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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

April 21, 2004

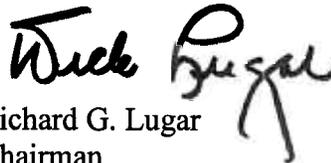
Dear Colleague:

I am writing to share with you the attached letter from Admiral James D. Watkins, USN (Ret.), Chairman of the U.S. Commission on Ocean Policy, expressing the Commission's strong support for U.S. accession to the Law of the Sea Convention. Yesterday the Commission released its preliminary report, which renewed its recommendation that the United States accede to the Convention.

The Commission's support for U.S. accession to the Convention is based on extensive testimony it heard from Members of Congress, federal agencies, trade associations, conservation organizations, the scientific community, and coastal states. The Commission's views on the Convention are set out in more detail in Admiral Watkins' testimony before the Foreign Relations Committee which is also attached for your reference.

Admiral Watkins' letter and testimony serve to further underscore that those who have given the most careful thought and study to U.S. oceans interests believe that accession to the Law of the Sea Convention will greatly advance the U.S. national interest. I urge you to join me in supporting early consideration and approval of the Convention by the full Senate.

Sincerely,



Richard G. Lugar
Chairman

RGL/mmk

Attachments

U.S. COMMISSION ON
OCEAN POLICY

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April 1, 2004

The Honorable Bill Frist
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Frist

On behalf of the U.S. Commission on Ocean Policy, I respectfully request that you schedule consideration of the United States' accession to the United Nations Convention on the Law of the Sea (LOS Convention) for Senate Floor action at the earliest opportunity. The Commission is unanimous in its strongly-held position in favor of U.S. accession to the LOS Convention.

The Commission has taken a strong interest in the international implications of ocean policy since the inception of our work. Our 16 Commissioners were appointed by President Bush – from a list of nominees submitted by the leadership of Congress – and represent a broad spectrum of ocean interests. The Oceans Act of 2000 (Public Law 106-256) specifically charged our Commission with developing recommendations on a range of ocean issues, including recommendations for a national ocean policy that "...will preserve the role of the United States as a leader in ocean and coastal activities."

I testified on October 14, 2003 before the Senate Committee on Foreign Relations in strong favor of our accession to the LOS Convention. I enclose a copy of my testimony on that occasion, together with associated documents that I submitted for the record as additional information. One of my fellow Commissioners, Paul L. Kelly, testified on March 23, 2004 before the Senate Committee on Environment and Public Works, again in favor of accession; I also enclose a copy of Commissioner Kelly's testimony.

Our testimony sets forth the history of the Commission's consideration of the LOS Convention, including receipt of testimony and letters from very senior representatives of the Bush Administration (both military and civilian), industry associations, environmental groups, and others, and the numerous important reasons why the U.S. should accede to the Convention.

COMMISSIONER

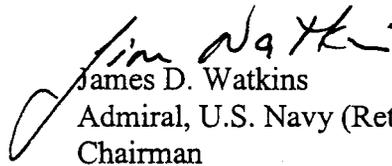
ADM JAMES D. WATKINS, USN (RET.), CHAIRMAN * ROBERT D. BALLARD, PH. D. * TED A. BEATTIE * LILLIAN C. BORRONE * JAMES M. COLEMAN, PH. D.
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Page 2 – The Honorable Bill Frist

Our Commission also is aware of some opposition to accession, notably as expressed in recent testimony to the Senate Committee on Environment and Public Works. I have carefully considered these opposing arguments and concluded they are not well-founded. I understand that the Bush Administration will submit a more detailed rebuttal to the Senate committees that held hearings on the LOS Convention.

Thank you for considering the views of the U.S. Commission on Ocean Policy on this important matter and I urge that the resolution authorizing U.S. accession to the LOS Convention be scheduled in the Senate before the adjournment of the 108th Congress.

Sincerely,


James D. Watkins
Admiral, U.S. Navy (Retired)
Chairman

Enclosures

cc: The Honorable Richard G. Lugar

Statement by
Admiral James D. Watkins, USN (Retired)
Chairman, U.S. Commission on Ocean Policy
Before the
Committee on Foreign Relations
United States Senate
October 14, 2003

Mr. Chairman:

Thank you for inviting me to testify before your Committee today on the important subject of United States accession to the United Nations Law of the Sea (LOS) Convention.

The U.S. Commission on Ocean Policy has taken a strong interest in the international implications of ocean policy since the inception of our work. Our 16 Commissioners were appointed by the President – 12 from a list of nominees submitted by the leadership of Congress – and represent a broad spectrum of ocean interests. The Oceans Act of 2000 (P.L. 106-256) specifically charged our Commission with developing recommendations on a range of ocean issues, including recommendations for a national ocean policy that “...will preserve the role of the United States as a leader in ocean and coastal activities.”

With this charge in mind, the Commission took up the issue of accession to the LOS Convention at an early stage. At its second meeting in November, 2001, the Commissioners heard testimony from Members of Congress, federal agencies, trade associations, conservation organizations, the scientific community and coastal states. We heard compelling testimony from many diverse perspectives – all in support of ratification of the LOS Convention. After reviewing these statements and related information, our Commissioners unanimously passed a resolution in support of United States accession to the LOS Convention. The fact that this resolution was our Commission’s first policy pronouncement speaks to the real sense of urgency and importance attached to this issue by my colleagues on the Commission.

The Commission’s resolution was forwarded to the President, Members of Congress, the Secretaries of State and Defense, and to other interested parties. I have enclosed a copy of our resolution, and the accompanying transmittal letters, for the record.

The responses we received have been very positive. Secretary of State Colin Powell wrote that he “shared our views on the importance of the Convention,” and Admiral Vern Clark, Chief of Naval Operations, stated that he “...strongly believe[d] that acceding to this Convention will benefit the United States by advancing our national security interests and ensuring our continued leadership in the development and interpretation of the law of the sea.”

Ensuing hearings, and the additional information we have gathered, have served to reinforce our conviction that ratification of the LOS Convention is very much in our national interest. I would like to share with you some of the reasons that our Commissioners have unanimously adopted this view of the Convention.

The LOS Convention was described by those who appeared before the Ocean Commission as the “foundation of public order of the oceans” and as the “overarching framework governing rights and obligations in the oceans.” The United States was involved in all aspects of the development of the Convention, including reshaping the seabed mining provisions in the early 1990’s. As a consequence, the Convention contains many provisions favorable to U.S. interests.

However, the foundation that the LOS Convention provides is subject to interpretation and will no doubt continue to evolve through time. The United States needs to be an active leader in this process, working to preserve the carefully crafted balance of interests that we were instrumental in developing, and playing a leadership role in the evolution of ocean law and policy. Acceding to the Convention will allow us to fully and effectively fulfill that leadership role, and will enhance United States economic, environmental and security interests.

For example, there are a series of issues currently being considered by parties to the Convention which could have tremendous economic implications for the United States.

Of particular importance is the work of the Convention’s Commission on the Limits of the Continental Shelf, which is charged with reviewing claims and making recommendations on the outer limits of the Continental Shelf. This determination will in turn be used to establish the extent of coastal state jurisdiction over Continental Shelf resources. There are several reasons why direct U.S. participation in this process would be beneficial, namely:

- The LOS Convention sets up the ground rules by which coastal nations may assert jurisdiction over exploration and exploitation of natural resources beyond 200 miles to the outer edge of the continental margin. This is particularly important to the United States, which is one of only a few nations in the world with broad continental margins.

The continental margins beyond the United States’ Exclusive Economic Zone (EEZ) are rich not only in oil and natural gas, but also appear to contain large

concentrations of gas hydrates, which may represent an important potential energy source for the future.

- The work of the Continental Shelf Commission in establishing clear jurisdictional limits creates a degree of certainty crucial to capital-intensive deepwater oil and natural gas development projects. Industry representatives stressed to us the importance of this certainty not only for potential investment in energy resource development beyond our own EEZ, but in U.S. industry participation in approved development projects undertaken on other nation's Continental Shelves.

The work of the Continental Shelf Commission is now at a critical stage. All current parties to the LOS Convention must submit their Continental Shelf claims prior to 2009. The Commission's action on these submissions will directly impact U.S. jurisdictional interests, particularly in the Arctic. If we do not become a party to the LOS Convention, we are in danger of having the world leave us behind on issues of Continental Shelf delimitation because we will continue to be ineligible to participate in the selection of members of the Commission or nominate U.S. citizens for election to that body.

Acceding to the LOS Convention will also allow the United States to play an active leadership role in a host of other issues of economic importance. As a party to the Convention, the U.S. can participate fully in International Seabed Authority efforts to develop rules and practices that will govern future commercial activities on the deep seabed. Currently, the U.S. is relegated to observer status.

As a party to the Convention, the United States will also be in a much stronger position to ensure the preservation of the balance between coastal state authority and freedom of navigation. The United States, whose international trade and economic health relies so heavily on maritime commerce, cannot afford to remain on the sidelines while parties to the LOS Convention make decisions that directly impact navigational rights and maritime commerce.

Further, the LOS Convention provides a comprehensive framework for protection of the marine environment. The Convention includes articles mandating global and regional cooperation, technical assistance, monitoring and environmental assessment, and establishing a comprehensive enforcement regime. The Convention specifically addresses pollution from a variety of sources, including land-based pollution, ocean dumping, vessel and atmospheric pollution, and pollution from offshore activities. The principles, rights and obligations outlined in this framework are the foundation on which more specific international environmental agreements are based.

The United States is party to many international agreements – including conventions pertaining to vessel safety, environmental protection and fisheries management – which are based directly on the LOS framework. Those United States representatives who participate in the negotiation of these agreements are among the strongest advocates for accession to the LOS Convention.

For example, the Coast Guard, which has played a lead role in developing international agreements on maritime safety, security and environmental protection at the International Maritime Organization (IMO), and also participates in fisheries negotiations, told our Commission that: “[A] failure to accede to the Convention materially detracts from United States credibility when we seek to advance our various ocean interests based upon Convention principles. Also, as a non-party, we risk losing our ability to influence international oceans policy by leaving important questions of implementation and interpretation to others who may not share our views.” In testimony before our Commission, then-Commandant Admiral James Loy, and more recently the current Commandant, Admiral Thomas Collins, both strongly supported United States accession to the LOS Convention.

From a security perspective, the LOS Convention provides a balance of interests that protect freedom of navigation and overflight in support of United States’ national security objectives. The provisions were carefully crafted during negotiation of the LOS Convention, and reflect the substantial input that the United States had in their development. In particular, the Convention provides core navigational rights through foreign territorial seas, international straits and archipelagic waters, and preserves critical high seas freedoms of navigation and overflight seaward of the territorial sea, including in the EEZ. The navigational freedoms guaranteed by the Convention allow timely movement by sea of U.S. forces throughout the world, and provide recognized navigational routes which can be used to expeditiously transport U.S. military cargo – 95 percent of which moves by ship.

The Convention’s law enforcement provisions establish a regime that has proven to be effective in furthering international efforts to combat the flow of illegal drugs and aliens by vessel – efforts which directly impact our nation’s security. The Convention establishes the rights and obligations of flag states, port states, and coastal states with respect to oversight of vessel activities, and provides an enforcement framework to expeditiously address emerging maritime security threats.

However, there have been several instances of unilateral assertions of jurisdiction which seem to disregard the Convention’s clear meaning and intent relative to freedom of navigation and overflight. The United States has unilaterally challenged some of the more excessive coastal state claims, relying on the navigational freedoms reflected in the Convention. There are also emerging issues that address the balance of interests between navigational freedoms and coastal state authority. The United States has important interests both as a coastal state and as a major maritime power. We will be in a much stronger and more credible position to challenge excessive claims, and to shape the future of issues and outcomes that impact our interests, if we are a party to the Convention.

There are many other examples of benefits that would be derived from U.S. accession to the LOS Convention. For example, the U.S. research fleet frequently suffers costly delays in ship scheduling when other nations fail to respond in a timely manner to our research requests. Currently, we are not in a position to rely on articles in the Convention that address this issue, such as the “Implied Consent” article (Article 252) that allows

research to proceed within 6 months if no reply to the request has been received, and other provisions that outline acceptable reasons for refusal of a research request. Also, as a party to the Convention, the U.S. could participate in the member selection process, including nominating our own representatives, for the International Law of the Sea Tribunal, as well as the Continental Shelf Commission and the various organs of the International Seabed Authority that I have previously mentioned.

U.S. accession to the LOS Convention has received bipartisan support from past and current Administrations. On November 27, 2001, Ambassador Sichan Siv, U.S. Representative on the United Nations Economic and Social Council, in his statement in the General Assembly on Oceans and Law of the Sea, said: "Because the rules of the Convention meet U.S. national security, economic, and environmental interests, I am pleased to inform you that the Administration of President George W. Bush supports accession of the United States to the [LOS] Convention." More recently the G-8 Summit held in June, 2003, produced a G-8 Action Plan for Marine Environment and Tanker Safety which stated: "Specifically, we commit to: [1.1] The ratification or acceding to and implementation of the United Nations Convention on the Law of the Sea, which provides the overall legal framework for oceans."

Mr. Chairman, the input received by the U.S. Commission on Ocean Policy reflects a broad consensus among many diverse groups in favor of ratification of the LOS Convention. Over 140 nations are party to the Convention. As I have described, there are many important decisions being made right now within the framework of the Convention which will impact the future of the public order of the oceans and directly impact U.S. interests. Until we are a party to the Convention, we cannot participate directly in the many bodies established under the Convention that are making decisions critical to our interests.

While we remain outside the Convention, we lack the credibility and position we need to influence the evolution of ocean law and policy. That law and policy is evolving as the provisions of the Convention are interpreted and implemented. It is interesting to note, in this regard, that the Convention will be open for amendment for the first time beginning in 2004. The Ocean Commission was directed by our enabling legislation to make recommendations to preserve the role of the United States as a leader in ocean activities. We cannot be a leader while remaining outside of the process that provides the framework for the future of ocean activities. For this reason, I renew our Commission's unanimous call for United States accession to the United Nations Law of the Sea Convention.

Thank you, Mr. Chairman. I stand ready to answer any questions that the Committee may have.