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## United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

April 8, 2004

Dear Colleague:

I am writing to share with you the attached letter from State Department Legal Adviser William Taft that addresses erroneous claims by opponents of the Law of the Sea Convention that the Convention would prohibit U.S. intelligence gathering activities. Mr. Taft's letter, which was coordinated with the Department of Defense and other relevant agencies including the intelligence community, confirms that the Convention would not prohibit U.S. intelligence activities.

Yesterday I shared with you a letter from General Richard Myers, Chairman of the Joint Chiefs of Staff, which similarly confirmed that U.S. intelligence activities would be unaffected by U.S. accession to the Convention. Admiral Vern Clark, the Chief of Naval Operations, has also written that the accession to the Convention will not affect U.S. intelligence activities. I am enclosing a copy of his letter for your reference.

These same issues were the subject of a 1995 classified legal analysis of the Convention prepared by the Department of Defense at the request of the Senate Select Committee on Intelligence. I have placed a copy of this classified analysis in S-407 of the Capitol for the use of interested Senators (Members Only).

Taken together, these documents demonstrate that accession to the Convention will have no adverse effect on U.S. intelligence activities. As the Bush Administration has made clear on numerous occasions, accession to the Law of the Sea Convention will enhance U.S. national security.

I urge to you to join with me in supporting early floor consideration of the Convention and its approval by the Senate.

Sincerely,

  
Richard G. Lugar  
Chairman

RGL/mmk

THE LEGAL ADVISER  
DEPARTMENT OF STATE  
WASHINGTON

Dear Chairman Lugar:

During recent briefings of Senate staff by officials from the Department of State, the Department of Defense, and other relevant agencies on the Law of the Sea Convention, the question was raised whether the Convention would prohibit or otherwise adversely affect U.S. intelligence activities. I would like to take this opportunity to respond to that question. I have coordinated this response with the Department of Defense and those other relevant agencies.

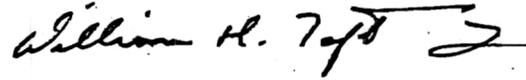
U.S. accession to the Convention would support ongoing U.S. military operations, including the continued prosecution of the war on terrorism. The Convention reinforces our military's ability to move – without hindrance and under authority of law – forces, weapons, and materiel to the fight, which is critical to our accomplishing national security objectives. The Convention does not prohibit U.S. intelligence activities; nor would we recognize any restrictions on those activities.

Since President Reagan's 1983 Ocean Policy Statement, the United States has conducted its activities consistent with the non-deep seabed provisions of the Convention. Further, the Convention's "innocent passage" provisions are actually more favorable to U.S. military and navigational interests than those in the 1958 Convention on the Territorial Sea and the Contiguous Zone, to which the United States is a party. Not

The Honorable  
Richard G. Lugar,  
Chairman,  
Committee on Foreign Relations,  
United States Senate.

only is the Convention's list of non-innocent activities an exhaustive one, but it generally uses objective, rather than subjective, criteria in the listing of activities.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Taft, IV". The signature is fluid and cursive, with a prominent flourish at the end.

William H. Taft, IV

cc: Sen. Joseph R. Biden  
Sen. John W. Warner  
Sen. Carl Levin  
Sen. Pat Roberts  
Sen. John D. Rockefeller, IV  
Sen. James M. Inhofe  
Sen. James M. Jeffords  
Congressman Porter J. Goss  
Congresswoman Jane Harman



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

18 Mar 04

Dear Chairman Lugar,

I write to express my strong support for United States accession to the Law of the Sea Convention. It has been the consistent, longstanding position of the Navy that accession to the Convention will benefit the United States by advancing our national security interests and ensuring continued U.S. leadership in the development and interpretation of the law of the sea.

The Law of the Sea Convention helps assure access to the largest maneuver space on the planet - the sea - under authority of widely recognized and accepted law and not the threat of force. The Convention protects military mobility by codifying favorable transit rights that support our ability to operate around the globe, anytime, anywhere, allowing the Navy to project power where and when needed. The Convention also provides important safeguards for protecting the marine environment while preserving operational freedoms.

Although the Convention was drafted over 20 years ago, the Convention supports U.S. efforts in the war on terrorism by providing important stability and codifying navigational and overflight freedoms, while leaving unaffected intelligence collection activities. Future threats will likely emerge in places and in ways that are not yet known. For these and other as yet unknown operational challenges, we must be able to take maximum advantage of the established navigational rights codified in the Law of the Sea Convention to get us to the fight rapidly. The diversity of challenges to our national security combined with a more dynamic force structure makes strategic mobility more important than ever. The oceans are fundamental to that maneuverability and, by joining the Convention, we further ensure the freedom to get to the fight, twenty-four hours a day and seven days a week, without a permission slip.

I appreciate your continued strong support of the Law of the Sea Convention and the Navy.

Sincerely,

VERN CLARK

Admiral, U.S. Navy

The Honorable Richard G. Lugar  
Chairman, Committee on Foreign Relations  
United States Senate  
Washington, DC 20510