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SENT BY FAX: 202.228.3612

Senator John F. Kerry, Chairman
U.S. Senate Committee on Foreign Relations
444 Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Mr. Chairman:

I am writing as President of The Maritime Law Association of the United States ("MLA" or "Association") to urge the Senate Foreign Relations Committee to recommend to the Senate that it give its advice and consent to the United States' accession to the Law of the Sea Convention ("UNCLOS" or "the Convention"). Please accept this as the MLA's view that this convention is in our best national security and economic/commercial interests.

The MLA is a 113-year-old bar association comprising about 3000 admiralty lawyers and other professionals in maritime commerce. Because of the international nature of marine trade, the Association was concerned from its founding with the uniformity of international and domestic maritime law, having been established in order to be one of now 50 constituent countries' members of the Comité Maritime International.¹ The MLA's continuing concern with international maritime law is reflected in the recitation of our objectives in our Articles of Incorporation:

¹ The CMI is a non-governmental not-for-profit international organization established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.

to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, . . . to participate as a constituent member of the Comité Maritime International . . . , and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices of different nations.

Many of our members, including practicing attorneys, judges, academics, and business people, work within and are affected by international laws, standards, and customs. Accordingly, the MLA takes a strong interest in the Law of the Sea Convention.

On March 10, 1983, shortly after the Convention was opened for signature, President Reagan recognized that the Convention expresses "traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states." Accordingly, he announced three policy decisions that would give effect to U.S. recognition of the Convention's principles:

- (1) The United States would "recognize the rights of other states in the waters off their coasts, as reflected in the Convention," so long as those states also recognize the rights and freedoms of other nations under international law;
- (2) The United States would exercise "its navigation and overflight rights and freedoms . . . in a manner that is consistent with the balance of interests reflected in the Convention;" and
- (3) An Exclusive Economic Zone was established "in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coasts."

Each succeeding administration has implemented the policy and law proclaimed by President Reagan.

Since President Reagan's announcement, the Law of the Sea Convention has been modified to provide further benefits desired by our nation. Even though not a party, the United States negotiated amendments to the Law of the Sea Convention to remove flaws that would have affected the development of seabed mineral resources beyond national jurisdiction (Part XI). That reform also was recognized by each succeeding administration and was effectuated by the July 29, 1994, Agreement which President Clinton noted, in his transmittal letter, "meets the objection of the United States and other industrialized nations previously expressed to Part XI."

President Clinton's letter of transmittal to the Senate noted that the Law of the Sea Convention protects and promotes the well-being of our country in the many essential respects:

The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea Following adoption of the Convention in 1982, it has been the policy of the United States to act in a manner consistent with its provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.

The primary benefits of the Convention to the United States include the following:

- ***The Convention advances the interests of the United States as a global maritime power.*** It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry seagoing cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage to the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond.
- ***The Convention advances the interests of the United States as a coastal State.*** It achieves this, *inter alia*, by providing for an exclusive economic zone out to 200 nautical miles from shore and by securing our rights regarding the resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.
- As a far-reaching environmental accord addressing vessel

source pollution, pollution from seabed activities, ocean dumping, and land-based sources of marine pollution, ***the Convention promotes continuing improvement in the health of the world's oceans.***

- In light of the essential role of marine scientific research in understanding and managing the oceans, ***the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.***
- ***The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean***—solutions that respect the essential balance between our interests as both a coastal and a maritime nation.
- Through its dispute settlement provisions, ***the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.***

* * * *

Early adherence by the United States to the Convention and the Agreement is important to maintain a stable legal regime for all uses of the sea, which covers more than 70 percent of the surface of the globe. Maintenance of such stability is vital to U.S. national security and economic strength.

(Emphasis added.)

The Convention's benefits and virtues remain unchanged, and the events of recent years make the need for accession even more compelling as our nation relies more and more on the high seas as our first line of defense. The Proliferation Security Initiative to combat attempts by rogue nations to spread weapons of mass destruction, is dependent on the application of international law to the high seas. The Convention will also enhance, not harm, the international legal efforts led by the United States to suppress the illegal proliferation of nuclear weapons and other weapons of mass destruction in a manner similar to the joint anti-slavery patrol off the coast of West Africa established by the Royal Navy and the U.S. Navy in the 1840s.

In the past several years the scourge of piracy has ever increasingly impacted maritime commerce in a major way, costing the United States' economy millions of dollars

and tragically taking the lives of innocent US citizens. UNCLOS has provisions that address piracy in meaningful ways that will strengthen US security.

US maritime commerce and the millions of jobs directly and indirectly linked to American activities at sea depend upon a strong U.S. Navy. The MLA fully accepts the learned views of the long line of Secretaries of the Navy and Chiefs of Naval Operations that UNCLOS is a bedrock of vital naval operations designed to protect US interests in the oceans.

Over 95% of all US international voice, data, and video communications is carried on submarine fiber optic cables which in turn depend upon the provisions of UNCLOS that enshrine and give practical protection to the freedom to lay and maintain cables in international waters. This must be recognized as a vital US interest of the highest magnitude.

In addition to security interests, the United States also looks more and more to the world oceans for their wealth of essential resources—from food to energy sources, both present and future—as well as a highway of trade providing access to the materials and products of other nations. The Convention would promote the kind of international stability that would protect our access to this wealth.

US companies and vessels suffer severe prejudice when the US State Department is handicapped in protecting their interests against the 161 nations and the EU that are parties to UNCLOS. US diplomats have little standing to ask these nations to respect UNCLOS provisions when the US is not a party and cannot enjoy the many remedies and opportunities that UNCLOS empowers to member States.

Uniformity of the law of the sea is essential to the recognition of the rights of states, their ships, and their citizens, and crucial to economic prosperity. Labor and business agree this convention will mean more US jobs. US accession to the Law of the Sea Convention will further establish that the world's territorial seas and high seas are not lawless, but are instead subject, respectively, to carefully crafted bodies of domestic laws and to a regime of international laws that ensure the right of law-abiding individuals and nations to enjoy the many benefits of the world's waters. The courts of the United States as well as courts of foreign states and the tribunal created under the Law of the Sea Convention, will benefit greatly from the accession of the United States to this Convention as an emblem of world accord on the principles that govern the peaceful use of the high seas.

The vast importance of the world's oceans to the economic and military well-being of the United States is beyond debate. Our historical and continuing role as a maritime nation has led the Joint Chiefs of Staff and all living former Chiefs of Naval Operations to speak in favor of ratification of a convention that is especially important to the interests of the United States.

Accession to the Law of the Sea Convention will be a major and long overdue step forward to protect and ensure the rights of the United States and its citizens around the

world and to promote uniformity of the law of the sea. Accordingly, the Maritime Law Association of the United States strongly urges the Senate to give its advice and consent in favor of accession to the Law of the Sea Convention.

In closing, the MLA hopes that the Committee will correct the misperceptions and misinformation about the Convention that have frustrated United States' accession to this point. We have examined the Convention carefully and can find no basis to support assertions that the United States by joining the Convention would relinquish sovereignty, be subjected to increased litigation, or that freedoms of navigation can be equally secured by remaining outside of the Convention. Quite to the contrary, we firmly believe that rights and commercial interests can only be perfected with legal certainty through United States' accession.

Respectfully submitted,



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