

**Chief of Naval Operations
Adm. Jonathan Greenert testifies before the
Senate Foreign Relations Committee on the Law of the Sea Convention
June 14, 2012**

KERRY:

Hearing will come to order.

Thank you all very much for being here with us today. This is the second hearing on the Law of the Sea Convention, and we are very pleased to welcome six individuals with long and remarkably distinguished careers in defense of America's security.

Admiral James A. Winnefeld Jr. is the vice chairman of the Joint Chiefs of Staff. Admiral Jonathan Greenert is chief of naval operations. Admiral Robert J. Papp Jr. is commandant of the U.S. Coast Guard. General William M. Fraser III is commander of U.S. Transportation Command. General Charles H. Jacoby Jr. is the commander of U.S. Northern Command. And Admiral Samuel J. Locklear III is commander of the U.S. Pacific Command.

I can't think of any time, certainly not since I've been here, and I doubt even before that, that we've had so many top military leaders come before the Senate Foreign Relations Committee at one time, and I thank you all for being here.

I want to make clear why the committee is so interested in this testimony and why it is so important.

There are many people -- there are some people who raise questions about the treaty, inevitably, as they have about any treaty that we've ever passed. But this treaty, particularly, has two components that those of us who support it believe are important for the country.

One is, above all, the economic component, and we will have a hearing shortly with major leaders from American industry -- mining industry, oil and gas, communications, others, transportation -- who are deeply concerned about the legality of their claims, should they capitalize and spend millions of dollars exploiting resources from the ocean seabed. And that is worth enormous competitive advantage to the United States of America and it is worth enormous numbers of jobs.

But secondly, there is a very significant national security component to this. And we've asked as many of the different commanders to come here because each of them, in their own way, will have an ability to be able to share with America their individual reasons -- and there are

individual reasons, they differ in some cases -- of what is most important to them about the passage of this treaty. And in its sum total, it is a compelling rationale for why this is in America's interest.

KERRY:

And the committee this afternoon will have another hearing. We'll have some opponents of the treaty there, and we'll have others who want to come in and oppose it, because we think it's very, very important, Senator Lugar and I are committed to hear from everybody, so that the Senate can build the strongest record possible and then act in its hopeful wisdom based on facts and based on that record that is compiled here.

We've heard from Secretary of State Hillary Clinton. We've heard from Secretary of Defense Leon Panetta, and we've heard from the chairman of the Joint Chiefs of Staff, General Martin Dempsey. In addition to support from the witnesses here today, we have letters that have urged ratification of the treaty from General Mattis, the commander of the U.S. Central Command; General Fraser, commander of the U.S. Southern Command; Admiral Stavridis, commander of the U.S. European Command; Admiral McRaven, commander of U.S. Special Operations Command; and General Kehler, commander of the U.S. Strategic Command. And I will place each of those records -- each of those letters in the record so that people can read them in full.

We -- we do want to have an open and honest discussion regarding this. I think that's the important thing, and building a record regarding this treaty. But today, we are going to focus on the national security component. And at the appropriate time, probably after the election, we will have a full Senate classified briefing because there is classified material that needs to be digested by members of the Senate, but I think the appropriate time would be sometime after the election.

As the world's most -- foremost maritime power, our national security interests are intrinsically linked to freedom of navigation. There's a reason that every living chief of naval operations has supported the U.S. accession to the Law of the Sea during the time that they were serving as chief of naval operations. They know that the United States needs the treaty's navigational bill of rights for worldwide access to get our troops to the fight, to sustain them during the fight, to get back home without the permission of other countries or without the diversion of having to force one's way into those passages and have a secondary struggle apart from the primary conflict that one might be engaged in.

Critics say that these navigational provisions are nothing new because they're already protected under customary international law. But most legal experts and most practical analysts of our security will tell you that relying on customary international law puts the legal basis for our actions outside of our ultimate control. By joining, we would maximize U.S. influence on the treaty bodies that play a role in interpreting, applying and developing the law of the sea.

Former Secretaries of State Henry Kissinger, George Shultz, James Baker, Colin Powell and Condoleezza Rice recently wrote an op-ed driving this point home, and I just want to quote it. "Some say it's good enough to protect our navigational interests through customary international law and if that approach fails, then we can use force or threaten to do so. But customary law is vague and doesn't provide a strong foundation for critical national security rights. What's more the use of force can be risky and costly. Joining the Convention would put our vital rights on a firmer legal basis, gaining legal authority -- legal certainty and legitimacy as we operate in the world's largest international zone."

I would call everybody's attention to a full-page advertisement in today's Wall Street Journal featuring the five secretaries, all of whom cite these reasons for why they believe we should ratify this treaty.

The bottom line is this: Do we really want to entrust our national security to an unwritten set of rules, where our security would be enhanced by having clarity ahead of time? Is there any other area in which we choose to leave important matters of national security simply to customary law where we have an option not to? And the answer to both question is no. Just look at the numbers of treaties we have engaged in with respect to nuclear weapons, chemical weapons, and other issues.

We need to join the treaty to ensure critical navigational rights and high-seas freedoms are protected. No where is the nexus between our national security and this treaty more clear than in the South China Sea. Becoming a party would give an immediate boost to U.S. credibility as we push back against excessive maritime claims and illegal restrictions on our warships and commercial vessels and those of our allies.

There's no doubt in my mind that it would help resolve maritime issues to the benefit of the United States and our regional allies and partners. And I believe if our colleagues have the opportunity to hear the classified briefing, which they will, and also the testimony here, I think they will come to that conclusion.

It's true that the United States has used diplomatic and military assets to refute excessive maritime claims, and I'm sure we'll continue in the future. These freedom of navigation of operations efforts on our behalf will continue for sure. But they entail a degree of risk and our Navy can't be everywhere at once, no matter what the size of our fleet.

As leaders and citizens, we owe it to our men and women in uniform to provide them with every available means at our disposal to perform their dangerous mission. Let me be clear. I am not advocating that our military take a step backwards and I'm not advocating that we replace a strong military with a piece of paper. I would never do that, nor would anybody who advocates this. What I am advocating is common sense, and giving the military all of the tools that it needs.

General Dempsey said it best. "This treaty would," and I quote, "provide us an additional tool for navigating an increasingly complex and competitive security environment. Ratification would also give the United States greater credibility and legitimacy as we seek to hold others to the treaty's terms. It would demonstrate by deed, not just by words, America's commitment to the rule of law and strengthen the foundation for the alliances and partnerships that are critical to U.S. national security and global stability."

So I just -- you don't have to take my word for that, but let me -- let me quote our current secretary of defense. Secretary Panetta said, "We are pushing for a rules-based order in the region and the peaceful resolution of maritime and territorial disputes in the South China Sea, in the Straits of Hormuz, and elsewhere. How can we argue that other nations must abide by international rules when we haven't joined the very treaty that codifies those rules?"

I think that's exactly right. The Law of the Sea ensures and secures the rights that we need for our military and commercial ships to meet our core national security requirements.

Now, you know, some will say that perhaps we shouldn't bother joining the treaty because China and some other countries that are parties don't always follow the rules. Well, it's true that they don't always, but it doesn't make sense not to join the treaty to have a tool to be able to try to force them to or hold them accountable. And I will tell you, and we will hear the testimony, that there are occasions when our secretaries have raised this issue with the Chinese at various meetings from ASEAN to elsewhere, and the Chinese look at us and say, "You're not even a party to the treaty. Who are you to tell us?"

The United States is the greatest maritime power in the world; the greatest maritime power the world has ever seen. We have the strongest Navy and our economy relies heavily on our imports and exports that move by sea. As a result, we have an enormous stake in ensuring a stable and predictable set of rules for the oceans. Joining the treaty helps us do this.

So with that, I welcome our distinguished witnesses again. Thank you for bringing your expertise to this committee at this important moment. We look forward to hearing your insights.

Senator Lugar?

LUGAR:

Thank you, Mr. Chairman.

LUGAR:

I join you in welcoming our distinguished military panel to the Foreign Relations Committee. I want to underscore for my colleagues a fundamental starting point for this hearing. The commander-in-chief, the Joint Chiefs of Staff, the United States Navy, the United States Coast

Guard, and individual combatant commanders are asking the Senate to give the advise and consent to the Law of the Sea Convention.

Our uniformed commanders are telling us unanimously that U.S. accession to this treaty would help them do their job at a time of considerable international threat.

We have charged the United States Navy with maintaining sea lanes and defending our nation's interests on the high seas. They do this every day. And even in peacetime, these operations carry considerable risk.

The Navy is telling us that U.S. membership in the Law of the Sea Convention is a tool they need to maximize their ability to protect the United States' national security, with the least risk to the men and women charged with that task.

This request is not the results of a recent reassessment, by naval authorities or the enthusiasm of a few naval leaders. The support of the military and the Navy for this treaty has been consistent, sustained, and unequalled. All the members of the joint chiefs support, advise, and consent. Their predecessors, likewise, supported the convention.

As seven CNOs wrote in the joint letter back in 1998, quote, "there are no downsides to this treaty. It contains expansive terms which we may use to maintain forward presence preserve U.S. maritime superiority. It also has vitally important provisions which guard against the dilution of navigational freedoms, and prevent the growth of new forms of excessive maritime claims," end of quote.

Now, the military is not always right. But the overwhelming presumption in the United States Senate has been that if military leaders ask us for something to help them do their job, we do our best to provide them with that tool. Within the constraints of law and responsible budgeting.

Articles and statements opposing the convention often avoid mentioning the military's long-standing support for Law of the Sea. This is because to oppose a convention on national security grounds requires one to say that military leaders who have commanded fleets in times of war and peace and who have devoted their lives to naval and military studies have illegitimate opinions.

Those critics who do mention the military support sometimes spin theories as to why the military would back this treaty. One explanation that was offered in 2007 was that somehow military commanders had been misled by their service lawyers.

As a former Navy officer who served as an intelligence briefer to a CNO admiral, Arleigh Burke, I can attest CNOs are not easy to deceive. These are some of the most talented and politically adept individuals to serve our nation. The suggestion that CNOs, service chiefs, other military leaders are blindly allowing themselves to be led astray by defense department lawyers is nonsense.

Other critics have suggested that military support for the convention is simply a function of top uniformed officers taking orders from presidents and secretaries of defense. This theory relies on a simplistic understanding of how military decisions are made. And it fails to explain why Navy leaders have continued to support the Law of the Sea Convention long after they have left active duty.

Still, other critics suggest that the Navy's expression that it will be able to maintain freedom of navigation with or without U.S. ratification of Law of the Sea means that their assessment is unnecessary or even undesirable.

But the Navy's assertion that it will protect sea lanes under any circumstances does not relieve us of the responsibility to give them tools, to make their job less arduous, less expensive, less complex and certainly less dangerous.

The Navy will always have a can-do attitude, regarding freedom of navigation missions. But that should not make us cavalier about the seriousness of their request for Law of the Sea. Navy leaders are not looking for a substitute for a naval power. They are hoping for a tool that will resolve navigation disputes with all types of nations including allies. They are hoping for a tool that will allow them to reduce the share of naval assets that must be devoted to freedom of navigation missions.

The ongoing debate and delay in ratifying the convention would be just an interesting political science case if -- if the United States were not facing serious consequences because of our nonparticipation.

As a nonparty, we have little say in amendments that could roll back navigational rights that we thought hard to achieve. And in addition, as a nonparty, our ability to influence the decisions of the commission on the limits of the continental shelf is severely constrained. Every year that goes by without the United States joining the convention deepens our country's submission to ocean laws and to practices determined by foreign governments without U.S. input.

I thank once again our distinguished panel for joining us today. We certainly look forward to their testimony.

I thank you, Mr. Chairman.

KERRY:

I thank you very much, Senator Lugar. I appreciate it. Senator Corker, and I think Senator Risch, I don't think you were here when I mentioned it, you may have been Senator Risch, but we'll have a classified briefing at the appropriate time down the road and just wanted -- and Senator (inaudible) -- and I think senators will be interested in that and I ask them just to withhold judgments in a sense until then.

I want to recognize that our colleague -- former colleague and former secretary of the Navy John Warner is here. We're delighted to have him as part of the proceedings. I think he has a number of friendly admirals, retired, who are here with him. We appreciate their interest in this.

I neglected to mention, I think today is the Army's birthday. Is that correct? Happy birthday to all members of the United States army. And I think it's your birthday, General Jacoby, tomorrow, so we wish you many happy returns, sir.

We will begin with, in this order, if we will: Vice Chairman Winnefeld, then Chief of Naval Operations Greenert, Coast Guard Commandant Papp, General Fraser, General Jacoby and Admiral Locklear.

Admiral, thank you for being with us. Appreciate it.

WINNEFELD:

Mr. Chairman, Senator Lugar, distinguished members of the foreign relations committee, good morning and thank you for the opportunity to appear before you on this topic.

I appear today as a career sailor, a former combatant commander and in my current position all assignments that have informed my perspectives on the Law of the Sea Convention. It's also a privilege to appear alongside another generation of military leaders as we join in sharing the view that now is the time for the United States to join the Law of the Sea Convention.

I've come to my own judgment on this, not informed by lawyer, actually informed but not influenced by lawyers, that joining this treaty will have positive implications for our operations across the maritime domain.

The convention improves on previous agreements, including the 1958 Geneva Convention. It will further protect our access to the maritime domain. It will fortify our credibility as the world's leading naval power. And allow us to bring to bear the full force of our influence on maritime disputes. In short, it preserves what we have and it gives us yet another tool to engage any nation that would threaten our maritime interests.

We've listened very closely over the many years to the rationale for why we should not accede to the convention. Including a number of items in public debate. And we take these concerns very seriously. We read this and we study it and we want to understand it.

But I would say some say that joining the convention would result in a loss of sovereignty for the United States. I believe just the opposite to be true. Some would say -- some of those op-eds and the like would say that joining the convention will open U.S. Navy operations to the jurisdiction of international courts. We know this is not true. The 2007 proposed Senate declarations and understandings specifically express our right to exempt military activities from the convention.

WINNEFELD:

Many other nations that have exceeded have already exempted their military activities from the treaty without dispute. Some say that joining the convention will require us to surrender our sovereignty over our warships and other military vessels. I can assure you that we will not let this happen, and the convention does not require it. If anything, it further protects our sovereignty in this regard well before we would have to resort to any use of force.

Others say that it will cause us to have to alter our rules of engagement. This is also false. I can tell you that joining the convention would not require any change whatsoever in the rules of engagement that we employ today, including and especially our right to self-defense.

Still others say that it means our naval activities will be restricted in or beyond areas in which we now operate. Rather, if we do not join the convention, we're at more risk than ever of nations attempting to impose such limitations under evolving interpretations of customary international law.

That body of law is not static. Joining the convention will protect us from ongoing and persistent efforts on the part of a number of nations, including those with growing economic and military power, to advance their national laws and set precedents that could restrict our maritime activities, particularly within the bounds of their exclusive economic zones.

We attach the term "lawfare" to these efforts to erode the protections of customary international law. It's a trend that's real and pressing and that could place your Navy at legal disadvantage unless we join the convention. And the nations that would challenge us in this and other ways are, frankly, delighted that we are not a party to the convention.

Joining will also give us a stronger moral standing to support partners who are being intimidated over questions of sovereignty that should be resolved peacefully and voluntarily under the convention.

Candidly, I join my boss, Secretary Panetta, and Marty Dempsey, in finding it awkward to suggest that other nations should follow rules that we have not yet agreed to ourselves.

And joining will give us the ability to influence key decisions that could affect our sovereign rights and those of our partners and friends in the Arctic and elsewhere, and this grows more important each day.

The real question to me is whether our country will choose to lead in the maritime environment from the inside or will follow from the outside.

Senator, you know, I tell my sons that there are three kinds of people in this world: those who make things happen, those who watch what happened, and those who wonder what happened. I do not want to see the United States or our Navy or Coast Guard wondering what happened when key decisions potentially detrimental to our sovereignty are made in our absence by the 161 members of the treaty.

Our recommendations to join reflect nearly two decades of military leaders who have studied this problem closely and arrived at the same conclusion that ratification is in our best interests.

Today I join these officers, including every chairman of the Joint Chiefs since 1994, in giving my support to the Law of the Sea Convention and in asking for your advice and consent.

I thank you for the opportunity to appear this morning and I look forward to your questions. Thank you, sir.

KERRY:

Thank you very much, Chief. Appreciate it.

Admiral Greenert? Chief?

GREENERT:

Thank you, Chairman Kerry, Ranking Member Lugar, distinguished members of the committee. I'm honored to appear before you to discuss the Law of the Sea Convention.

You'll have to excuse me, I have a little bit of laryngitis, but I'll get through this.

This morning I'd like to make three points, if I may. Number one, the Law of the Sea Convention will help ensure the access that the Navy needs to operate forward.

And, Senator, operating forward is what we're about. That's where we're at our best, that's where we serve the nation best. That's key to our effectiveness.

Number two, the convention will provide a formal and consistent framework with legal certainty to peacefully settle maritime disputes.

Number three, the convention will help ensure we remain consistent with our principles and will enhance our multilateral cooperation. That I've found in spades as I've interfaced with my heads of Navy around the world.

As the world's preeminent maritime power, the U.S. Navy will benefit from the support the convention provides our operations, especially the broad navigational rights that are guaranteed on the high seas and inside exclusive economic zones of the other nations.

For example, in the past several years some nations in the Middle East and the Asia-Pacific region have complained about U.S. Navy survey ships operating within their exclusive economic zones. Commanders have consistently responded by asserting our rights under the convention and customary international law.

However, our argument would carry much more weight if the U.S. were a party to the convention. Joining the convention would give our day-to-day maritime operations a firmer codified legal foundation. It would enable and strengthen our military efforts. It won't limit them.

The convention provides a formal and consistent framework for peaceful resolution of maritime disputes. The convention defines the extent of control that nations can legally assert at sea and prescribes procedures to peacefully resolve differences. It's an important element in preventing disagreements from escalating into a confrontation or potentially conflict.

Recent interference with our operations in the Western Pacific and some rhetoric by Iran about closing the Strait of Hormuz underscore the need to be able to use the convention to clearly identify and respond to violations of international law that might attempt to constrain our access. As a member of the convention, our ability to press the rule of law and to peacefully deter conflict will certainly be enhanced.

Remaining outside the convention is just inconsistent with our principles, our national security strategy and our leading position in maritime affairs.

For example, our forces in the U.S. 5th Fleet in the Arabian Gulf lead a coalition maritime force that enforces maritime security in the greater Middle East. Out of the 26 nations that serve in this coalition, only three, including the United States, are not a party to the convention.

This coalition asserts rights on a daily basis under the convention to visit vessels, counter piracy and render assistance to vessels in danger. However, America's status as a nonparty to the convention is sometimes questioned by our coalition partners.

Acceding to the convention will enhance our position as a leader of that coalition and a leader in the world of maritime nations, in the Middle East and in elsewhere.

In closing, aided by the framework provided by the convention, your Navy will continue to be critical to our nation's security and prosperity. I appreciate the committee's longstanding support of the men and women of the Navy and I look forward to continuing to work with you as we address the challenges.

Thank you, Senator.

KERRY:

Thank you very much, sir. We appreciate it.

Commandant?

PAPP:

Good morning, Chairman Kerry, Senator Lugar, and the distinguished members of the committee. It's my privilege to testify before you here today on how the United States should accede to the Law of the Sea Convention because it will enhance the Coast Guard's operations and maritime leadership.

Like six previous commandants, I ask you to accede to the convention without further delay. Having served in six Coast Guard cutters, commanding four of them, I view things through a sailor's eye. My fictional hero, Captain Jack Aubrey of Patrick O'Brian's "Master and Commander" book series always positioned his ship in battle so that he could hold the weather gauge. The ship with the weather gauge is upwind. It has greater ability to maneuver relative to other ships and it maintains its position of advantage and is able to dictate the terms of engagement.

I can think of no better analogy to describe the Law of the Sea Convention than providing the Coast Guard with the weather gauge to protect Americans on the sea, protect America from threats from the sea, and to protect the sea itself.

Since the founding of our nation, American prosperity has depended upon having safe, reliable and secure maritime trade. Today, the convention's provisions set forth the global maritime framework, among other things.

The convention's provisions contain internationally recognized sovereign maritime boundaries. It's this framework that we rely upon every day to aid mariners in distress, to protect our fish stocks, to intercept illicit traffickers attempting to deliver drugs, persons and other illegal cargoes to our shores, and to preserve our maritime sovereignty, navigational rights and freedoms.

Indeed, our many bilateral and multilateral law enforcement agreements that we rely upon to stop drug smugglers, interdict human traffickers and protect our oceans are predicated upon the convention.

These agreements, which have been described as the fabric of the Law of the Sea, are concluded, interpreted and enforced under the convention's framework.

The convention also provides us with the largest exclusive economic zone, or EEZ, of any coastal state. Our EEZ contains vast fisheries, energy and other resources. Beyond the EEZ lies the extended continental shelf, or ECS. Its seabed, particularly off Alaska, is a new frontier that contains 20 to 30 percent of the world's untapped fossil fuel resources. And it's the convention that contains the mechanisms to seek and ensure international recognition of our sovereign ECS rights.

Joining the convention will not only put these sovereign rights on the strongest legal footing, it will also bolster our ability to ensure stewardship of our ECS resources.

There's no better example of this than the emerging Arctic. Our ability to effectively plan and allocate Arctic resources depends in part upon the delineation of maritime boundaries, sovereign rights, privileges and navigational freedoms.

PAPP:

Yet, as we work alongside our partner Arctic nations on issues of governance, such as cooperative search and rescue agreements, oil spill prevention and response protocols and delineation of maritime claims, we remain the only Arctic nation that's not a party to the convention.

Being a nonparty detracts from our ability to best provide for the safety, security, and stewardship of our vast resource-rich maritime and emerging Arctic domains.

The convention contains established legal framework for the oceans. Unlike customary international law, which can change, the convention codifies this framework. We follow this framework. We demand others do so yet we remain outside of it. In sailor's terms, this puts us downwind and it forces us to tack up into the wind when we should be leading on maritime issues. That's why I'm urging you today to seize the weather gauge and accede to the convention.

Thank you for this opportunity to testify. And I look forward to answering your questions.

KERRY:

Thank you, sir. We appreciate it.

General Fraser?

FRASER:

Chairman Kerry, Ranking Member Lugar, and distinguished members of this committee. It's indeed my distinct privilege to be here today representing United States Transportation Command.

I appreciate this opportunity to testify concerning the Law of the Sea Convention. And I join an array of other senior military officers both past and present who support the Law of the Sea Convention.

The United States Transportation Command is the Department of Defense's distribution process owner and global distribution synchronizer, responsible for planning global deployment and distribution operations. USTRANSCOM relies on unfettered global mobility. Unimpeded flow of cargo by air and sea through strategic choke points and unchallenged access to the world's navigation lanes by our military assets and our commercial industry partners to support our forces around the globe.

On any given day, USTRANSCOM has approximately 30 ships loading, unloading or under way. We have a mobility aircraft taking off and landing every 90 seconds. These assets are operated by our military components and our commercial partners. It's vital we maintain freedom of the high seas and international overflight routes for our military and our commercial operations as these freedoms are essential to our nation's strategic mobility.

Our military conducts activities and operations across air, ocean, and sea lanes. Unobstructed passage through these lanes is paramount for United States Transportation Command as we provide support and sustainment through our warfighters around the world.

For example, our civilian air carriers and transporters transport almost all of our military passengers and much of our air cargo over the ocean and sea lanes. Unhindered overflight of these transports is crucial to our mission's success.

Moreover, the vast majority of our military equipment and supplies are transported around the world through ocean and sea lanes by our commercial partners. They conduct these movements typically without escort or onboard security teams.

In today's environment, we assess our navigation and overflight rights through customary international law. To better secure our global access, joining the Law of the Sea Convention would provide a solid legal foundation to our military and commercial partners that transport the lifeline of supplies and equipment to our warfighters around the globe.

Specifically, accession to the Law of the Sea Convention secures navigation and overflight rights for the vessels and aircraft operated by both our military and our commercial partners.

The Law of the Sea Convention protects our military mobile by legally binding favorable transit rights that support our ability to operate around the globe any time and anywhere. Our sea lift industry partners will be internationally protected as they transit the strategic choke points from the Straits of Gibraltar to the Straits of Malacca and Hormuz.

As we move forward and look to the future challenges, support of Law of the Sea Convention is essential to our national strategy and security. Chairman Kerry, Ranking Member Lugar, and all the members of this committee, I want to thank you for your continued support of United States Transportation Command. To all of our men and women in uniform, and especially to their families.

I'm grateful for this opportunity to be here today with my distinguished colleagues at this table, and I ask that my written same statement be submitted to the record.

I look forward to your questions, thank you.

KERRY:

Thank you very much, General. Let me just say that all written testimonies will be placed in the record in full as if delivered in full and we look forward to having them part of the record.

General Jacoby.

JACOBY:

Chairman Kerry, Senator Lugar, distinguished members of the committee, thank you for the opportunity to appear today.

As commander of U.S. Northern Command, I'm assigned responsibility for military defense of our continental United States homeland and nearby waters. As commander of North America Aerospace Defense Command, I'm assigned responsibility for maritime and aerospace warning and for aerospace control to the governments of the United States and Canada.

Based on my command responsibilities, principally in the Arctic, my experience and our changing operating environment, I believe there's a compelling reason for the United States to accede to the Law of Sea Convention for the safety and security of our homeland.

In a maritime environment, our military defensive operations are best served by a clear, stable, rules-based cooperative international framework that helps our friends and allies work with us, helping us be the security partner of choice.

Now, Arctic cooperative security is one of the five lines of operated delineated in U.S. northern command's theater campaign plan. U.S. accession to the convention joining all the other seven Arctic nations would be helpful in supporting peaceful opening of the Arctic, which is my mission. And in dealing with non-Arctic states it has shown an interest in engaging in the Arctic, and in resolving sovereignty, natural resource, infrastructure, communication, navigation, military presence, and public safety issues in the Arctic as human activity increases.

For our maritime warning mission, accession to the convention will help us establish global operational relationships that are critical to information sharing, recognition of patterns of activity, and quick identification of safety, security, and defense issues.

We are grateful for everything the members of this community have done to ensure our ability to defend our citizens here at home. I'm honored to be here and I look forward to your questions.

KERRY:

Thank you, sir. Thank you, General.

Admiral Locklear?

LOCKLEAR:

Chairman Kerry, Senator Lugar and members of the committee, thank you for this opportunity to appear before you to discuss the subject of strategic importance and how it relates to the Asia-Pacific region.

As a commander of the United States Pacific Command, I join my colleagues and my other combatant commanders in recommending that the United States accede to the Law of the Sea Convention.

After careful reflection, I'm fully confident it will advance U.S. national security interests in the Pacific Command area of responsibility. As you know, this region is predominantly maritime. Covers half the planet. It's home to three dozen nations. Over 3.6 billion people. The world's largest economies. A significant part of our national economy. World's largest militaries. As well as some of the most important sea and air lines of communication.

As the United States military executes our rebalance to the Pacific, the convention is essential to locking in a stable, legal framework for the maritime domain that is favorable to our national interests and preserves our access to this critical region.

And as a Pacific power, United States must continue to lead the effort, maintain security in the region, which has defended freedom, enabled prosperity, protected peace there in that area for more than six decades.

Joining the convention will reinforce the United States' international leadership in the maritime domain. The convention specifically codifies the rights, the freedoms, and the uses of the sea that are critical for our forces to transit through and operate in the waters of the Asia-Pacific region.

As the populations and the economies of the Asia-Pacific region continue to grow, competing claims in the maritime domain by some coastal states are becoming more numerous and contentious. Some of these claims, if left unchallenged, will put us at risk, our operation the rights and our freedoms in key areas of the Asia-Pacific.

Nowhere is this more prevalent than in the South China Sea, where claimants asserted broad, territorial sovereignty rights over land features, sea space, and resources in the area.

The convention is an important component of a rules-based approach that encourages peaceful resolution of these maritime disputes. Moreover, the convention codifies an effective balance of coastal state and maritime state rights, a stable legal framework that we help to negotiate that is favorable to our interests and that we should leverage as a check on states that attempt to assert excessive maritime claims.

Currently the United States is forced to rely on customary international law as a basis for asserting our rights and freedoms in the maritime domain. And because we're not a party of the convention our challenges are less credible than they might otherwise be.

By joining the convention we place ourselves in a much stronger -- demand adherence to the rules contained in it, rules we have been protecting from the outside since the '80s and before.

Thank you for the opportunity to testify on this important convention as it relates to this critical region. I look forward to your questions, thank you.

KERRY:

Thank you very much, Admiral.

Thank you to all of you for your testimony.

Let me begin. I want to clarify -- I want to try to clear up something and pick up on the theme that Senator Lugar opened up in his opening comments. Some in our very diverse media platforms that we have today, and whether it's an editorial or a blog or whatever, have tried to suggest, "Oh, you know, these guys in the military are just coming there because the administration's told them to come there, and they're going to say what they have to say, but we can sort of discount it."

So I want to -- I want to get right at that right up front, if I can. Are each of you, I believe when you are confirmed you agree before the Senate that you will live up to sort of individual advice and do what is in your conscience and so forth. But are you appearing today, any of you, under any kind of sort of order or coercion? Or are you here because you believe in this treaty and you're expressing your personal view to the Senate as the best advice that you can give the Senate to perform our -- our function?

Do you want to begin, Admiral Winnefeld?

WINNEFELD:

I would invite my colleagues to speak up as well, but I'm -- nobody twisted my arm in any way to be here today. I'm here because I believe we should ratify the treaty. Yes, sir.

KERRY:

And the reasons you've given to the treaty are reasons that you believe in?

WINNEFELD:

Yes, sir.

KERRY:

Can we just run through the list in the order that you testified, or how ever you want to do it?

GREENERT:

Yes, sir, Senator. I am here to give you my best professional and military advice on the treaty and I support the treaty fully.

PAPP:

Yes, sir, I fully believe in this. As I said in my opening comments, as a practitioner, as a person that's been out there operating on the seas for nearly four decades, I believe in this. And more than anything else, I believe in it because we have young lieutenants that are commanding patrol boats. We have bosun mates who are making law enforcement boardings, and they need the clarity and the continuity and the predictability that this convention provides in terms of making terminations on a daily basis on jurisdictional issues and other things.

FRASER:

Chairman, I am here too because I want to be. I want to be especially because of not only the extensive career that I've had and been on the receiving end of certainly the support that an operation like TRANSCOM has provided, but also because of my study of this convention and engaging our commercial partners in the need for us to be able to deploy, sustain and then return home our warfighters, whether they are supporting humanitarian operations or responding to another type of crisis. I will provide you my honest assessment.

JACOBY:

Chairman Kerry, I'm here to support Law of the Sea based on my professional responsibilities, my experiences as a commander in every theater. And I'm fully committed to this approach. Thank you.

LOCKLEAR:

Senator Kerry, the men and women of Pacific Command, they live this issue every day. They're confronted with the aspects of ambiguities in our -- of not being a part of this treaty. I'm here because I support this treaty.

I support what the framework it gives the military commanders and those that work under me our ability to make decisions that will be in the best interest of this nation. They'll be in the best interest of ensuring that we can follow rule of law and not have miscalculations that lead us in directions that we would not want to go as a nation.

So I'm here to support this treaty and I both professionally and personally support it.

KERRY:

I thank each of you. I had no doubt, but I thought it was important to have those statements on the record, and I appreciate your candid answers.

Admiral Winnefeld, you made a statement in the beginning of your testimony in which you talked about the misplacing of this notion about giving up our sovereignty in any way. In fact, you said it's the opposite. We would be growing our sovereignty.

Preliminary studies indicate that the extended continental shelf, which we don't yet -- it's not fully defined yet, and part of the reason for joining this treaty, as I understand it, is to have that clarity about our extended continental shelf. But right now, the estimates are that the continental shelf we would have exclusive rights to could conceivably be as high as 1 million square kilometers -- an area about twice the size of California, nearly half of the Louisiana Purchase.

So what we're looking at here, are we not, is the opportunity for us to in fact gain exclusivity and gain clarity with respect to the exploitive rights over this vast area of additional land mass to the United States. Is that accurate?

WINNEFELD:

Yes, sir.

KERRY:

And can you -- can you sort of explain? Some people say, "Well, what the heck? You know, we've got the strongest Navy in the world. We're paying a lot of money for it. Nobody's going to stand up to us. We'll just go out and do what we want to do and need to do, and if somebody gets in our way, we'll enforce it."

What's wrong with that?

WINNEFELD:

Well, there are a couple of things. Specifically related to the continental shelf, notwithstanding the potential economic benefits which I think would be covered in a different setting for the committee, we would have much more control over the, as you point out, the extended continental shelf.

I think as of today, theoretically, absent a clear delineation of that shelf, somebody could come in and potential prospect for resources at the 201-mile point away from our coastline, which is the extended continental shelf is defined the way we think it ought to be defined under the convention, they would not be able to do.

And now there comes in a question with Admiral Papp and how he would have to enforce that under existing customary law, or whether he would have the full force of the convention behind him.

KERRY:

Well, what's wrong with the approach of people who say, "We'll just go ahead and kick them out; what the heck?"

WINNEFELD:

Well, if the president tells us to do that, we certainly would be ready and willing and able to do it. But I think we would rather apply a legal approach step -- step before we got the potential use of force.

KERRY:

Admiral -- Admiral Papp, can you speak to this question of sort of added sovereignty?

PAPP:

Absolutely, sir. And while most of us, and the theme of this is looking at national defense, I would suggest that national security is -- only part of that is defense. There's also economic security, environmental security, and energy security and others that come into the whole equation of national security.

And when we're talking about the extended continental shelf and making determinations on where it might be, we -- we need that clarity. And I have a slightly more nuanced view perhaps than my colleagues because the Coast Guard's the one of the five armed services that has the responsibility for law enforcement, U.S. laws on our waters and on the high seas. So we look at it from the law enforcement perspective.

Use of force is one of our last resorts in abiding through the rule of law, and so we have to think on a daily basis how we conduct our law enforcement operations, and we need the predictability and stability of what those determinations are based upon, which the convention gives us.

KERRY:

Senator Lugar?

LUGAR:

Gentlemen, you've discussed two areas that I want to touch upon in these questions. One of them was the growing complexity of the Arctic situation. This may in part be because of the melting of ice floes or the ambitions of other countries to create sealanes to have commerce in the Arctic well beyond that which we've had before.

And it does raise points that you've made, that it's not really clear just in terms of law enforcement, not of sovereignty, but just simply of indiscretions of various people involved or rescue missions for people who get caught in a situation, who does what and how all of this is to be worked out.

I'm hopeful that -- that one or more of you are doing some scholarly work that's going to be of help to each of us to explain what the circumstances are for a sea which either expands or constricts or so forth, quite apart from what the claims may be in terms of sovereignty of all of the boundaries.

But I want to dwell specifically on the Pacific because we've had an interesting visit in the last week. Some of us have visited with the president of the Philippines who came over. It's a very good time in terms of our relations with the Philippines because of the growing of their economy. President Aquino is a straightforward, honest president in the Philippines.

LUGAR:

And furthermore, the Philippines, having rejected our fleet from Subic and various other places in recent years, now is very concerned about definition of where the rights are for the Chinese. They -- the Philippines would join Vietnam, Indonesia, other countries in wondering precisely who is going to enforce what. And for a variety of reasons, in part because of these Law of the Sea questions, have come into the orbit of our diplomacy in a way that we have not seen in the last decade.

Now, let me just ask any one of you how are we going to work to define who owns or governs or commands what, in the South China Sea in particular, and in that large area between China and the Philippines, in which there are extraordinary resources, and certainly very little definition of who does what and for the moment a great deal of reliance upon the United States fleet to bring some definition to this?

If we don't have Law of the Sea, the question is how do we define it? And what are we prepared to do? And what are the American people prepared to do?

It's one thing to talk about enforcing this and in essence going to war over it, but at least in the old days this required a declaration of war. People really wanted to know if it was worth the sacrifice of individual human beings. And so can anyone give me some idea of where we're headed in the Pacific and the South China Sea particularly?

LOCKLEAR:

Yes, sir, I can. In the South China Sea, you have, I think, a great example of how the Law of the Sea should play out if done correctly. Because of globalization, things that move in the oceans, that move through the South China Sea -- half the energy supplies in the world move through there daily. A third of our economy moves through there daily -- you know, all the things we talked about.

So there are competing claims from the various coastal states in there. And, you know, we have a tendency to want to talk about China, but there's a number of countries that have excessive

claims and they're in two areas. One is in territorial disputes and the other is in maritime disputes.

So what the Law of the Sea would give us, it gives a framework on territorial disputes, which the U.S. takes no position on territorial disputes between the Philippines and the Chinese or any other excessive territorial claim. But the Law of the Sea would give a framework for them to be able to have that dialogue in a peaceful way.

Our perspective is that we don't want coercion. We don't want -- we want things done peacefully and we want them done in a framework that allows that to happen.

And my understanding is that there are vehicles in the Law of the Sea if applied properly that would allow them that vehicle, and they are desirous of that in the ASEAN nations in particular.

The other side is excessive maritime claims, which are clearly laid out in the Law of Sea of what can be there. And these are critical to us so that we can maintain our unimpeded access to those areas for the future, that allows us to provide, if you want to call it a security deterrent that allows us to -- you know, we have seven allies in the world. Five of them are in this region. And ensuring that our allies' perspectives are -- are looked at properly through a rule of law that allows us to continue operate to freely with them is important.

So this is why the Law of the Sea convention is important to me.

LUGAR? Yes, sir?

PAPP:

Senator, there's one other nuance. I've been watching this. Obviously, Admiral Locklear has the responsibility out there. But the Coast Guard has responsibilities in the Pacific as well. And one of the things we have seen China doing is that, as an indication that they are operating under the rule of law, they are in fact many times now using their maritime patrol vessels, more or less their Coast Guard vessels, which are less provocative, rather than sending large navy ships out there, once again, portraying themselves as following the rule of law and acting within the convention.

We have no means of disputing that unless we are parties to the convention because I'm involved with the Chinese and North Pacific Coast Guard Forum. And whenever we address issues like this, their first response is "But you're not a party to the convention." And it puts us in a difficult situation to deal with and it makes our work much harder.

GREENERT:

Senator, if I may make a comment, one of the things I'd like to pursue -- and the South China Sea is one part of the ocean. I organize, train, equip and deliver the ships to Admiral Locklear and

others. And we're looking forward what I call dependable, if you will, or predictive behavior by the elements in these maritime crossroads such as the South China Sea.

And when -- if each interaction ends up to be a debate or a confrontation, it becomes unpredictable, and then you get, you know, the unprepared, if you will, and then you get this in situ debate, which is OK if everybody is agreed upon on what the customary international law is, but it evolves and it becomes domestically derived in some locations.

That's, kind of, what we have right now in the South China Sea. So we say to ourselves, how do we preclude this?

Well, we should talk and not have belligerent behavior. So we pursue things like the Military Maritime Consultative Agreement talks with China, for an example, and there are others. I host heads of navies every two years in the International Seapower Symposium.

Having something like the Law of the Sea convention as a book that we all have agreed to and we sit down and say, OK, let's talk about the protocols that we're all, kind of, going to agree to or what is the basis of the disagreement would be very helpful.

LUGAR:

I appreciate that. Each of you know that we get briefings here about so-called pivot of our national defense toward this South China Sea, toward the Pacific. So that's why it's very crucial, both in terms of what we're talking about today as well as our overall national defense and foreign policy.

Thank you very much.

KERRY:

Thank you, Senator Lugar. Senator Cardin?

CARDIN:

Thank you so much, Mr. Chairman.

And let me thank all of you for your leadership and your service to our country. You have all indicated that you support the ratification of the Law of the Sea treaty. We've been at least in discussions of this for almost 20 years, so this has been an issue that's been around the United States Senate for a long time.

I would like to get from you an assessment as to whether this is just something that would be nice to get out of the way and done or whether this is an important issue as it relates to our national security?

WINNEFELD:

I can start off, sir. I think it is an important issue related to our national security. Some have pointed out that, you know, there are no operations that we have been unable to conduct because we have not become a party to the convention and that in fact is true. But as we look to the future, which is what this is really about, and we see some of the erosions of customary international law that have been referred to by Admiral Locklear and Admiral Greenert and Admiral Papp, that's what we're really concerned about.

And we would rather not wait until that becomes a crisis for us. We would rather get the treaty ratified now so we've got that fundamental basis and international treaty law for us to do what we need to do and to counter those who might be taking us on in the maritime environment.

So we believe it is an issue for national security, mostly in the future.

CARDIN:

Is there any disagreement on that or any further clarification?

(UNKNOWN)

If I may, Senator, the Arctic, as mentioned earlier by Senator Lugar, is a new area. I don't know what's customary up there and we're going to be defining our behavior and our protocols up there. Therefore, I would say this is an opportunity.

CARDIN:

In regards to the Arctic -- and that is an area that is emerging as to the issues, we're not -- the issues that are currently being thought of were not 10 years ago. So it's an emerging area of great interest to the United States.

As I understand it, we're the only country that borders the Arctic that's not a member of the -- has not ratified the Law of the Sea.

Explain a little bit more as to how that disadvantages us as these discussions are taking place.

JACOBY:

Senator, I'm the commander of Northern Command. It's in my area of responsibility. Arctic is a fast changing environment. It's harsh. There are few assets available. Working together is really at a premium.

It's the opening of a new frontier, danger and uncertainty and also opportunity. So the idea that the strongest, the fastest, the most aggressive party can define the customary international law is not the approach that any of the eight Arctic nations desire to take. It would empower me as I provide leadership on behalf of the United States in the Arctic to start with that rules-based frame

work, the firmness of treaty law, in order to start sorting through the uncertainty that we face up there.

And as I said, there is a large premium on working together in the Arctic right now.

CARDIN:

I thank you for that.

I want to get back to China for one moment because I think back a decade ago, when we were looking at China and saying, gee, we certainly should be able to manage our trade issues with China; it wasn't going to be a major problem for America. And now we see what this has developed.

The maritime interest of China seems to be expanding. They seem to be more bold than they've been in the past -- some of which we believe are not appropriate under international law.

Can you tell us how ratification of the Law of the Sea would put us in a stronger position vis-a-vis China as it relates to its maritime ambitions?

WINNEFELD:

I can start and then turn it over to Admiral Locklear.

One of the things that (inaudible) we've -- we've talked about is the concern about erosion of law. And one of the areas where China has been assertive is in writing national laws that would restrict maritime activity in their exclusive economic zone.

And some of that maritime activity is very important to us from a military sense. And perhaps in a classified briefing later in the year we can go over that.

But they -- without being a party to the convention, we really don't have a leg to stand on if we try to invoke the convention's clear rights in terms of our ability to operate in that exclusive economic zone. So that is, again, a potential future source of friction. It's already a source of friction but it could get worse. And we'd like to see the fundamental underpinning of accession to the treaty to back up our rights and (ph) the EEZ to do what we need to do on -- from a military basis.

Over to Sam.

LOCKLEAR:

I fully agree. It -- IT provides a solid fixed and a favorable legal framework for us, first, to protect U.S. navigation and overflight rights, as well as the sovereignty of our ships and aircraft. So that's the first thing it does.

And it would align -- you know, us being part of the convention, it aligns our international legal authorities with those of our allies and our partners and our friends that are in that region, which is important.

I think it would strengthen our standing to support our allies who are dealing with some of these issues -- particularly in the South China Sea. And it would -- and they're trying to find a mechanism to align their maritime claims with international law. And so it would improve our overall support and our standing as we try to get them to resolve in an ever increasing complex environment. We have to look forward, I think, here and not in the rearview mirror.

The complexity of the maritime environment, because of -- of the demand for resources, because of the amount of goods. Ten years ago the amount of things that flowed on the ocean across the sea lines -- in that 10 years it quadrupled because of the globalization of the economy.

So we need to make sure that we're able to work through these disputes from a -- a solid fixed legal framework rather than resulting to every one of these issues being a standoff that could potentially lead to -- I think, us down a path that we don't want to go.

CARDIN:

As I understand it, in 1990s when this treaty was first brought to the Senate there were concerns. Those concerns were shared by some of our allies. Modifications were made and our allies went ahead and ratified the treaty. The Congress -- the Senate has not followed suit.

From your testimony here today, am I correct to say that you believe today it's more important to ratify the treaty than it was a decade ago, that circumstances on the sea continue to present additional challenges that the Law of the Sea would help America in promoting its national interests and its national security?

Is that a fair assessment, that it's even more important today than 10 years ago because of the emerging issues?

WINNEFELD:

Absolutely. A decade ago there were not as many nations who were asserting their claims into the maritime environment in the way they are -- as there are today. And those claims -- those excessive claims continue to grow. So I would -- I would say definitely compared to 10 years ago it's more important today than it was.

CARDIN:

(inaudible)

Thank you, Mr. Chairman.

KERRY:

Thanks, Senator Cardin.

Before I recognize Senator Corker, let me just quickly -- on your question about the Arctic, I just wanted to comment.

I believe the Russians are sending their fifth mission into the Arctic to do plotting this summer and the Chinese have been up there in a very significant way. Is that not accurate?

JACOBY (?):

Yes, Senator, that is.

KERRY:

Again, this will be part of our classified briefing to -- for all of the members, but it's quite significant what is happening there without recourse in any legal way. Is that correct?

JACOBY (?):

That's correct, Senator.

KERRY:

Senator Corker?

CORKER:

Thank you, Mr. Chairman.

And thank each of you. And I -- I do believe that each of you are here espousing your own views. I also know that sometimes we can have silos where one part of our government wants something to happen; other parts may be jeopardized. And that's our role here, is to balance all of those off.

But we thank you very much for being here and certainly for your service.

Admiral Locklear, I -- I was -- my -- my friend and colleague, Senator Lugar, asked you about China and the Philippines. And it looks to me like that it's just the opposite of what we just said; that we -- those two countries are signatory to Law of the Seas treaty. There's a dispute and there's no resolution. It looks to me like that the Law of the Seas treaty is not working as it should be with two countries having a dispute and both being signatory.

I'd like for you to explain why the Law of the Sea treaty hasn't already resolved the conflict there, and -- and what is it about it that's failing.

LOCKLEAR:

Yes, sir. I think your perspective is correct. It has failed them to some degree. But I think it hasn't been tried in some of these areas that are now emerging. And I believe that there is opportunity.

And I get from all of our...

(CROSSTALK)

CORKER:

What do you mean it hasn't been tried? I mean, we have a conflict there. They're in dispute. And it looks to me like China has basically said, "We're -- we're sorry..."

(CROSSTALK)

CORKER:

... we're not going to adhere to the -- to the treaty document."

So how is it working?

LOCKLEAR:

Well, at this stage my understanding is that the Chinese want to solve this in a bilateral relationship.

(CROSSTALK)

CORKER:

So the treaty's not working if they're doing it in a bilateral way, is that correct? I mean, isn't there a group...

(CROSSTALK)

LOCKLEAR:

The treaty provides mechanisms should the partner states choose to use it or the people -- the signatory states choose to use it. So our perspective is, in our dialogue with our allies and our partners and as well with the Chinese is that we want them to resolve this using standard rules and to use those that are outlined -- those mechanisms that are outlined in the convention rather than a bilateral way, where you may end up having a coercive perspective from one party or the other that drives a decision in the direction that we don't -- would not want it to go.

CORKER:

Yeah, but it sounds like China is saying, "We don't care what you think. We don't care that we're members of the treaty. We want to resolve it in a bilateral way."

So I would just say, to me it points to failure. We have a real life example of a failure of this treaty.

Admiral Winnefeld, let me -- let me ask you this. You kept saying and it just -- that this in no way affects our sovereignty. But then you kept saying that if we're not a member, key decisions are being made that affect our sovereign rights. How can both be true?

WINNEFELD:

I would say -- first of all, I want to add a little bit to what Sam Locklear said. And that one of the things that helps us in the South China Sea is that when we have the nations, the ASEAN nations align together pushing against China, China tends to listen. And when they can cut out somebody from the herd and go bilateral then they will tend to not go under treaty mechanisms.

So if we're -- if we are a party to the Law of the Sea and we can put our political power and diplomatic power behind that it would tend to buttress the ASEAN nations into potentially supporting the Philippines, what have you.

So the Law of the Sea is not a magic formula to resolve a dispute between China and the Philippines. Nobody's claiming that. But I think it would allow us to have a little more credibility in entering into that environment.

And then in terms of the sovereignty piece, what we'd like is we will be able, as a party to the convention, to have direct influence over how the convention is applied. We will be able to more fundamentally and with more credibility apply what is now customary international law that's embedded in the convention.

(CROSSTALK)

CORKER:

But specific -- I understand all those things. We're a member of the club and therefore we can influence the -- the rules of the club.

But if -- if key decisions are being made right now because we're not a party of the treaty that affect our sovereignty, how can you say that the treaty doesn't affect our sovereignty? It sounds like...

(CROSSTALK)

WINNEFELD:

Because -- because, Senator, we would be in the mechanisms of the treaty and able to counter those decisions.

CORKER:

Well -- well, wait a minute. You cannot say on one hand that the treaty in no way affects our sovereignty and then say that decisions are being made that affect our sovereignty. You can't say that and it would be true.

WINNEFELD:

What I'm saying is by not being a party to the convention we lose the opportunity to preserve our sovereignty. So if we lose the opportunity...

(CROSSTALK)

CORKER:

... that by virtue of you saying that you're saying the treaty, then, has -- has pieces of it that affect our sovereignty.

WINNEFELD:

It positively affects our sovereignty and avoids negative impact on our sovereignty.

So, for example, the extended continental shelf piece, we will not be able to assert that right. Unless -- in -- we concede to the treaty nobody will pay attention to it. So theoretically somebody could come into 201 miles off of our coast and explore for natural resources, and we don't have the power of the treaty behind us to say, "Sorry, you can't do that."

CORKER:

You know, Admiral Papp, can you give me one example where us not being a party to this treaty has ever impacted your ability to board a ship or enforce U.S. law? One live example.

PAPP:

Absolutely, sir.

We have countries within South and Central America that have excessive territorial sea claims. And often times when you have these questions about jurisdiction, we may have intelligence or we may have a target which we believe is smuggling drugs or people, and we cannot gain cooperation from these countries that are outside of the convention and we're outside of the convention and they have jurisdictional claims. We can't -- don't have mechanism for disputing this.

On a routine basis, not only do we lose cases but often times we lose time, our cutters and crews while we go through protracted negotiations on jurisdictional disputes between countries in particular for in particular drug interdiction.

But, I would add we're focused on countries that are challenging us around the world on a day-to-day basis and I think to buttress what Admiral Winnefeld was saying, even with our closest friends, we have disputes that only can be resolved within the convention.

Our border between Canada and Alaska is -- is under dispute. We can't negotiate with all of the tools in our tool bag with Canada unless we are members of the convention.

We have waters in northern New England between Maine and Alaska where we have jurisdictional disputes in terms of transit that has prevented LNG port to be developed in Passamaquoddy, Maine, because Canada will not allow us to have free and unimpeded passage because -- and I think they are on very loose footing here, because we can't negotiate because we aren't members of the convention.

It's not just with countries that challenge us. It's also with our friends as well. Those can be played against us because we aren't -- we haven't signed onto the convention.

CORKER:

I find it hard to believe we couldn't reach a bilateral agreement with Canada. It seems far-fetched. I would love to talk to you more about it.

One last question, I get the impression that -- we feel like that if we were a party to the Law of the Sea treaty that it would cause us to have some savings as it relates to dealing with maritime issues throughout our Navy.

Is that correct, Admiral?

WINNEFELD:

I don't know there's any influence on the...

CORKER:

We're talking about the cost. We have a lot of cost because we're not part of the treaty. We have to do things in a very different way. I mean it seems to me that I've heard that throughout the testimony here today.

WINNEFELD:

I don't think any of us have expressed, Senator, that it would be more costly for us if we did not accede to the treaty in terms of financial terms. We're not going to have any different size of

Navy if we do or do not accede to the treaty. It gives us another tool in the toolbox to do business as a Navy and as a nation.

CORKER:

Listen, I respect each of you. I will say that today's testimony -- I thank you for your public service. To me, it has fogged things up more than it began. I very much appreciate and look forward to many one-on-one meetings as we hash this out. I thank you very much for your service to our country.

KERRY:

Senator Webb?

WEBB:

Thank you, Mr. Chairman. Let me begin by just offering an observation on the exchange that just took place.

Without getting to the issue of sovereignty and there are sovereignty issues involved clearly in what we're attempting to do in places like the South China Sea, I would just say as an observation treaties in and of their nature compel certain actions by our country. That's why we come together and have this process very carefully before we ratify a treaty.

And they also cause an agreement among our governmental people to abide by certain standards that are in a treaty. That's what a treaty is about. That does not mean that in a treaty at least in my opinion we're going to be giving up any of our sovereignty rights. Let me start with that.

Before I get into my question, I would like to join the Chairman in recognizing Senator John Warner for his presence here today. He's been working on this issue for a very long time, from the time he was in the department of Navy and I was a 25-year-old marine on his staff. That was a long time ago.

It was a pleasure to follow Senator Warner, secretary of the Navy, and also to be able to serve with him here in the Senate as my senior partner. Tremendous regard for all of his service and the work that he's done on this area.

I believe that the indisputable starting point in this discussion really is that the international rules of the road for security and also for commercial exploration have never been more complex. This affects the issues of freedom of navigation as you have discussed several times this morning. Those are basically tactical questions. It also affects issues of sovereignty. Those are strategic questions and following issues of sovereignty in and of itself unavoidably involves commerce and how our nation interacts in a lot of areas that right now are not clear in terms of who has those rights.

That's apparent in the Arctic as has been discussed and it's also clear in such areas as the Senkaku Islands where, after a number of years of quiet dispute, in 2010 Japan and China had a blowup over sovereignty that could have involved our security treaty with Japan if it had gone further.

It's clearly apparent in the South China Sea we were -- from our office, the initial -- we initially offered a Senate resolution condemning the Chinese actions a couple years ago involving the use of military force in the Philippines and off of the coast of Vietnam, and we had unanimous vote by the Senate that had two very important pieces in it I think in terms of the expression of the Senate.

One was deploring the use of force by naval and maritime security vessels from China and the other called on all parties to refrain from threatening the U.S. of force and to continue efforts to facilitate multilateral peaceful processes as -- as we address these issues. And that to me is the most important component of what we're talking about today.

We need to find the right forum to address disputes where claims can be resolved with the agreement of multiple claimants and this is a key point when we're discussing the activities of China particularly to this point.

Not only China. You go to the Spratlys there's five claimants, you go to the Paracels you have two. There are a lot of these that are potentially going to affect sovereignty rights and eventually commercial competition. ASEAN has been mentioned. ASEAN is a -- it's an evolving entity, it's a very important entity, 10 countries, 650 million people. With a widely varying governmental systems among them.

They have been struggling for 10 years now to find rules of navigation and sovereignty to try to calm down the process in this part of the world. they issued a proclamation in '02 trying to lay down rules of the road and they issued another one recently.

We've not been totally successful with China. We all know that. We have been attempting to develop a number of different ways to encourage China to come into the solutions process on a multilateral basis.

From our office we have done the same thing with respect to the Mekong Delta where China does not recognize downstream water rights from the Mekong River with all the damming that it's done upstream. That makes it very difficult to bring China into a multilateral solutions process and it is no -- there's no place that it is truer than when we look at sovereignty rights and the future of the activities and commercial endeavors in the South China Sea.

For that reason, I think this is a format that will greatly assist us in the future. I know that there are questions on other side. I'm sure all of you have seen the editorial in the Wall Street Journal yesterday written by former Secretary of Defense Rumsfeld who says the treaty remains a

sweeping power grab that could prove to be the worldwide mechanism of redistribution of wealth in human history.

That's not necessarily in any of your portfolios. I would like to hear from you. What is the downside? What is the downside of this treaty? is there in your view a downside?

Admiral?

WINNEFELD:

On the security side, I'm not aware of any downsides that we can point to. In fact, the upsides are why we're here today.

WINNEFELD:

As I mentioned, it very much improves the 1958 Geneva conventions. It codifies in treaty law, not customary law, the things that we need to do day-in and day-out as a Navy and as a force.

So in terms of the -- on the security side, I know of no downside. I have explored the commercial side and I -- it's complex, but it seems to me as though this treaty was negotiated and modified in 1994 to our advantage, but I would leave that to the -- the economic experts to -- to discuss. But I see no downside on the security side.

GREENERT:

Senator, if I were to think of a downside it would be misinterpreting the advantages or what this will do for us. It's not going to solve everybody's problems, and you laid out some very clear issues that we've been dealing with for years and years from Senkakus, Kurils, et cetera.

I think feeling that the Law of the Sea Convention will solve unto itself because it establishes law is wrong. Now, we need to roll up our sleeves and go use it as the instrument to now sit down with nations because we have a consistent instrument that we can use.

WEBB:

Admiral Locklear?

LOCKLEAR:

Yes, sir. I see no downside from a security perspective. I see a downside on the status quo, though. One is it leaves us relying on customary international law, which I think is going to morph in a way that we can't predict. It leaves us outside the full international legal framework that governs these rights and obligations, and the actions of our allies, partners and friends.

It weakens our standing to object to inappropriate actions of other states that violate the convention. I mean, 160 countries have -- have signed up for this thing. They don't all follow it to the letter of the law, but we're not in there to be able -- to be able to object to that.

And I think it weakens our ability to shape potential changes to the convention that we may want to see in the future.

PAPP:

Senator, I find it interesting you used "the rules of the road" at the beginning of your statement there. In fact, to me, that's one of the greatest analogies here. The rules of the road for centuries were determined by customary international law. The challenge was, particularly as we went from sail to steam and vessels approached each other much more quickly, everybody had their own version of customary international law, and consequently collisions occurred.

All countries agreed at a certain point to collision-avoidance regs, or COLREGS which standardized things across the entire world for mariners at sea. There's stability. There's continuity. There's predictability in those rules which sailors depend upon. And I think that's a perfect analogy for us is that we continue under customary international law, it changes and everybody has a different view of it.

We've negotiated ourselves into a position where this is most favorable to us. It's almost like having a lottery ticket, a winning lottery ticket that you don't cash in and you can't use the proceeds.

WEBB:

Well, I would respectfully submit that the series of exchanges that we've had with China where they have insisted on only bilateral solutions is perhaps the strongest argument for us proceeding forward in this sort of way where we can continue to encourage multilateral solutions.

Thank you, Mr. Chairman.

KERRY:

Well, thank you, Senator Webb. That last point is a critical one. I'm sorry Senator Corker isn't still here to hear you say it, but I think we should probably chat with him about it. But everyone I think has agreed -- I mean, one of the reasons we have our presence where we do in the Pacific is because we are viewed by most nations out there as being the indispensable nation.

And clearly, China would love to just use its power to bilaterally leverage some other country, but if the United States is at the table or if ASEAN is at the table and there's a unity, there's a whole different equation the Chinese have to take into account.

So the virtue of, you know, in fact it advantages the Chinese for us to be out, and Secretary Clinton and others have told me personally that they have been ribbed and, you know, kind of -- what's the word? -- you know, sort of made fun of in a jocular kind of way at various meetings when these subjects come up because we're not a member. And they sort of look at them and say, "Well, you're not a member; you don't have any standing to bring this up." So people need to weigh that as we go forward here.

Senator Risch?

RISCH:

Thank you, Mr. Chairman.

Admiral Papp, you know, we sit here every day and it isn't very often our intelligence is insulted. But for you to come here and tell us that we can't resolve a border dispute with Canada because we're not a member of this Law of the Sea treaty really does that. And I'm sorry that you chose to go down that route because I think those kinds of representations really undermine the statements and the logical arguments made by others who want to see this treaty authorized.

I was surprised as all of you testified that the South China Sea wasn't mentioned until we got to Admiral Locklear. I was going to go down the same route that Senator Corker did in that regard and I guess I'll touch on it at least some.

I would say that most of the people in America don't realize what a mess the South China Sea is in. And the description that we've had here today has been very antiseptic. I've met with representatives of the governments and it's not just the Philippines. It's other governments that are having the same kind of difficulties.

And they're begging for help. Not one of them asked that we subscribe to the Law of the Sea treaty. They wanted you guys to do something about it. They wanted me to urge the president to have you do something about it, which I'm not inclined to do, by the way.

But Senator Corker made the point that this treaty was negotiated 30 years ago this coming December 12th. It was adopted by the United States -- by the United Nations a couple of decades go, and every one of the players in the mess in the South China Sea is a subscriber to this treaty. Yet this treaty is just a piece of paper and it's just flowery speeches like we've had here today, until the gate opens and the rodeo starts.

And the gate's open and the rodeo has started, and this thing hasn't helped one bit to resolve the tension, the disputes, the defugalties that are going on in the South China Sea. They're shooting at each other there. There's -- there's been munitions expended. And this thing hasn't done one thing to help, as Senator Corker has pointed out.

Can any one of you point to me one thing that this treaty has done on a specific basis -- people, places, and the timing -- tell me one thing that this treaty has done to resolve the disputes and the tensions that have taken place in the South China Sea?

And -- and I don't want to talk about the future. I don't want to talk about what a wonderful document it is. I want to know what did one country do to use the provisions of this treaty to help itself in the mess that they're in in the South China Sea.

Who wants to try that?

WINNEFELD:

We pointed out, Senator, already that the treaty is not a magical document that's going to cure the ills of the South China Sea. It's yet another tool. And I think that the nations there will feel more empowered to use whatever mechanisms are in -- or to insist that the mechanisms in the Law of the Sea Convention be used if we are a party, if we apply our political backing...

RISCH:

But Admiral, we have.

WINNEFELD:

... and our political power and our influence to do that. And it might not work. And if that's the case, there are other mechanisms. Why should we leap right away to the use of force or something along that order when we have the opportunity to bring our influence to bear in the region? And the nations in that region will be a lot more comfortable if we're bringing our influence to bear with treaty law behind us than if we're on the outside looking in with no credibility to be able to -- to having not acceded to the treaty to make statements about the treaty.

RISCH:

You know, I'm not suggesting that you should jump in with force. I'm not suggesting that at all. What I'm suggesting is this has been an abject failure for the members who've signed this and who've been members for years and years and years. They're coming to us asking for help.

This -- can anybody answer my question? Give me one example of a tension or a difficulty that was resolved as a result of this treaty by the members who operate in the South China Sea. Give me one example. Anybody do that?

I'll take that as an answer.

Thank you, Mr. Chairman.

KERRY:

Well, let me give you an answer, because it's important to know that China -- that the Philippines and Vietnam have both specifically asked us to join the Law of the Sea in order to be able to help them leverage a peaceful outcome to the disputes of the South China Sea, because they can't do it on their own because of China's power. And China, until we're in the Law of the Sea, doesn't listen to us either because we're not party to it.

So I will make sure those documents and those facts are made available to the senator. But, you know, China has -- China wants a different outcome. China doesn't want to submit to the Law of the Sea right now. It's going to take a different equation within the Law of the Sea for China to feel compelled to listen. But those nations are at a huge disadvantage, and if you look at the map of what China is claiming, it's clear why.

So clearly, Law of the Sea on its own is not going to resolve it.

Senator Coons?

(CROSSTALK)

KERRY:

Yeah, sorry. Go ahead.

RISCH:

Well, Mr. Chairman, I -- you know, with all due respect, I don't understand that. You have these countries that have signed this agreement that is supposed to resolve these kinds of disputes. Whether we're in or not in should not make any difference whatsoever. There's 160-some countries who are in here. Supposedly this document is supposed to do something to create a mechanism by which they resolve this dispute, and it simply hasn't happened.

RISCH:

Senator, it does. It provides a forum with a set of rules that if a party to any dispute -- this is true anywhere, in any country, any time. Here in the United States if you've got two parties, you know, whether it's a sports figure negotiating with the franchise owner and they go to arbitration ultimately because they can't come to agreement because one party doesn't want to agree. Or how 'bout the United States Senate where we had a supercommittee where we could get no agreement so we're going to have a sequester. There's a great example.

So, I mean, there are plenty of examples where people can't agree and you need a structure to be able to get it to agree. The United States...

RISCH:

And it hasn't worked.

KERRY:

But the United -- it hasn't worked with respect to the South China Sea. But the question is, would the presence of the United States at the table, in conjunction with those other nations, be a precursor and lay the predicate to other options if you had to come to them? The answer is (inaudible) and I think most experts, they'd say absolutely.

If you're going to go to war, you want to go to war with China over the South China Sea, you better lay the predicate. And the predicate better be that you exhausted every opportunity peacefully before you ask the American people to do that.

RISCH:

I would certainly hope the United States doesn't give any consideration in going to war with China over the South China Sea. But this document was supposed to long ago have resolved this amongst the players in the South China Sea and not one person has been able to give me a specific example as to one of these tensions or one of these disputes that's been resolved.

KERRY:

With respect to the South China Sea. And I think it's for very obvious reasons. But we will have plenty of testimony that will show you the ways in which, on an everyday basis, countless decisions are made which create rules of the road -- Admiral Papp has testified to that -- which lay out the rules of the road which have assisted and avoided conflict. And there are dozens of examples where conflict is avoided or various thorny issues have been resolved by virtue of people being at the table.

You know, we've had arms control agreements between the United States and the former Soviet Union and we didn't always have a resolution as a result of it, but ultimately we found a forum or a mechanism to try to move forward.

I guess it's a fundamental belief about whether you think it's better to have some structure within which you can work these things through or you want to do it in an absolutely ad hoc basis.

But I don't think anything should diminish the veracity and the impact of the evidence that says from our commanders who are dealing with, you know, young officers and sailors and forces in various ways on a daily basis who are put in harm's way trying to do a board and search or trying to stop a drug interdiction or whatever it is, they are advantaged, according to the testimony of these commanders, by the presence of this agreement.

You may not agree, but these are the commanders who are telling us on a daily basis that those advantages are there.

With respect to the South China Sea, I'd rather have the United States be at that table. And I'll bet you if we are at the table within the confines of this, we can help resolve some of those issues.

Senator Coons?

COONS:

Thank you, Chairman Kerry, for holding another hearing on the Law of the Sea. And I'm grateful to the panel for their testimony to us today.

As I expressed at the previous hearing, I'm concerned that debate over this treaty is locked in a framework that is decades out of date. All major questions about this treaty have been answered thoroughly, not once, but twice, by both Democratic and Republican administrations, and we are now in the process of thoroughly vetting them a third time.

In our last hearing, after listening to and asking questions of General Dempsey, Secretary Panetta and Secretary Clinton, it was apparent to me that the real risk we face is letting others draw boundaries, set rules and advance their economic interests without the United States having a seat at the table, all the while putting our national security interests at some risk by failing to ratify this treaty.

Based on what I've heard and read today and over the last few weeks, as well as the 30 years of commentary before that, there seem to be two schools of thought on this treaty's impact on our national security.

First, there are those who argue, and I would put many of today's witnesses in this camp, that the Law of the Sea is a treaty that contains vital provisions about navigation that would help our armed forces carry out their global mission. It also, as we will hear, includes benefits for American business.

There's others who believe that the Law of Sea Convention's an agreement with only minimally important provisions on navigation which has little impact on our armed forces and so we should focus our time on this international seabed authority in picking apart the functioning of a group of international bookkeepers.

I disagree. And in my view there are real benefits to the United States in terms of navigation rights I'd like to focus on.

As many distinguished witnesses have testified to the strategic value of this treaty, I'd like to focus narrowly on the question of sort of exactly how in the real world freedom of navigation operations are carried out and what potential benefit there might be as a result of accession to this.

And since nine out of 15 of the nations with excessive maritime claims in 2011 were challenged by armed forces through PACOM, in PACOM's area of responsibility, I'm going to focus my questions today on Admirals Greenert and Locklear, with my apologies to the other fine witnesses who've also joined us today.

Admiral Greenert, if I could start, just to reiterate what was covered in the last hearing for the sake of a starting point, is it correct that in navigational disputes the United States currently asserts customary international law as defined by the Law of the Sea?

GREENERT:

That's correct.

COONS:

And so when another nation, whether ally or competitor, claims customary international law does allow their claim in excess to those allowed by Law of the Sea, is it correct the United States then performs a so-called freedom of navigation operation to reassert the real customary international law?

GREENERT:

Well, when accosted, our commanders are directed to say we are operating in international waters. So in effect you could say, yes, in situ, we do a freedom of navigation operation.

But in addition to, we do regularly scheduled freedom of navigation operations. Admiral Locklear manages those in the Pacific. They are well documented, transparent about the whole thing, saying where we're going to go and why we're going to do it.

COONS:

If the United States did not contest an excessive claim through either routine or special freedom of navigation operations, are we at some risk that that would set a new precedent and that our competitors, allies or others would suggest somehow the United States agreed that customary international law might allow their excessive claims?

GREENERT:

I believe that's so. We are looked at very much as the ones that sort of set the standard not only in the Pacific, but in the Arabian Gulf, the North Arabian Sea. I've seen it again and again.

If we say that inland seas start at 75 miles -- in other words, if our behavior is that, then others are going to assume we believe that and that is what we -- as we attest to.

COONS:

And, Admiral Locklear, if I might, in a freedom of navigation operation, generally speaking, we're not -- I'm not asking about tactics, techniques or procedures, but just generally speaking, is it correct that an aircraft or maritime vessel is placed into the contested area in order to prove customary international law is still in force and we are demonstrating real customary

international law is enforced because no one successfully intercepts, turns back or fires on that aircraft or vessel?

LOCKLEAR:

That's correct.

COONS:

So it sounds to me like this is a process that is not without cost and risk. Secretary Panetta said clearly at the last hearing we never give up our right to self-defense. And so when we insert men and women, aircraft, vessels into these situations, I presume there is some risk associated with that.

LOCKLEAR:

That's correct.

COONS:

So when we've successfully reasserted customary international law and leave a contested area, do these other nations sometimes then reassert their excessive claim?

LOCKLEAR:

They do.

COONS:

And we then have to conduct another freedom of navigation operation. This is a back and forth, routinely contested thing that is just part of your mission week in, week out, year in and year out.

LOCKLEAR:

That's correct. We actually have a plan that we recognize where the contested areas are, and then we plan and get approval for freedom of navigation operations that do the same thing, do what you just said. They contest the -- they show that we are not abiding by that claim.

COONS:

And, Admiral Greenert, the annual report that the Pentagon provides to Congress on freedom of navigation shows the number of countries with excessive claims that the United States armed forces have actively engaged in challenging has actually tripled since 2006, the number of countries making these excessive claims and the number of incidents that have required a freedom of navigation operation have tripled since 2006.

Would accession to the convention eliminate the need altogether for freedom of navigation exercises?

GREENERT:

I don't think it would eliminate altogether the need for it. Periodically we would, in order to establish what is codified in the Law of the Sea convention, we would continue that. It's right and proper. We believe in it.

But it would certainly save the need to, the requirement to do that. Because we feel compelled to do that for reasons, as you said, our behavior helps our coalition allies and potential allies to see what the standards are. We're the standard bearer.

COONS:

So, Admiral, if I hear you right, would accession to the convention provide an alternative, non-lethal, less risky, less asset-consuming tool to assert navigation rights for the United States?

GREENERT:

Yes, Senator, it would.

And so my conclusion is that freedom of navigation operations which are provocative to nations, some of which are allies and some of which are opponents, have steadily increased in number, in seriousness, in cost and complexion over recent years.

Based on that testimony, it seems to me, Mr. Chairman, in conclusion, that what you and Senator Lugar have said for a long time is correct, that to avoid setting new precedents in customary international law, the United States has to continue to carry out increasingly large numbers of freedom of navigation operations, each of which is inherently life-threatening for our servicemembers and consumes our limited assets and is also provocative to the nations whose claims we're contesting, whether hostile, friendly or allied.

And the entire dangerous, risky and provocative process could be avoided in some circumstances by ratifying this treaty and being able to contest excessive claims in the ways it allows us to do.

So this treaty makes a real difference for the average men and women who serve us on the high seas, in the air, around the world, and in my view, contributes meaningfully to the national security of the United States.

Thank you for your testimony today.

KERRY:

Thank you very much, Senator Coons. Appreciate it.

Senator Inhofe?

INHOFE:

Thank you, Mr. Chairman. I appreciate the opportunity to -- to be here.

I -- let me first all of say all six of you, I know all about you. You're great guys and you've served your country, and I have the greatest respect for you. I don't envy you a bit. You are put in a position -- I know a little bit about chain of command because I was -- I was in a very lonely position, but I was in the United States Army, and my chain of command started with my master sergeant and on up to the lieutenants and the rest of them. Yours is the president of the United States. He's the commander in chief. So you're going to naturally reflect anything that comes from -- you have to. You're military, and I understand that. I've been there.

What I'd like to do is -- is suggest that, maybe, after your retirement, you might change your mind.

I'm looking right now at 24 stars -- I just had a few stripes is all I had -- 24 stars, and that's very, very impressive. And I have a letter here that's signed by 33 stars, and these guys have already retired.

They -- on this letter, and I want to ask that this be admitted as part of the record, it says -- I can't read the whole letter; there's not time, but "We wish respectfully to challenge the perception that military personnel uniformly support this accord by expressing our strongly held belief that Law of the Sea ratification would prove inimical both to the national security interest and sovereignty of the United States."

It talks about -- it goes back and gives the history of this thing, and they have very, very strong language. And it's signed by one, two, three, four, five -- nine of the top-level people who are in retirement. I'll ask that be a part of the record.

KERRY:

without objection.

INHOFE:

And I also want to make as a part of the record the Reserve Officers Association. This is a letter that was -- that we have here. It's actually a resolution. At the very end of the resolution, it says, "In conclusion, the Reserve Officers Association does not endorse ratification of the Law of the Sea treaty. It actively advocates against it. Historically, the United States has claimed that its right to territory was manifest. To agree to a Law of the Sea treaty acknowledges that the United Nations has authority over the United States maritime territorial claims. The Reserve Officers Association concern is that the Law of the Sea treaty will become" -- and it goes on and on.

So I ask also that this be made a part of the record. These are all retired people, and -- and I think that is significant.

Now, I'm going to have to quickly go through this. I assume that you all agree -- and it has to be a yes or no answer because there isn't time for more than a yes or no answer -- that the not signing of this is not going to compromise in any way our ability to use force or our -- or to navigate.

Is that true? Is that yes or no? Do you agree with that, starting with you, General Jacoby?

JACOBY:

Yes, Senator, I agree with that.

INHOFE:

All right. Do you agree?

(UNKNOWN)

Yes, sir. At the moment, it will not, but in the future it could.

INHOFE:

OK.

(UNKNOWN)

I agree.

INHOFE:

OK. You all agree?

(UNKNOWN)

Agree, sir.

INHOFE:

OK. At the last hearing, I guess -- here's a guy who's your boss; he's chairman of the Joint Chiefs of Staff, General Dempsey. At the last hearing, he was asked a question as to whether or not this would have an effect. He said -- would -- whether failure to ratify the Law of the Sea treaty would compromise our ability to project force around the world, and his answer, that "the United States would continue to assert our ability to navigate and our ability to project force, and it would not be deteriorated if we did not ratify this treaty."

So I will ask you whether you agree or disagree with your boss, but I agree with him.

When I talk to people in what I call the real world -- that's outside of Washington, in Oklahoma, and I say, "What do you think about a treaty that cedes our right -- it allows another entity to tax the United States for the first time -- or to sue in a court not in the United States," they find that this is a real sovereignty issue.

We talked about sovereignty up here, but we haven't really gotten specific. I don't think anyone's going to question the fact that this does give the -- cede that authority, the right and the privilege, the authority to tax this. And it comes through royalties.

Right now, the royalties on the area of the extended Continental Shelf range between 12.5 percent and 18.75 percent. And the reason that's a range is because the oil companies who would drill, they would say anything in excess of that range, we would not be interested in doing. So we have to do it at that range.

This authority, according to the U.S. Interagency Extended Continental Shelf Task Force talks about the resources out there are worth billions, if not trillions. Now, if you just merely take \$1 trillion and you apply this to it, they'd be, at the end of 12 years, able to get up to 7 percent of these royalties that would otherwise go to the United States.

Now, that amount would be around \$70 billion. I won't ask you the question I asked the last panel because I don't want to put you in that situation, but by doing this and having the authority to tax us in that amount, I'm going to ask - one of the questions I'm going to ask at the end of this, does anyone know of any time in the history of this country that we've given, ceded our authority, taxing authority, to allow someone else to tax us?

And the second thing would be, on the -- the -- which I think Senator Lee is going to -- he certainly is much better positioned to talk about the fact that they would be able to sue us. I would only want to read something to make sure it's in the record. When you talk about the people who are champing at the bit, waiting for us to become a party of this treaty so they can sue the United States of America, one person that I would quote, so it gets into the record, would be the -- the International Tribunal -- well, I don't have it right here, but the -- Andrew L. Strauss, who was -- the forum was the Global Warming Emissions.

He said, "The article proposed various forums for initiating lawsuits against the United States, including the Law of the Sea's treaty compulsory dispute resolution, which I'm sure that Senator Lee will be talking about, mechanisms. And he lamented, "As the United States has not adhered to the convention, however, a suit could not be brought unless we adhered to the convention."

In the book that was written, "Climate Change Damage and International Law," law professor Verheyen said she posed a comprehensive, hypothetical case that could be brought against the

United States for its alleged responsibility in melting glaciers, causing glacier outbursts and floods.

The reason I'm interested in this is we in the -- in the Senate and the House have refused to adhere to this and passed something that would put a limitation on anthropogenic gases, and here we would be ceding our -- that authority to someone else.

INHOFE:

So I would merely -- and the last thing I want to mention, Mr. Chairman, if you'd allow me to do this, they keep talking about a seat at the table. I think my good friend to my right, Senator DeMint, is going to ask what table are you talking about? Because we already have a table out there and it's called the International Maritime Organization, and it says there are -- this has been -- they've had this since World War II. It says that "accomplished by passing or adopting, implementing standards, maritime safety and security, efficiency of navigation and prevention of control and pollution from ships. IMO is the source of approximately 60 legal instruments that guide the regulatory development of its member states that improve the area of the sea."

So those questions I would ask are you really don't think that our sovereignty is impaired by ceding these authorities to some international group or suing the United States and taxing the United States and also can you tell me of incidences where the IMO has not answered these problems we've been talking about to your satisfaction?

Thank you, Mr. Chairman.

KERRY:

Thank you very much, Senator Inhofe, you put a lot on the table.

Do you want to respond, Admiral?

WINNEFELD:

There's an awful lot in -- in -- first of all, it's good to see you again, Senator. I always enjoy our conversations. There was an awful lot in the conversations.

INHOFE:

Up to now.

WINNEFELD:

Even now, with respect. There's an awful lot in the question and we have to have a detailed one-on-one conversation. I'm not sure if it's a tax as opposed to a royalty, I would also suggest and again I'm not the economic expert or the industry person who might testify this, but I think a lot

of these guys are not investing in -- in these areas because they're worried they don't have the underpinning of treaty law to protect them.

And so it's money that's not there because they're not drawing the natural resources that perhaps we as a nation would like to see them draw.

(UNKNOWN)

If we did, of course, we would be able to get that royalties in the range that I discussed and of course, 7 percent would represent more than 50 percent of the royalties we would otherwise be entitled to.

WINNEFELD:

Depending on the range, if we took 18 and three-quarters and took seven off that, we'd be down to certainly, 11 and three-quarters which at the moment that money doesn't exist. And we could have a detailed discussion there.

Another example would be the reserve officer's association letter which I read for the first time this morning which I found after I read it, I felt like these guys ought to go get better advice because there are a number of statements in there that are incorrect or misleading.

For example, they talk about territorial seats at the 1958 Geneva Convention established territorial seat and that's just not true. It talks about sort of cleverly that convention defined international straights and what it didn't do but what the Law of the Sea does is to define what transit passage is to those areas. It's not in the Geneva Convention and not in the Law of the Sea Convention.

And very importantly to me, and I would like to go in to a classified session to discuss this is that the Law of the Sea Convention defines a stateless vessel, and that's important to us in the counter-terrorism world and the counter proliferation world.

So there are inaccuracies that I would love to sit down and walk through even though there are a great bunch of guys that mean the best for our country. As I said, I always enjoy the conversations and I enjoy the potential to have one on this very important subject, sir.

INHOFE:

Thank you very much, Admiral.

Admiral Papp.

PAPP:

Senator issue I lead the international maritime organization, I went to my first general assembly this Fall. And in every discussion bilateral and multilateral every conversation starts off with the

other country questioning and wondering why the U.S. is not asserting leadership by joining the convention. Because it has to do with piracy whether it has to do with marine casualty overseas and everything is formed on the basis of the -- of the treaty and with us being an outsider, oftentimes just because of who we are, because of the United States we can influence it and we can still get things done, but it makes it more difficult for us to get these things done.

We are looking at this and how we're going to operate in the future and what tools we're going to get in the future and customary international law, countries influences they ebb and flow. They rise, they fall. This is something that assures because it's the basic underpinning of all these treaties and all these agreements that we come to.

INHOFE:

And did you -- my question was where has this not worked in the past that's been working for the last -- since World War II?

PAPP:

I can give you one right now, sir, and it's dealing with the Arctic. I personally requested a meeting with the Arctic representatives there so that we can continue our negotiations in terms of coming up with the details of the search and rescue agreements for the Arctic, for pollution response to the Arctic.

INHOFE:

They didn't meet with you? Is this what you're asserting here?

PAPP:

They did meet with me, sir, because we are the United States. We still have influence, but will that influence continue forever? Shifting politics, shifting strength of countries.

What I can tell you is that each and every one of those countries looks to the United States for leadership and set in the example under the rule of law and being in a leadership position and we are not quite in that leadership position given the current stance that we have.

INHOFE:

Do you think in the future if we do give this opportunity for them to take funds, royalties or otherwise which I would have to say, Admiral, that's a tax because that's money to be redistributed for some organization which we don't have a voice in, do you think that's in our best national security interest?

PAPP:

Sir, it's all speculative at this point because nobody's willing to drill on the extended continental shelf because they don't have the legal assurances given by the convention. And if we are a member of the convention we do have a seat at the table. Somebody asked what table do we have a seat at? The international seabed authority. Where we would have the one permanent seat and veto power.

INHOFE:

Same veto power that other countries like Sudan might have? We have veto power, but first of all you're talking about two entities. One's an advisory and the other's making a decision. You're saying we have a different veto power than the other countries have?

PAPP:

We have -- if any country has the veto power that would nullify the ability to distribute any of those funds.

INHOFE:

That's right. So the deal would be. If the group does not come up with a fair and equitable deal with those funds we would have it.

INHOFE:

On distributing the funds, yes, but the funds would already be there the tax -- the royalty would already be in effect. They would have the control over those funds that came from our efforts who would otherwise be coming to the United States.

That doesn't affect that. They would have that authority, it's just you're saying we could direct which countries they go to, but they wouldn't be coming to ours.

PAPP:

Some of them could be coming to ours, but you're correct, whatever the equitable...

INHOFE:

For the record, I want you to send me a scenario by which any of that would come to the United States.

PAPP:

OK.

KERRY:

Well, can I -- I'm going to intervene here just for a second.

INHOFE:

Well, you're the chairman.

KERRY:

Well, no, no, I don't want to -- I've given you well more than double the amount of time of any other senator, because I really want any opponent to be able to have an opportunity to -- to grill people.

INHOFE:

I appreciate that.

KERRY:

I think that's really important, and I want to get all these issues out on the table.

But I do think it's important as we do that that we try to establish what's fact and what isn't.

There is no power and no right of taxation in this document. And we will have an understanding and a declaration that makes it clear in the resolution of ratification that the United States of America will never accede to any other countries' tax, that there is no tax here and it will be properly defined.

INHOFE:

Mr. Chairman, we are saying that they'll have a percentage of the royalties that we would otherwise...

KERRY:

The royalty. A royalty is not...

INHOFE:

A royalty is not a tax?

KERRY:

That's correct. A royalty is a bargain. It is an agreement. A royalty is not a tax.

No government authority has issued a tax in any kind of way that constitutes taxation. It is a royalty where the companies were at the table during the negotiation. Ronald Reagan set that in place and -- and, in fact, we will have testimony from John Negroponte and others who have been part of these negotiations for a long period of time and how.

There is a royalty scheme.

Why is there a royalty scheme? Because three-quarters of the planet Earth is ocean -- three-quarters of the planet -- and a whole bunch of countries are landlocked.

And if the ones with the border on the ocean have the right to extend their shelf way out into the ocean, you could have very few nations claiming all the resources of the Earth to the exclusion of everybody else.

So what was agreed on is really quite minimal. It is far less than the oil companies pay to drill off the coast of Louisiana. Far less. And it is scaled by how much mining and how much resources you take out of the ocean.

KERRY:

Now, Lockheed Martin decided, "Wow! You know what? Ninety-seven percent of something is a heck of a lot better than 0 percent of nothing," and they want 97 percent. They want their 93 percent. And so they've agreed there'll be a scale of some amount that will go to the landlocked nations in compensation for the rights of other countries to exploit the seabed of the Earth.

We have over a million acres of land out there that we can claim for America -- more than any other nation on the face of the planet -- because of Guam, because of the Marianas, because of Hawaii, because of the Aleutians and so forth. We have the most extensive -- and I'll bring a map in of it one day; it's extraordinary.

To sit here and think that we're not going take advantage of that and stake our claim and have our claims legitimate so our companies can go out would be just astonishing.

The companies want this. They -- they're ready to pay the royalty because they want the profits that come from the other 93 percent.

Now...

INHOFE:

They establish the royalties. I just have to say, and I'm afraid you'll cut me off before I respond to your...

(CROSSTALK)

KERRY:

Oh, I've never -- I'd never cut you off, Senator.

INHOFE:

... about a tax.

Money that would be coming to the United States by virtue of this treaty would not come to the United States. I call that a tax. Most people outside of Washington would call that a tax.

KERRY:

Well, Senator, you're entitled. We will, as I said, make it crystal clear in the ratification document. And I think the companies will be quite upset that you are protecting them from earning the profit that they would like to earn. It's sort of remarkable to me. But so be it.

I also think it's important here to deal with facts. General Dempsey indeed said we would not reduce our force. And, of course...

INHOFE:

Our force power.

KERRY:

Force power. Of course the United States of America is not going to reduce its force power. But every one of these gentlemen at this table who have the responsibility of sending people into combat, conceivably, at some point in time, have said they would rather have a tool at their disposal to try to resolve things peacefully first.

And what General Dempsey said, if you quote him completely, which you didn't do, he went on to say that the failure to ratify puts ourselves at risk of confrontation with others who are interpreting customary international law to their benefit. So the risk of confrontation goes up.

So our force capacity won't go down, but the risk of having it used in a confrontation you don't want goes up. And that's what every one of these leaders have said is not advisable.

INHOFE:

No, I understand. We talked about that. So you would agree then that not going into this treaty would not in any way compromise our ability to project force or to navigate? You would agree with that.

KERRY:

Not necessarily navigate, but project force, I would agree. We will project force. But it is not necessarily going to affect those rights. If you want to have a confrontation without having a tool to resolve it properly, that is a choice every senator will face when we get to it.

But let me -- I've taken up the senator's time, but I just want to also -- I think it's important -- and, Admiral, maybe you want to comment on this, because part -- a reserve officer's letter -- and I

respect them completely and they're entitled and we will welcome those kinds of comments here -- but once again we have to deal with facts.

A lot of people are working off the 1982 treaty, and for them and for some people things haven't moved since then, but the negotiation has and the status of the treaty has changed since then. And so we're dealing with a very different set of facts here.

And I think, Admiral Winnefeld, I think you would agree that there is an assertion been made here that every provision of the convention is already codified in previous treaties to which we're a party. And I think that's a misunderstanding. It reflects a confusion about what was in customary law as opposed to the older treaties.

And, for example, the 1958 convention, Senator, did not specify any limit on the territorial sea, and some countries were taking advantage of that loophole to extend their territorial seas. Article 3 of the 1982 convention explicitly set a 12-mile limit according with U.S. policy. The '58 convention did not include a codification of the right of transit passage through straits used for international navigation that had developed in customary international law. And there are other examples of that.

So I just very quickly ask you, Admiral Winnefeld, is that correct that...

(CROSSTALK)

DEMINT:

Mr. Chairman, I don't mean to be rude and don't want to interrupt, but we have a vote at 12:30.

KERRY:

Fair enough.

(CROSSTALK)

KERRY:

Let's come back to this. We'll come back to this at the appropriate time. We're certainly going to leave the record open, and we're going to be building a longer record anyway. So we'll draw this out so people understand the distinction between the '82 and where we are now, what's in customary and what the relationship is to the treaty.

Senator Udall, thanks so much for your patience.

UDALL:

Thank you, Senator Kerry. And let me just thank you again for -- for approaching this treaty in a very, very thorough way and having these fine servicemembers before us that are giving us their personal opinions.

I think there was some suggestion here that your opinions -- I know Senator Kerry asked you at the beginning, are you here giving us the best of your experience and the best of your personal opinions, and I think everyone said yes.

And so I think we should put to rest this issue of the idea that the commander in chief has ordered you to testify in a certain way? Is that the case, that this is -- these are your personal opinions here based on your experience? Yes? (inaudible) everybody nodding...

(UNKNOWN)

That's correct.

(CROSSTALK)

UDALL:

Let the record reflect. OK. Thank you.

There was also a suggestion that on the letter with the retired officers -- and you all are active military -- that somehow there is a split. Do any of you all have a sense? I mean, I know Senator Warner was here earlier, he was a captain in the Marines, he's in support.

Do any of you have a sense of how it comes down in terms of retired military versus active military on this or the various associations or anything? And if you don't know it off the top of your head, you can get us the information. But please?

GREENERT:

All of the colleagues that I've spoken to, chiefs of naval operation, the conversation centered around maritime security. That's what I'm, you know, conveyed to take care of, and there's not been a split. And those retired not chiefs of naval operation, the issue has been consistent that the elements in the Law of the Sea Convention that enhance maritime security, which the entire convention that I see does, there has not been a split.

There have been some who are retired that I've spoke to, said, "Well, I'm not so sure of," and it involved a lot of the details of the economics and the ability to control. That's been my experience, Senator.

UDALL:

Do any of you -- would any of the others like to comment on that or...

WINNEFELD:

I'm aware of a -- of a 2007 letter written by the Military Officers Association that is supportive of the treaty. So that's why I was sort of surprised to see this morning the other letter, which, again, had some inaccuracies.

But I give them credit for the courage and the strength of their convictions, but I think they just had some things inaccurately stated.

UDALL:

The Navy and the Coast Guard's ability to conduct maritime interdiction is an important tool to stop drug trafficking and conduct counterproliferations operations. And while some have asserted that the Law of the Sea Treaty puts shackles on our maritime forces, I agree with the assessment of the Navy JAG that Article 110 pertaining to the right of visit actually strengthens our ability to conduct maritime interdictions.

Can you go into details about how our armed forces will be enabled to conduct their mission by Article 110 and why it is important that the Navy and the Coast Guard have the backing of an international treaty to conduct operations they can already conduct via force if needed?

PAPP:

Well, sir, being the service that's involved in maritime interdictions on almost a daily basis, I can tell you that prior to the convention we tried to work out bilateral or multilateral agreements with other countries that enable us to operate close to their waters, sometimes even in their territorial seas because we're able to come to these agreements, whether we use ship riders (ph) or other things. It helps us to interdict drugs, migrants and perhaps other things far offshore, in the transit zone, sometimes in the departure zone.

Prior to the convention in the '94 revision we had about a dozen countries that we were able to get into agreements with. After the '94 convention, which had language in there talking about cooperation between countries, particularly as it relates to interdicting drugs, we have been -- and because we comply with the convention even though we haven't acceded to it, we've built that up to about 45 countries that we have agreements with around the world.

PAPP:

However, administrations change. Other people are elected in. These constructs that we've come to are on a foundation of shifting sand and we cannot always rely upon each country to live up to its agreement because things will change. We have some countries that have excessive territorial sea claims that we have to respect.

But having the assurance of the underpinning of a solid foundation of the convention would help us in negotiating those things into the future and give us greater predictability.

UDALL:

Right. Thank you very much.

Please?

GREENERT:

The elements that describe freedom of navigation, for example, exclusive economic zones, you know, territorial seas and all that, transit passage, archipelago passage -- that all enhances our ability to conduct maritime intercept operations because it clarifies where we can operate.

But also what section 110 does is it provides a clarity for unauthorized broadcasting, drug trafficking, piracy and unflagged nations, as the vice chairman mentioned earlier. But also says that powers conferred by other treaties -- in other words, United Nations resolutions and all that, that's very clearly laid out and gives us those mandates that enhance our ability to, especially in a coalition operation, bring it all together to do maritime intercept.

UDALL:

Any -- any of the other panelists have a comment on that?

Thank you very much for your answers, and thank you for your service.

KERRY:

Thanks so much, Senator Udall.

And Senator DeMint, thanks for your patience. Appreciate it.

DEMINT:

Thank you, Mr. Chairman.

And I want to thank all the folks here today. You and the men and women who serve with you make us proud to be Americans. And I appreciate you being here to advocate for the treaty. I mean, there are 10 pages in this treaty dealing with navigation that would have a lot of theoretical benefits to -- to our military, to particularly our Navy.

I don't refute that at all. Although some of the things I've heard today would make me even concerned about that part of it. As has been pointed out, where it's really been tested in the South China Sea with China violating the rules, with numerous countries affected, there has been no enforcement based on the treaty, and numerous countries that are part of this treaty.

And the implication I've heard from some of you today maybe worries me more than anything else, is that by joining, we in effect become the enforcers of this around the world. And I know

that's not what you said, but that we add our weight, but I'm afraid that these other countries are part of this treaty. It's not being enforced, and if we become part of it, they want us to become part of it for numerous reasons, but one is to help enforce it. That worries me.

But I -- I would like to take just a second to explain why I oppose the treaty as a whole, not necessarily the pages you're talking about. And instead ask a question and yield to Senator Lee, because I know he's studied this a lot and I'd like to give him a chance to ask questions before we run out of time.

But you've explained that the up-side of this treaty is that it might give you an additional tool to deal with issues out in the future. And I respect that. But the downside risks for us seem much greater than that potential benefit that we might have that is clearly theoretical, not working now. The hope is if we get involved, our weight might make it work.

But the 300 pages is primarily a document, I would say at least in large part, with environmental issues. And that may affect us much more than any navigation part of this. And in fact, all the research I've done, there is not a table in Jamaica where the naval powers around the world except for us are meeting at a table making decisions about navigation. That's not happening. That's not what they're dealing with now. Perhaps our joining the convention could change that, but that's not what the convention is doing now.

But the language in this treaty that worries us is particularly that that deals with environmental issues and the ability of -- of this convention to enforce that with signatories of the treaty. And it's clear that the United States is the largest economic power. We're the largest producer, the largest consumer. We also have the largest military in the world. And if you put all that together, we are by far the largest emitters of carbon. And that is an issue around the world.

This is not a theoretical issue. Europe is already going to charge us taxes for our commercial planes to land there because of emissions. And it is clear from this that the United States is going to be subject to complaints and suits from all over the world dealing with climate change, issues like cap-and-trade. There will be suits for us to pay for pollution credits where we sail our ships and where we fly our military aircraft.

And the arbitration or the dispute resolution part of this is out of our control. We appoint two. The complainant appoints two. And the United Nations secretary general will be the deciding vote.

And so while a lot of us who are against this treaty are -- are mocked, in effect, for not having the good sense to understand what's in it, I'm afraid that you're looking at a section of this that might benefit our military long term, but the other issues of -- that are in the other 300 pages are very serious and subject the United States to high cost. We would pay more for this -- being in this convention, just like we do the United Nations, than any other nation. The royalties that come from it will largely come from us. That's why other countries want in it.

We'll probably be paying for pollution credits very quickly. And we will pay for countless lawsuits that are going to come against us that are not theoretical, but I think very real.

So we have concerns, not necessarily disagreements, of what you're talking about. And again, I appreciate your advocacy of trying to bring us and the rest of the world into the rule of law. This treaty is not doing it now. I don't think it's going to do it when we join it.

I yield to Senator Lee.

LEE:

Am I recognized?

KERRY:

Yes, absolutely.

LEE:

Thank you.

Thank you all for being with us today. It's an impressive sight to have 24 stars here in front of us with only six officials, and I'm honored by your service to our country.

I, too, have some concerns with this proposed treaty, concerns that relate ultimately to sovereignty concerns. The discussion we had a few minutes ago regarding the difference between a tax and a royalty is, I think, a legitimate one. There is a legitimate point to be made there.

My concerns would not, however, be resolved merely if we could conclude that what we're talking about under article 82 is a royalty rather than a tax. The reason that developers will pay a royalty to the United States government in the American submerged lands offshore has to do with the fact that there's a recognition there of a sovereign interest vested in the United States of America. That's why the royalty gets paid when it's on federal lands, whether it's onshore or offshore.

The idea of paying a royalty to any international body tends to imbue that international body with a degree of sovereignty. That, by itself, raises significant concerns in my mind.

Now, of course, the primary reason why the six of you are before this committee today is to talk about our maritime interests, our navigational rights as a country. And I understand that. But I do have to ask the question -- I'm happy to ask it to any or all of you who are willing to answer this question.

Why is it necessary? Let's assume for purposes of this discussion, that you may be right that it would be a good thing to protect our navigational, our maritime rights through some kind of --

some kind of a treaty. Why is it necessary to join that together with a separate part of the same treaty that also deals with exploitation of the seabed extending beyond our outer continental shelf?

General Jacoby, you're closest to me, why don't you take a stab at that?

JACOBY:

I'd be happy to, Senator.

The -- in my area of operations, my concern about the Law of the Sea treaty and my support is generated by the opening of the Arctic. It's one of those things where you've got to be in favor of what's going to happen. For whatever reason, human activity is increasing at a fast pace. Since 2008, double the number of vessels heading through the Bering Strait. This summer right now, Shell Oil is bringing two platforms to work in the Beaufort Sea.

And this increasing economic activity inevitably is followed with security and perhaps later safety and defense concerns. And so we have to pace that and make sure that we stay ahead of that.

LEE:

Would that necessarily include, then, I mean, to the extent that there are some benefits of joining those two things would, is there any reason why it would have to include a royalty paid to an international sovereign body? Which I assume you would agree, by the way, this would be unprecedented. I mean, it's really the first time we would, as a country, be recognizing -- be vesting an international body with -- with real incidence of sovereign authority.

JACOBY:

Senator, I'm going to stick with the operational aspects of that, if I may. This increasing competitiveness that's generated by increased human activity and economic activity really opens up a whole new world of friction points. So it's -- for an operational commander, it's where are you going to pick your fights and what tools are in your tool bag.

Harsh environment, few assets, little infrastructure, activity -- economic activity outpacing that ability.

So having this framework, this starting point with all the other Arctic nations. But not just the nations. In my case the chiefs of defense, the chiefs of security, the folks (inaudible) safety that allows us to build shared situational awareness, common interests, common framework so that we're gonna avoid -- my job -- avoid these frictions the best that I can as this pace of activities...

LEE:

So is the common framework that you're referring to, would that be established by the International Seabed Authority? Is that the (inaudible) the metaphorical table that we keep talking about?

JACOBY:

I'm gonna stick with just the operational aspects of it. I think the seabed questions and the continental shelf questions, of course, are the things that are the uncertainty that's accompanying increased economic activity.

The Law of the Sea does allow us a starting point of certainty in our discussions and in our coordination and cooperation as we try to resolve what is really an opportunity to have a boon in activity in the Arctic.

And so for me it's just allowing us to get ahead of this. It's about the future and it's about how can we contribute to the peaceful opening of the Arctic, reduce potential friction points. And this is a good, solid framework which all the Arctic countries and the chiefs of defense start with when we begin those decisions.

LEE:

OK. Admiral Papp, I heard you mention a few minutes ago that we -- we've had difficulty negotiating with Canada on -- on an issue that you described.

You said that Canada was standing on what you regarded as, I think, weak footing -- or words to that effect. You also indicated that although it was on weak footing the objections that Canada was raising were based on the fact that United States has not yet ratified this treaty.

Did you want to explain to us what -- why that is the case and why ratification of the treaty would necessarily resolve (inaudible)?

PAPP:

Yes, sir.

And getting back to Senator Risch's comment, if I insulted anybody's intelligence we'll be happy to have staffs come up and brief specifics of the cases that I cited.

The one that I will give you is because I've been personally involved as the Atlantic (inaudible) commander, my previous job. Part of the Coast Guard's responsibility is permitting process. We're a law enforcement and regulatory agency, so when people seek to -- for commerce purposes seek to build oil facilities, gas facilities, et cetera -- New England has a need for more LNG facilities. There was a proposal to put one up in northern Maine. Canada objected because of -- and claiming that it was internal waters and that they would have control over whether there were transits through that area.

There's also a dispute as to our border between western Canada and the eastern edge of Alaska.

More importantly and more significantly a large issue of the Northwest Passage, whether that's internal waters to -- to Canada or whether it's archipelagic, where there should be a transit (inaudible) through there.

LEE:

So are these all issues -- and I apologize for interrupting, but we've got very little time before we got to go vote. Are these all issues that are not adequately addressed by customary international law that would be resolved by the treaty were it ratified?

PAPP:

If we were operating only under customary international law perhaps, but Canada's a signatory to the convention. They fall back on the fact that they are a signatory to the convention and we are not, so we're not a party and don't have any standing to dispute their claims.

LEE:

And so they -- they would regard that aspect of customary international law as non-binding to them and they're excused now from that aspect of customary international law?

PAPP:

Well, Sir, as I said earlier in regard to the collision regulations, collision avoidance regulations, when we operated under customary international law, customary international law is in the eyes of the beholder. Everybody has slightly different variations of customary international law.

LEE:

Right. And yet that was an example, was it not, of how countries were able to come together and establish an international regulatory standards without vesting sovereign authority in an international body?

PAPP:

I would say that's correct, yes, sir.

LEE:

And also one in which we were able to establish those international standards, those international norms which have helped facilitate maritime traffic without subjecting the United States to lawsuits, to be cited (ph) by a tribunal that would be weighted in many instances by the -- the -- what would likely be the tie-breaking arbitrator being chosen by the secretary-general of the United States (sic).

PAPP:

I can't really comment on that, sir. And (inaudible) be delighted to bring my lawyers up to discuss that. I'm looking at it from an operational commander's point of view where I like to have all the tools possible in order to negotiate agreements on the broad range of things the Coast Guard does in terms of ensuring safe, secure, and environmentally sound commerce into our country, out of our country, through our waters, and concluding agreements in the Arctic -- which we are constrained because we're not a party to -- to the convention.

LEE:

OK. Thank you all very much for your -- for your testimony. Just in closing, to wrap up, I just want to comment that I respect your judgment greatly. And if there is a need to codify certain aspects of currently existing accident (ph) -- customary international law either in a treaty or in the U.S. Code or in some combination of the two, I'm more than open to discussing that idea.

I have, nonetheless, grave concerns, concerns that have not been resolved in any hearing to this point or in any reading of the treaty that I've undertaken so far that what we're doing is not just that, but we're going far beyond that, creating an international body with many of the -- that would be imbued with many of the incidents of sovereignty, and -- and doing so in a way that is completely unprecedented in -- in U.S. history.

Thank you very much.

KERRY:

Senator Lee, I appreciate your questions, and those of Senator DeMint.

And, obviously, part of what we'd love to try to do here is be able to address your concerns and your -- your fears about this.

There really are some significant mistaken interpretations -- and I do mean mistaken.

For instance, Senator DeMint and I will talk about this one-on-one, but there is no ability to have an environmental lawsuit that would have any standing (inaudible) someone can bring a suit if they want to try. But it's not going to go anywhere, can't go anywhere because the specific language of the treaty says that no -- no one is accountable to any environmental standard that you haven't signed up for internationally. The United States of America has not signed up to any international environmental agreement.

So literally -- and I know that the senator is a good lawyer and he understands standing. There would be zero standing under the direct, overt language of this treaty. There's no ability to bring an environmental suit against this, number one.

Number two, with respect to this -- this concern about the seabed authority, the United States of America is the only country that has a permanent seat on it. Kudos to Ronald Reagan and the folks who negotiated this -- and we will hear from some of the negotiators this afternoon.

The others are rotating on a four-year basis. So Sudan may be there today; who knows where they'll be in the future. But the bottom line is that Sudan is on a lot of bodies that we currently work with, and it has not impeded our ability to assert our values and our interests.

Moreover, if we don't accede to this treaty our major mining companies and other exploitative undersea entities (inaudible) gas, oil, whatever -- will not drill, will not exploit.

In fact -- it's very interesting (OFF-MIKE)

(UNKNOWN)

Lockheed.

KERRY:

Lockheed Martin has -- has asked the British government and joined into a British consortium in order to be able to access someplace because the United States of America will not stand up for it and represent it through this process to legalize its claims.

So here we are sending our companies to other countries to have them stand up for their interests. Lockheed Martin will not drill and put millions of dollars into an undersea exploitation unless they know they have legality to their claim. That's for the extended shelf.

The extended shelf we have available to us here is bigger than any other country in the world. Now, are we gonna sit here and say it is smart for the United States not to help our companies have legal assurance so they can go out there and exploit those resources.

KERRY:

There's gonna be a competition for resources. I mean, look at what China is doing now in Africa. Look at what they're doing in Afghanistan. We're -- we're fighting and putting people on the line and they're there trying to exploit copper. I mean, we -- we got to start thinking about our long-term economic strategic interests here.

And the only way we're gonna -- you know, if we don't sign up we have a chance -- other countries can take us to the cleaners.

And you will see this in the classified briefing, the degree to which other countries are staking claims and we're just sitting here. Now we have a permanent seat and we have a veto to boot. Nothing can happen through the seabed authority that we don't agree to.

So no money will be sent to some -- I've heard people say we're going to send money to dictators through this. No, we're not. It can't happen, because we -- if we're on it, we can prevent it. If you want it to happen it can happen through all the exploitation that's gonna take place without us on it and then they may decide to go do those things.

So, in fact, there's a reverse argument, there's a much greater interest for us to be here to protect against those kinds of distributions. The final thing I'd just called to the attention of the Senator article 82 which sets up this entity and the distribution.

You know, for the first time years of production at a site you don't pay any royalty at all. Nothing, and then for the sixth year you pay about 1 percent of the value of production at the site. 1 percent of the total value of production at the site and that rate increases by 1 percent for each subsequent year and only at the 12th year do you get to a 7 percent?

If we're lucky enough to hit mining and oil and gas that lasts for the 12 years, you may get 7 percent, much less than we pay on any of those oil rigs down in the Gulf. And finally, if you're a net importer of the minerals that you're producing out there, you don't pay anything at all, zero royalty.

If you're the importer because you're using it, this negotiation had the judgment to say that's your use, that's your deal, it's if you're exporting it and selling it, then you have to pay the party.

And finally, the payments are not made to the seabed authority. They're distinctly isolated and they go through the seabed authority and that language is very specific and it is only in an agreement by the parties at the table and distributed to where. We're not at that table.

So whatever's exploited in the world now, is going to be distributed without the input of the United States. We are far better off sitting there and influencing that distribution and vetoing it if it's against our interest than we are watching it go by, so I think we ought to have this conversation...

LEE:

If I can just respond to those points.

KERRY:

Absolutely.

LEE:

First of all, I appreciate your insight, Mr. Chairman, this is what you've lived with and worked with for many years and I do appreciate your insights. I would observe however a couple of points.

First, the International Seabed Authority is governed...

KERRY:

Let me just ask how much time we have for the vote?

I'm not trying to cut you -- we have five minutes, we have time, we have time.

LEE:

OK, in that case, I'll try to finish up in one minute.

The international Seabed Authority is governed ultimately by the assembly and the assembly is the 160-plus member which is the supreme organ and the supreme law-making body of the authority.

Now it does -- the chairman is absolutely right to point out that the council, this smaller body on which the United States does have a seat which can be fairly described in some limited contexts as veto authority because there are some areas that requires consensus.

The council does have the authority to propose the rules and regulations governing the article 82 distribution, but ultimately the distribution itself, the determination of how those rules are implemented and the allocation itself is made by the assembly and not by the council.

As to the lawsuit, I understand your point about -- about a lawsuit, but let's take into account the fact that -- let's suppose we, the United States, get hauled into an arbitration pursuant to annex 8 and we find ourselves having chosen two of our arbitrators, our opponent having chosen two, and the fifth having been chosen by the secretary-general of the United Nations.

You can easily count to three among the arbitrators who might interpret the laws to which we've acceded to which we've agreed to be bound, differently than the U.S. court might and differently than you and I might and that might present us with a risk.

KERRY:

Actually, it doesn't, Senator, for this reason -- if we were to agree to a international agreement with respect to the environment and we agreed to a dispute resolution process within that treaty that treaty would govern and you could specifically, in fact, preclude and I'm confident we would in the negotiation and any jurisdiction of the Law of the Sea over that particular issue. So, in fact, we would be well protected if we were to get there.

I wish this really were a threat that the United States was about to enter into an agreement on international climate change, but I think it's a long way away given where we are, but I'm willing certainly to provide for that. And we can do something in the resolution of ratification that addresses that concern, and I'm perfectly happy to work with the Senator to do that.

LEE:

Thank you.

KERRY:

Thank you very much.

Gentlemen, I think everybody here has said it. We are enormously grateful to you for not just being here today, but for your service and your careers and for what you represent and really, it is, I think, important to have had these 24 stars here.

We are grateful for your testimony and most importantly for what you do every single day. We thank you on behalf of the country.

Thanks for being here today and again, happy birthday to the United States Army.

We stand adjourned.

CQ Transcriptions, June 14, 2012

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