

118TH CONGRESS
1ST SESSION

S. RES. 466

Calling upon the United States Senate to give its advice and consent to the ratification of the United Nations Convention on the Law of the Sea.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2023

Ms. HIRONO (for herself, Ms. MURKOWSKI, Mr. KAINÉ, Mr. VAN HOLLEN, Ms. ROSEN, Mr. CASSIDY, Mr. KING, and Mr. WHITEHOUSE) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Calling upon the United States Senate to give its advice and consent to the ratification of the United Nations Convention on the Law of the Sea.

Whereas the United Nations Convention on the Law of the Sea (UNCLOS) was adopted by the Third United Nations Conference on the Law of the Sea in December 1982 and entered into force in November 1994 to establish a treaty regime to govern activities on, over, and under the world's oceans;

Whereas the UNCLOS builds on four 1958 Law of the Sea conventions to which the United States is a party, namely the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on

Fishing and Conservation of the Living Resources of the High Seas;

Whereas the UNCLOS and an associated 1994 agreement relating to implementation of the treaty were transmitted to the Senate on October 6, 1994, and, in the absence of Senate advice and consent to ratification, the United States is not a party to the treaty or the associated 1994 agreement;

Whereas the treaty has been ratified by 169 parties, which includes 168 countries and the European Union, but not the United States;

Whereas the United States, like most other countries, maintains that coastal States under the UNCLOS have the right to regulate economic activities in their Exclusive Economic Zones (EEZs), but do not have the right to regulate foreign military activities in their EEZs;

Whereas the treaty's provisions relating to navigational rights, including navigational rights in EEZs, reflect the diplomatic position of the United States on the issue dating back to the adoption of the UNCLOS in 1982;

Whereas becoming a party to the treaty would codify the current position of the United States, which recognizes the provisions within the UNCLOS as customary international law;

Whereas becoming a party to the treaty would give the United States standing to participate in discussions relating to the treaty and thereby improve the ability of the United States to intervene as a full party to disputes relating to navigational rights and to defend United States interpretations of the treaty's provisions, including those relating to whether coastal States have a right under the

UNCLOS to regulate foreign military activities in their EEZs;

Whereas becoming a party to the treaty would allow the United States to be a member of the International Seabed Authority and thereby participate directly in setting and voting on the policies organizing and controlling mineral-related activities in the international seabed area as global demand for critical minerals increases;

Whereas more than 97 percent of the global internet traffic relies on infrastructure located on the international seabed compared to space-based infrastructure;

Whereas lack of full-party membership to UNCLOS limits the access and influence of the United States to critical territorial dispute management, including matters involving pursuit and competition of extended outer continental shelf submissions, facilitated primarily by article 76, which represents the main tool assisting sovereign authority delimitation agreements;

Whereas relying on customary international norms to defend United States interests in those issues is not sufficient, because customary international law is not universally accepted and is subject to change over time based on State practice;

Whereas relying on other countries to assert claims on behalf of the United States at the Permanent Court of Arbitration at The Hague is woefully insufficient to defend and uphold United States sovereign rights and interests;

Whereas the Permanent Court of Arbitration, in the July 12, 2016, ruling on the case *In the Matter of the South China Sea Arbitration*, stated that “the Tribunal communicated to the Parties and the U.S. Embassy that it had

decided that ‘only interested States parties to the United Nations Convention on the Law of the Sea will be admitted as observers’ and thus could not accede to the U.S. request” to “send a representative to observe the hearing”;

Whereas, on November 25, 2018, the Russian Federation violated international norms and binding agreements, including the UNCLOS, in firing upon, ramming, and seizing Ukrainian vessels and crews attempting to pass through the Kerch Strait;

Whereas, on May 25, 2019, the International Tribunal for the Law of the Sea ruled in a vote of 19–1 that “[t]he Russian Federation shall immediately release the Ukrainian naval vessels Berdyansk, Nikopol and Yani Kapu, and return them to the custody of Ukraine” and that “[t]he Russian Federation shall immediately release the 24 detained Ukrainian servicemen and allow them to return to Ukraine”, demonstrating the Tribunal’s rejection of the Russian Federation’s arguments in that matter in relation to the Law of the Sea;

Whereas, despite the Tribunal’s ruling aligning with the position of the United States Government on the November 25, 2018, incident, the continued nonparticipation of the United States in the UNCLOS limits the ability of the United States to effectively respond to the Russian Federation’s actions and to any potential future violations by the Russian Federation and any other signatory of UNCLOS;

Whereas the Secretary of Defense, the Honorable Lloyd Austin, stated that “the United States has long treated the UNCLOS’s provisions related to navigation and overflight as reflective of longstanding and customary inter-

national law. Our military already acts in a manner consistent with these rights and freedoms, so accession to the Convention will not impact the manner in which we conduct our operations”, in response to a question for the record from Senator Hirono on January 21, 2021;

Whereas the Chief of Naval Operations, Admiral Lisa Franchetti, stated that “the United States played a major role in drafting the Convention, and it is favorable to U.S. interests on all significant issues as a result. Further, our Navy already acts in a manner consistent with the Convention’s navigational and overflight provisions. Accession would not impose any additional constraints on the Navy’s ability to fly, sail, and operate wherever international law allows”, in response to advance policy questions on September 14, 2023, before the Committee on Armed Services of the Senate;

Whereas Admiral Franchetti further stated that “the United Nations Convention on the Law of the Sea would give our objections to excessive maritime claims a stronger legal foundation that does not rely exclusively on customary international law. When protesting excessive maritime claims asserted by the People’s Republic of China in the South China Sea, the Russian Federation in the Arctic region, and others, the United States would come from a position of increased authority and influence”, in response to advance policy questions on September 14, 2023, before the Committee on Armed Services of the Senate;

Whereas the Commander of the United States Indo-Pacific Command, Admiral John C. Aquilino, stated that “there’s really two main reasons [to ratify the UNCLOS]: as the group gets together, it would be cer-

tainly beneficial if we had a seat at the table when there were discussions occurring as it applied to potential adjustments and the interpretations of those international laws and the second reason is it puts us in an increased position of credibility . . . we adhere to the UNCLOS treaty in our operations, and it would make our position much stronger if we were signatories”, on March 23, 2021, at his nomination hearing before the Committee on Armed Services of the Senate;

Whereas the Commander, North American Aerospace Defense Command and United States Northern Command, General Gregory M. Guillot, stated, “I support U.S. accession to the Law of the Sea Convention (UNCLOS). UNCLOS provides a comprehensive regime for the governance of the world’s oceans, including the Arctic, and U.S. accession would further demonstrate our commitment to an international rules-based order. Acceding to the treaty would enable U.S. representation during critical international negotiations that impact the maritime domain, provide an additional mechanism to counter countries like Russia and China that continue to exploit our absence from key ocean governance diplomatic forums, and ultimately help protect our nation’s rights and interests in this critical sphere of operations”, in response to advance policy questions on July 23, 2023, before the Committee on Armed Services of the Senate;

Whereas the Commander, North American Aerospace Defense Command and United States Northern Command, General Gregory M. Guillot, further stated in regard to United States ratification of the UNCLOS that “I believe accession to the Law of the Sea Convention would help the U.S. protect its interests in the Arctic. Accession

would demonstrate our commitment to a rules-based order, ensure our best interests are represented during international negotiations regarding territorial disputes and challenges to longstanding maritime customs and practices, and improve our ability to advocate for our ocean governance interests around the globe, including in the Arctic. Engagement through UNCLOS is particularly critical today as multiple nations vie for access and control in the Arctic and seek to modify international norms to accommodate expansionist ambitions around the globe in general, and in the Arctic in particular. Finally, accession would preclude Russia and China from exploiting U.S. absence in forums”, in response to advance policy questions on July 23, 2023, before the Committee on Armed Services of the Senate;

Whereas the Secretary of the Navy, Honorable Carlos Del Toro, stated “accession would ‘lock in’ the customary rights and freedoms reflected in the UNCLOS, and would give the U.S. a seat at the table to set the course for future law of the sea discussions on a coequal level with member states like China and Russia. China continues a more aggressive posture in the South China Sea. As widely reported, Chinese warships, law enforcement vessels, and other PRC-flagged vessels have failed to respect the rights of maritime nations under the Convention. As a party to the Convention, U.S. objections to these violations would have more force and credibility, and would enhance its ability to respond to excessive maritime claims, land reclamation, and militarization efforts by China in the South China Sea”, in response to a question for the record from Senator Hirono on July 13, 2021;

Whereas the past Commander of United States Indo-Pacific Command, retired Admiral Philip S. Davidson, stated that “our accession to the UNCLOS would help our position legally across the globe and would do nothing to limit our military operations in the manner in which we’re conducting them now”, on April 17, 2018, before the Committee on Armed Services of the Senate;

Whereas the past Commander of United States Pacific Command, retired Admiral Harry B. Harris, stated “I believe that UNCLOS gives Russia the potential to, quote, unquote ‘own’ almost half of the Arctic Circle, and we will not have that opportunity because of, we’re not a signatory to UNCLOS”, on March 15, 2018, before the Committee on Armed Services of the Senate;

Whereas the past Commander of United States Pacific Command, retired Admiral Harry B. Harris, stated “I think that by not signing onto it that we lose the credibility for the very same thing that we’re arguing for”, and “which is the following—accepting rules and norms in the international arena. The United States is a beacon—we’re a beacon on a hill but I think that light is brighter if we sign on to UNCLOS”, on February 23, 2016, at a hearing before the Committee on Armed Services of the Senate;

Whereas the past Chairman of the Joint Chiefs of Staff, retired General Joseph F. Dunford, stated that “by remaining outside the Convention, the United States remains in scarce company with Iran, Venezuela, North Korea, and Syria” and “by failing to join the Convention, some countries may come to doubt our commitment to act in accordance with international law”, on July 9,

2015, before the Committee on Armed Services of the Senate;

Whereas the past President and Chief Executive Officer of the United States Chamber of Commerce, Mr. Thomas J. Donahue, stated that “we support joining the Convention because it is in our national interest—both in our national security and our economic interests”, “becoming a party to the Treaty benefits the U.S. economically by providing American companies the legal certainty and stability they need to hire and invest”, and “companies will be hesitant to take on the investment risk and cost to explore and develop the resources of the sea—particularly on the extended continental shelf (ECS)—without the legal certainty and stability accession to LOS provides”, on June 28, 2012, before the Committee on Foreign Relations of the Senate;

Whereas the past President and Chief Executive Officer of the United States Chamber of Commerce, Mr. Thomas J. Donahue, further stated that “the benefits of joining cut across many important industries including telecommunications, mining, shipping, and oil and natural gas”, and “joining the Convention will provide the U.S. a critical voice on maritime issues—from mineral claims in the Arctic to how International Seabed Authority (ISA) funds are distributed”, on June 28, 2012, before the Committee on Foreign Relations of the Senate;

Whereas the past Commandant of the United States Coast Guard, retired Admiral Paul Zukunft, stated on February 12, 2016, “With the receding of the icepack, the Arctic Ocean has become the focus of international interest.”, “All Arctic states agree that the Law of the Sea Convention is the governing legal regime for the Arctic

Ocean . . . yet, we remain the only Arctic nation that has not ratified the very instrument that provides this accepted legal framework governing the Arctic Ocean and its seabed.”, and “Ratification of the Law of the Sea Convention supports our economic interests, environmental protection, and safety of life at sea, especially in the Arctic Ocean.”;

Whereas the past Chief of Naval Operations, retired Admiral Michael Gilday, stated that “acceding to the Convention would strengthen our strategic position on issues pertaining to the [South China Sea and the Arctic]. The United States would have increased credibility when responding to excessive maritime claims and militarization efforts in the South China Sea. With respect to the Arctic, becoming a party to the Convention would allow the U.S. to position itself to safeguard access for the purposes of maritime traffic, resource exploitation, and other human activities, while ensuring other states comply with the law of the sea”, in response to advance policy questions on July 30, 2019, before the Committee on Armed Services of the Senate; and

Whereas the past United States Special Representative of State for the Arctic and former Commandant of the Coast Guard, retired Admiral Robert Papp, Jr., stated that “as a non-party to the Law of the Sea Convention, the U.S. is at a significant disadvantage relative to the other Arctic Ocean coastal States”, “those States are parties to the Convention, and are well along the path to obtaining legal certainty and international recognition of their Arctic extended continental shelf”, and “becoming a Party to the Law of the Sea Convention would allow the United States to fully secure its rights to the conti-

mental shelf off the coast of Alaska, which is likely to extend out to more than 600 nautical miles”, on December 10, 2014, before the Subcommittee on Europe, Eurasia, and Emerging Threats of the Committee on Foreign Affairs of the House of Representatives: Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) affirms that it is in the national interest for
3 the United States to become a formal signatory of
4 the United Nations Convention on the Law of the
5 Sea (UNCLOS), done at Montego Bay December
6 10, 1982;

7 (2) urges the United States Senate to give its
8 advice and consent to the ratification of the
9 UNCLOS; and

10 (3) recommends the ratification of the
11 UNCLOS remain a top priority for the Federal Gov-
12 ernment, the importance of which was most recently
13 underscored by the strategic challenges the United
14 States faces in the Indo-Pacific, the Arctic, and the
15 Black Sea regions.

○