

March 22, 2004

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

Dear Majority Leader Frist:

The American Bar Association, which supports ratification of the Law of the Sea Treaty, welcomes the Advice and Consent resolution reported by the Foreign Relations Committee and urges you to schedule floor action while the opportunity presents itself, and before a summer recess and campaign considerations further delay Senate approval.

The American Bar Association submitted a statement for the hearings of the Foreign Relations Committee in October (a copy of which is attached), along with many other organizations and individuals representing every possible constituency on the impact of the Convention, whether legal, economic, environmental or scientific. Seldom has there been such unanimity of responsible opinion on the importance of the United States becoming a party to a treaty. I do not want to take your time in repeating the arguments in our earlier statement other than to note that the ABA had a number of objections to the treaty as presented in 1982, as did the Reagan administration, and that we carefully reviewed the changes adopted in 1994 to be sure that those objections had been addressed, and then supported ratification without qualification. I am sure that with your experience with medical associations you can well appreciate the extensive vetting of our resolution of support for ratification that speaks for the 400,000 members of the ABA.

Because of the length of time that has elapsed between the date of the original treaty (1982), the date of the changes to that text (1994), and consideration by the Senate, now ten years later still, there is a great deal of misinformation and uninformed comment appearing in the press and elsewhere. For example, I am sure you are aware, but many are not, that the Reagan Administration in 1982 supported the Law of the Sea Treaty as then written with the exception of the troublesome Part XI regarding seabed mining which was the reason why the U.S. did not then sign the treaty. Those objections, which were shared by the American Bar Association and others, were subsequently corrected to everyone's satisfaction in the Amended Agreement of 1994 that is a part of this ratification process.

This treaty represents a unique moment in the development of the rule of law in that it has established an equitable framework of law to balance often conflicting interests in an area - the

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world's oceans - which by their nature require agreed rules as an alternative to uncertainty and unilateral claims. With the exception of the deep seabed mining provisions, noted above, this treaty has enjoyed bipartisan support by every Administration since the negotiations began in the Nixon Administration. Such opposition as remains comes from political quarters for whom any and all international obligations or rules are somehow a violation of our sovereignty rather than a legal protection of our rights.

Most recently, some questions have been raised with respect to any possible restrictions under the Convention on intelligence or other activities made necessary by reason of increased security concerns. In our view this is not the case. To the contrary, these considerations underline the importance of the protections in the Convention. It is essential to U.S. security interests, both past and present, that key sea and air routes remain open as a matter of international legal right to help guarantee global mobility of our armed forces. The codification in this treaty of traditional freedoms of the seas was a key achievement by the U.S. negotiators, as was the limitation of the territorial sea to 12 nautical miles at a time when many states were claiming far broader jurisdiction. Furthermore, with respect to navigation in territorial seas, the treaty merely repeats prior rules with respect to a requirement that submarines navigate on the surface in foreign territorial seas. What the treaty adds, as an additional protection, is the right of submerged passage through international straits, which is not embodied in prior conventions to which the U.S. is a party.

Finally, I would point out that this treaty has been in force since November of 1994. Although the U.S. is not a party, this country has observed the treaty and participated in meetings and committees established under the treaty to the extent possible absent our being a party. Nevertheless, as a result of not being a party, the United States has been unable to exercise leadership in the creation of, and membership in, various institutions created under the Convention, most notably the Commission on the Limits of the Continental Shelf, an issue that Senator Stevens addressed in his testimony before the Foreign Relations Committee. Yet in all of that time nothing has occurred to suggest that anything in the treaty, and the practices of states under it, have in any way adversely affected U.S. interests. To the contrary, it is evident that the treaty has accomplished what it set out to do: create a stable, certain legal regime to which all nations can subscribe.

At this moment, the timing of Senate action is important to ensure the continued leadership of the United States in what is still an evolving process of law. What is at risk here is the possibility that if the U.S. fails to ratify, the important protections embodied in the treaty over time would unravel. The Convention provides for a ten-year review period, which will occur later this year. It would be unwise for the United States not to be in a position to protect its interests and manage whatever suggestions for changes might then be made.

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For all of these reasons, and for the many more that are discussed in the record of the hearings of the Foreign Relations Committee, we urge you to schedule a vote on the treaty now.

Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis W. Archer".

Dennis W. Archer

cc: The Honorable Richard Lugar
The Honorable Joseph Biden