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Witnesses:

Thomas Donahue

President & CEO, U.S. Chamber of Commerce

Jack Gerard

President & CEO, American Petroleum Institute

Jay Timmons

President & CEO, National Association of Manufacturers

Lowell McAdam

Chairman & CEO, Verizon

Committee Members Present:

John Kerry (D-MA), Chair

Dick Lugar (R-IN), Ranking Member

Bob Casey (D-PA)

Bob Corker (R-TN)

Jeanne Shaheen (D-NH)

Johnny Isakson (R-GA)

On June 14, the Senate Committee on Foreign Relations held a fourth hearing to discuss ratification of the Law of the Sea Convention (LOS) (Treaty Doc. 103-39). LOS is the result of the third meeting of the United Nations Conference on the Law of the Sea (UNCLOS III) and was signed in 1982. 162 nations are party to the Convention including China, Iran and Russia. The Convention outlines a country's rights and responsibilities regarding international waters and the country's continental shelf. Natural resource rights, political rights, an administrative body in the International Seabed Authority (ISA) and the defense of marine science research are outlined in the treaty.

The treaty establishes "exclusive economic zones" (EEZ) in which a coastal nation has sole exploitation rights over natural resources within 200 nautical miles of a defined baseline. The natural resources extend from fishing and wave energy in the ocean column to oil, natural gas, gas hydrates, and mineral resources below the seafloor. The ISA was established to oversee the amendment of Part XI of the Convention. The United States Extended Continental Shelf Task Force, led by the Department of State, is responsible for delineating the U.S. extended continental shelf (ECS).

Chairman John Kerry (D-MA) began his opening statement with an anecdote explaining how industry leaders "convinced" him of the economic need for LOS. Thomas Donahue, President & CEO of the U.S. Chamber of Commerce, outlined the need for international protection so companies can "explore and mine [and] do what's necessary to produce energy."

The chairman said the major economic benefit of the treaty is legal protection for business ventures and land claims in international waters. Producers of undersea fiber optics cables can use LOS for legal protection if another nation does not allow the company to repair or lay cables in their EEZ. Kerry explained the need for companies to have complete legal certainty before investing a significant amount of money to explore the ECS for oil and natural gas. The oil and gas industry recognizes that the ECS is "critical to our energy security for years to come" but will not take the risk without protection. Similarly, recent technological advancements have made it possible for mining companies to prospect for rare and precious metals on the deep seabed, but cannot apply for claims to the ISA without having a sponsor party nation.

A common argument against the treaty is that customary international law should be enough to protect resource mining claims on the high seas. Kerry addressed this by pointing out that as a party to the treaty the U.S. will be able to dictate how law changes while as a non-party it is "on the outside looking in." This makes marine law unstable and unpredictable for the U.S. which leads to uncertainty for business owners who do not know "the rules of the road." Kerry plainly stated that "our companies want this treaty ... because it affects their bottom line."

Marvin Odum, President of Shell Oil Company, was invited to the hearing but could not attend. Chairman Kerry entered his testimony to the record as support for LOS.

Ranking Member Dick Lugar's (R-IN) opening statement was in support of LOS for its ability to "support job-creating investment and open new resources to our industries at a critical time for our economy." He pointed out that the current political climate eliminates a stimulus as an option to bolster the U.S. economy. He said U.S. companies are at a "competitive disadvantage" to companies based in nations party to LOS for their ability to access marine resources and influence ocean policy.

Under the terms of the treaty, a one percent royalty must be paid to the ISA after the first five years of oil and gas production on a country's ECS. This royalty increases by one percent every year until the 12th year where it remains constant at 7 percent. Lugar said that oil and gas companies prefer the small royalty and were represented when it was added to the treaty.

Donahue's testimony supported the treaty because it is "essential to America's global interest." He said that businesses will appreciate the "codified" right to ... develop vast amounts of oil and natural gas and minerals off the U.S. coasts and in the deepwater seabed." Donahue said rare earth minerals are paramount to "sustaining and creating American jobs" for their use in electric cars, wind turbines, computers and many other electronics.

He said he hoped the U.S. would be able to take its "seat at the table" in the ISA. He emphasized that the U.S. would have effective veto power on decisions relating to deep seabed mining, such as how the royalty for drilling in the ECS will be spent. He said the ISA is "not going to run our lives" and the nation has "the most to win or to lose" based on whether or not Congress ratifies the treaty.

Jack Gerard, President of the American Petroleum Institute (API), testified to API's support for LOS. The ECS Task Force estimates "billions if not trillions" of dollars of oil and natural gas lay undiscovered just off U.S. shores and can be drilled under provisions in LOS. If more companies invest in oil and gas exploration on the ECS, more U.S. jobs will be created and more money can go to federal and state governments.

Oil companies need legal certainty of ownership available through LOS to protect financial investments when exploring the ECS. According to Gerard, oil companies look at "10, 20, 30 or 40 year horizons" when making the multi-billion dollar investment to claim, explore and ultimately extract oil from any environment. With a complicated operation like drilling on the ECS even more capital is required and "air-tight" legal protection is needed.

Currently, 60 percent of U.S. energy comes from oil and gas resources and Gerard estimated that will only drop to 57 percent over the next 25 years. To accommodate this need, oil and gas exploration must take place in less conventional environments. The U.S. Geological Survey estimated that one-quarter of the world's undiscovered oil and gas is in the Arctic and nations party to LOS have begun laying claims in the region. Gerard said LOS will support U.S. claims to extend its ECS and provide a "level playing field" for Arctic nations looking develop oil and natural gas in the unexplored region.

Jay Timmons, President of the National Association of Manufacturers (NAM), testified in support of LOS as a representative of 12,000 manufacturing firms. Timmons said the manufacturing sector demands a large amount of rare earth elements for a wide breadth of applications. Currently China controls over 90 percent of rare earth production, but exploration geologists have found that ferromanganese crusts and nodules on the deep seabed contain profitable amounts of rare earths. Provisions in LOS allow companies in party nations to apply for a claim to mine areas on the abyssal plain which contain rare earths and other critical minerals, said Timmons. The ISA considers these claims, and the U.S. has a permanent seat with effective veto power.

He said it is 20 percent more expensive to manufacture electronics in the U.S. partly because of the need to import critical minerals from other countries. Timmons testified that a local supply of rare earths would greatly reduce this cost, creating American jobs and supporting a strong U.S. economy. Timmons urged the committee to support ratification for LOS because "a strong economy needs a strong manufacturing sector."

Lowell McAdam, Chairman and CEO of Verizon, discussed the importance of maritime freedoms to the digital communications industry in his testimony. Data, voice and visual communications cables on the bottom of the sea transmit information between the U.S. and other continents. McAdam quoted a Federal Reserve official to explain the importance of these cables saying that if there is a disruption in communication because of the loss of undersea communication cables, the U.S. "financial sector does not grind to

a halt, it snaps to a halt.”

When cables were damaged by a Vietnamese vessel in the South Pacific, there was “significant cost to the communications industry” and consumers “without legal recourse” to provide compensation for consumers or arbitrate the dispute. Malta has threatened legal action against cable companies that have tried to repair communications cables in its waters. McAdam said there are 10 articles in the LOS which provide a legal framework to protect and repair its communications cables, arbitrate disputes like those with Malta and Vietnam and protect U.S. economic interests.

During questioning, Kerry asked the panel to confirm that industry does not feel it can protect claims to ECS and deep seabed resources without legal protection under ECS. Donahue confirmed this saying, “money goes where it’s safe [and] where it’s profitable.” Prompted by Senator Jeanne Shaheen (D-NH) Gerard explained that when the treaty was drafted, resource development on the ECS and deep seabed was impossible. Now companies are technologically capable of deep seabed mining but are restricted for legal reasons.

Lugar asked for the panel’s opinion on former Secretary of Defense Donald Rumsfeld’s argument that companies frequently take risks for profit and should ignore legal restrictions imposed by LOS. Gerard said that the property right is the “fundamental issue” and greatly outweighs profit. Rumsfeld testified that companies can undergo joint ventures with other nations. Gerard testified that the “greatest companies in the world” should not have to apply for land claims through other nations. McAdam said he would not support asking other countries “to carry our water for us” by supporting land claims with U.S. companies.

In previous LOS hearings, Senator Jim Risch (R-ID) has had reservations about Article 222 of the treaty for its environmental regulations. Risch was concerned LOS will compel the U.S. to follow green house gas emission regulations similar to Kyoto Protocol to the United Nations Framework Convention on Climate Change. Kerry asked if any witness’s legal interpretation of Article 222 of LOS resembles a “back door Kyoto Protocol” as suggested by Risch. Donahue stated that the U.S. meets the environmental regulations set forth by LOS, and it does not resemble the Kyoto Protocol.

Senator Bob Corker (R-TN) said he found it “ironic” that the Obama Administration supports the interests of the oil and natural gas companies in relation to LOS but works against them in continental oil and gas exploration. Gerard agreed but explained he separates the domestic “inadequacies” of the administration from its support of LOS. Kerry emphasized that the committee is pursuing ratification of LOS out of its own interests, not those of the administration.

Senator Bob Casey (D-PA) asked for clarification of the importance of LOS to manufacturing. Timmons explained that rare earths are vital to chemical engineering processes, and are used to make ceramics, alloys, glass and magnets in electronics like smart phones, electric generators and catalytic converters.

Prompted by Kerry, Donahue reemphasized the importance of navigational freedom and legal protection to high seas resource claims through LOS. He said the “next great industry of this country is energy of every type” and energy has the potential to “create millions of jobs.” LOS can be the catalyst for this job creation and would jumpstart the U.S. economy.

Opening statements, witness testimony and an archived web cast of this hearing can be found at the committee web site.
