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The Honorable Joseph Biden
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The American Bar Association is pleased that the Foreign Relations Committee is holding hearings on the United Nations Convention on the Law of the Sea, and we request that the enclosed statement be included in the hearing record.

The American Bar Association, through its Section of International Law, extensively studied the development of this Convention. Following the adoption of the agreement reforming its seabed mining provisions, the ABA in 1994 adopted a policy strongly supporting the United States' accession to the Convention. As the world's leading maritime and naval power, it is past time for the United States to become a party to the Convention, and we applaud you for moving the treaty forward.

Should the ABA be able to offer any assistance or information to you or your staff, please don't hesitate to contact me or Kristi Gaines in the ABA Governmental Affairs Office at 202-662-1763 or at gainesk@staff.abanet.org.

Thank you again for your efforts on this important issue.

Sincerely,



William H. Neukom

cc: Members of the Senate Foreign Relations Committee



AMERICAN BAR ASSOCIATION

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**Statement of William H. Neukom, President of the American Bar Association,
Submitted to the Committee on Foreign Relations of the United States Senate
on the Convention on the Law of the Sea
September 27, 2007**

Mr. Chairman and Members of the Committee:

Since 1994, accession by the United States to the Convention on the Law of the Sea has been a priority for the American Bar Association. To that end we have testified before the U.S. Commission on Ocean Policy and submitted a statement to this Committee during its hearings in 2003. We strongly urge this Committee to forward, with a favorable recommendation, this treaty to the Senate for its advice and consent to accession to the Convention.

This treaty has now been in force for thirteen years and more than 150 nations are party to it. None of the dire consequences predicted by its ideological opponents has come to pass. It does not inhibit anti-terrorist activities on the high seas. In fact, both the U.S. Navy and the Coast Guard have attested that joining the Convention will strengthen our national security efforts. It does not impose any taxes or create any international forces. Further, rather than limiting our sovereignty as claimed, it vastly extends it over the resources of the continental shelf out to 200 miles, an area greater than that of the lower 48 United States.

Opponents have also raised alarmist objections regarding the jurisdiction of the International Tribunal on the Law of the Sea created under the Convention which are patently untrue. The United States, in accordance with provisions of choice in the Convention will elect arbitral procedures for certain categories of disputes rather than submit to the jurisdiction of that Tribunal or the International Court of Justice. The United States also will opt out of all mandatory dispute settlement with respect to military and

certain other activities. Thus, contrary to opponents' claims, the Convention does not and will not award any control over US military activities to any international court or international bureaucracy.

This Convention was carefully drafted to preserve freedom of navigation, not only on the high seas but through all international straits and waterways, and to protect economic interests relating to off-shore resources, notably oil and fisheries. It is worth emphasizing that its protections extend to freedom of overflight and submerged passage, which also are vital to the national security of our nation. The Convention protects these freedoms by establishing a comprehensive legal framework that defines rights and duties with respect to the uses of the world's oceans. Unfortunately, however universally accepted the Convention's provisions may now appear, they may erode over time if the United States fails to exercise the kind of continuing leadership and participation which led to this extraordinary achievement in the first place. We must become a party to the Convention and resume our leadership role in order to protect our future interests.

The rule of law in the oceans is not static, and the Convention will provide the platform for additional legal rules on future uses and protections of the oceans. The ABA did not endorse the treaty until 1994 because we agreed with objections to one part of the treaty dealing with deep seabed mining. After intensive negotiations, again led by the United States, those objections were resolved in an Agreement signed by the United States in August 1994 and now in force with the Convention. In accordance with that Agreement, the United States will become a permanent member of the governing Council of the International Seabed Authority and of the Finance Committee, which operate by consensus, once it becomes a party to the Convention. From that point forward, no decisions will be able to be made over the objections of the United States. Our failure to become a party to the Convention and take advantage of these changes negotiated in the Agreement will become more problematic in the future when and if mining of the deep seabed becomes commercially feasible.

More dramatic at the moment is the recent attention to resources in the Arctic Ocean beyond the 200 mile Exclusive Economic Zone established in the treaty. The Convention accords coastal States sovereign rights over the continental shelf beyond the 200-mile zone where the geologic margin so extends and establishes a process through

which a country may seek to delineate the geographical outer limits of its shelf. This is an especially important provision for the United States, which may have claims as far as 600 miles in some areas, notably in Alaska. So far a number of States, including Russia and Canada, have claimed jurisdiction in the Arctic. The extent and nature of these claims are subject to review by the Commission on the Limits of the Continental Shelf, an entity created under the Convention for this specific purpose and to which only State Parties may elect representatives. Therefore, the U.S. currently has no seat at this table where critical discussions are being held and decisions being made that impact our interests in the Arctic and other areas around the world.

With the exception of the deep seabed mining provisions that have now been corrected by the 1994 Agreement, this treaty has a remarkable, probably unique, history of support from every Secretary of State, Chairman of the Joint Chiefs of Staff, and State Department Legal Advisor since its inception during the Nixon administration. All of the principal parties affected -- the military, the energy industry, the communications industry, fisheries, and environmental organizations, among others -- are united in recognizing that the United States will benefit by becoming a party to this Convention.

In short it is difficult to conceive of any reason why the United States should not be a party to, and take a leading role in, advancing the rule of law as it applies to the seas. It will serve our interests for as long as we are bordered by two great oceans. Looking to the future, ratification would also do much to reestablish our credibility as a negotiating partner and leader, as we have always been, in furthering the rule of law in the world.

The ABA urges this Committee and the Senate to proceed to pass an advice and consent resolution as quickly as possible.