

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

April 6, 2004

Dear Senator Warner:

During recent briefings of Senate staff by officials from the Department of State, the Department of Defense, and other relevant agencies on the Law of the Sea Convention, the question was raised whether the Convention would prohibit or otherwise adversely affect U.S. intelligence activities. I would like to take this opportunity to respond to that question. I have coordinated this response with the Department of Defense and those other relevant agencies.


U.S. accession to the Convention would support ongoing U.S. military operations, including the continued prosecution of the war on terrorism. The Convention reinforces our military's ability to move – without hindrance and under authority of law – forces, weapons, and materiel to the fight, which is critical to our accomplishing national security objectives. The Convention does not prohibit U.S. intelligence activities; nor would we recognize any restrictions on those activities.

Since President Reagan's 1983 Ocean Policy Statement, the United States has conducted its activities consistent with the non-deep seabed provisions of the Convention. Further, the Convention's "innocent passage" provisions are actually more favorable to U.S. military and navigational interests than those in the 1958 Convention on the Territorial Sea and the Contiguous Zone, to which the United States is a party. Not

The Honorable
John Warner,
Chairman,
Committee on Armed Services,
United States Senate.

only is the Convention's list of non-innocent activities an exhaustive one, but it generally uses objective, rather than subjective, criteria in the listing of activities.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Taft, IV". The signature is written in a cursive style with a large, sweeping flourish at the end.

William H. Taft, IV

cc: Sen. Carl Levin
Sen. Richard G. Lugar
Sen. Joseph R. Biden
Sen. Pat Roberts
Sen. John D. Rockefeller, IV
Sen. James M. Inhofe
Sen. James M. Jeffords
Congressman Porter J. Goss
Congresswoman Jane Harman