THE U.S. SHOULD RATIFY THE U.N. CONVENTION ON THE LAW OF THE SEA

The U.S. would benefit from ratification of UNCLOS

- Consensus of Experts Advocate for U.S. Ratification of UNCLOS
  - Defense department has consistently advocated ratification of UNCLOS
  - Political opposition to ratification of UNCLOS dominated by small group of conservatives
- U.S. ratification of UNCLOS best way to preserve freedom of navigation rights
  - U.S. Navy's freedom of navigation is continually challenged by excessive claims
  - Freedom of Navigation program is not a long-term viable solution to address excessive claims
    - U.S. ratification of UNCLOS would bolster efforts of Freedom of Navigation program
  - Freedom of navigation is critical to U.S. leadership and economy
  - U.S. will be able to challenge excessive claims more effectively as a party to UNCLOS
- U.S. ratification of UNCLOS would benefit Marine Conservation efforts
  - U.S. ratification of UNCLOS necessary to control overfishing
  - Deep seabed mining has potential to cause significant environmental damage and should be regulated
  - Arctic environment requires special environmental protection
- U.S. ratification of UNCLOS would boost U.S. global leadership
  - U.S. ratification of UNCLOS critical to naval soft power needed for cooperation with other navies
- UNCLOS treaty helps establish needed rule of law and governance regime for oceans
  - UNCLOS regime empirically has already shown that it is a stabilizing force
  - Customary international law is no longer sufficient to protect U.S. interests
  - UNCLOS has empirically been successful
  - Bilateral treaties are not an alternative to UNCLOS
- U.S. ratification of UNCLOS key to a number of maritime industries
  - Offshore oil and gas development dependent on legal protection of UNCLOS
  - U.S. ratification of UNCLOS key to development of deep seabed mining industry
    - U.S. has significant economic interests in emerging deep seabed mining industry
      - Deep seabed mining has potential to be significant source of strategically valuable rare earth elements
        - New sources of rare earth minerals are critical to U.S. national security
      - Deep seabed mining is technologically feasible

    - Success of offshore wind power industry depends on U.S. ratification of UNCLOS
    - Marine biotechnology industry would benefit from UNCLOS legal regime
    - U.S. underseas cable industry needs UNCLOS protection
        - Underseas cables are vital to global economy
    - U.S. ratification of UNCLOS is key to sustaining competitiveness of U.S. shipping industry
    - Other states will challenge U.S. unilateral claims outside UNCLOS
- UNCLOS necessary to protect rights of marine researchers
- Ratification of UNCLOS is in U.S. national security interests
    - U.S. ratification of UNCLOS would bolster homeland security and counterterrorism efforts
    - U.S. ratification of UNCLOS best way to preserve freedom of navigation rights
        - U.S. Navy's freedom of navigation is continually challenged by excessive claims
        - Freedom of Navigation program is not a long-term viable solution to address excessive claims
            - U.S. ratification of UNCLOS would bolster efforts of Freedom of Navigation program
        - Freedom of navigation is critical to U.S. leadership and economy
        - U.S. will be able to challenge excessive claims more effectively as a party to UNCLOS
- Model of UNCLOS useful for governance of other global commons
    - Many valuable lessons in UNCLOS for international governance of cyberspace
    - UNCLOS regime sets a good precedent for governance of outer space
- UNCLOS has empirically been successful
- U.S. ratification of UNCLOS would help resolve disputes with Russia in Arctic
- U.S. ratification of UNCLOS would help moderate rising Chinese naval power
    - U.S. ability to peacefully resolve South China Sea disputes compromised by its non-party status to UNCLOS
    - U.S. must challenge China's flawed interpretation of UNCLOS freedom of navigation provisions
        - China's interpretation of UNCLOS at odds with U.S. and rest of the world
    - U.S. can best influence China to abide by international rule of law as a party to UNCLOS
    - U.S. can best challenge China's excessive claims as a party to UNCLOS

U.S. failure to ratify UNCLOS has been detrimental

- U.S. is losing emerging Arctic race by not being party to UNCLOS
    - U.S. has significant interests in untapped mineral wealth in Arctic
    - Other nations are pursuing Arctic claims to the detriment of the U.S.
    - U.S. failure to ratify UNCLOS complicates U.S. naval operations in the Arctic
    - UNCLOS is best regime for Arctic Governance
        - Struggle for Arctic resources could devolve into conflict
            - China becoming more aggressive in its pursuit of Arctic resources

        - Arctic resource disputes unlikely to lead to conflict
    - U.S. can't secure claims to Arctic resources through CLCS as a non-party to UNCLOS
- Adversaries using U.S. absence from UNCLOS to modify martime law in ways adverse to U.S. interests
- U.S. position as a leader has been damaged by non-participation
- U.S. adversaries are using its absence from UNCLOS to push excessive maritime claims
    - China is using excessive EEZ claims to deny U.S. access
- U.S. non-party status to UNCLOS is undermining ability to conduct maritime interdiction operations
    - U.S. ratification of UNCLOS would bolster counter-piracy efforts

U.S. ratification of UNCLOS will not be detrimental

- U.S. would not be exposing itself to liability for environmental damage in international courts by ratifying UNCLOS
    - U.S. ratification of UNCLOS will not create a "backdoor" for environmental groups to force regulations on the U.S.
- U.S. already abides by UNCLOS as a matter of customary international law and domestic policy
    - U.S. has already accepted "common heritage of mankind" principle in previous agreements and domestic law
- The 1994 Agreement explicitly dealt with and resolved concerns U.S. had with ratifying UNCLOS
- Revenue sharing agreements in UNCLOS are not a reason to reject the treaty
    - As a party to UNCLOS, U.S. would be able to prevent revenues from being redistributed to non-desirable actors
    - Revenue sharing agreements in UNCLOS are not the same as a tax
- Dispute resolution mechanisms in UNCLOS are not a reason to reject the treaty
    - Dispute resolution mechanisms in UNCLOS do not threaten U.S. military action
        - U.S. has resolved the ambiguity in military activities exemption clause
    - Dispute resolution mechanisms in UNCLOS not unique to the convention
- U.S. will not be obligated to transfer technology under UNCLOS
- U.S. ratification of UNCLOS will not threaten our intelligence operations
    - UNCLOS will not uniquely restrict submarine operations
- U.S. participation in UNCLOS will not undermine national sovereignty
    - U.S. can extend the range of territory under its sovereign control by ratifying UNCLOS
        - U.S. is losing emerging Arctic race by not being party to UNCLOS
            - U.S. has significant interests in untapped mineral wealth in Arctic
            - Other nations are pursuing Arctic claims to the detriment of the U.S.
            - U.S. failure to ratify UNCLOS complicates U.S. naval operations in the Arctic
            - UNCLOS is best regime for Arctic Governance
                - Struggle for Arctic resources could devolve into conflict

        - Arctic resource disputes unlikely to lead to conflict
    - U.S. can't secure claims to Arctic resources through CLCS as a non-party to UNCLOS
- U.S. ability to conduct maritime interdiction operations will not be curtailed by UNCLOS
    - U.S. ratification of UNCLOS would bolster counter-piracy efforts
    - U.S. ratification of UNCLOS will not undermine Proliferation Security Initiative
- UNCLOS is not administered by the United Nations

THE U.S. SHOULD NOT RATIFY THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The U.S. would not Benefit from Ratification of UNCLOS

- U.S. underseas cable systems can be protected by existing laws or bilateral treaties
- U.S. ratification of UNCLOS is not necessary for development of offshore oil and gas industry
- U.S. can make claim to Arctic resources without being party to UNCLOS
- U.S. could rely on bilateral treaties as an alternative to UNCLOS regime
- UNCLOS regime is not a viable model for governing outer space
- U.S. can mine the deep seabed without ratifying UNCLOS
    - Deep seabed mining is not currently technologically viable
- Existing customary international law is sufficient to protect U.S. interests without ratifying UNCLOS
- U.S. ratification of UNCLOS will not help resolve Arctic disputes with Russia
- U.S. ratification of UNCLOS won't help resolve disputes in South China Seas
- UNCLOS has empirically not been successful
- UNCLOS is inadequate for protection of U.S. underseas cables

U.S. failure to ratify UNCLOS has not been detrimental

- U.S. does not need to ratify UNCLOS to preserve freedom of navigation rights
    - Freedom of navigation program is sufficient to protect U.S. navigation rights
- U.S. not losing ability to guide maritime law by not being party to UNCLOS
- U.S. is not losing out in Arctic by not being party to UNCLOS
    - U.S. can make claim to Arctic resources without being party to UNCLOS
    - U.S. is not losing out by not having a seat on CLCS

U.S. ratification of UNCLOS would be disadvantageous

- Ratification of UNCLOS would expose U.S. to broad liability for environmental damage in

international courts
    - U.S. ratification of UNCLOS will be used as a "backdoor" by environmental groups to force regulations on the U.S.
- U.S. participation in UNCLOS will undermine national sovereignty
- U.S. would be obligated to transfer technology under UNCLOS
- U.S. ratification of UNCLOS would further advance collectivist idea of "common heritage of mankind"
- UNCLOS would give far-reaching regulatory powers to international and national bureacracies
- The 1994 Agreement did not resolve serious problems with UNCLOS
- U.S. should reject UNCLOS because of its revenue sharing agreements
    - Under UNCLOS, U.S. revenues from offshore resource extraction would be redistributed to non-desirable state actors
    - U.S. ratification of UNCLOS would give United Nations ability to impose tax on U.S. citizens
    - UNCLOS participation would require U.S. to transfer significant royalties to International Seabed Authority
- UNCLOS would subject U.S. to anti-competitive regime
- U.S. ratification of UNCLOS would damage national security
    - Dispute resolution mechanisms in UNCLOS threaten U.S. national security
    - U.S. ratification of UNCLOS would subject U.S. military to rulings by third-party tribunals
    - U.S. ability to conduct maritime interdiction operations would be curtailed by UNCLOS
        - U.S. ratification of UNCLOS would complicate counter-piracy efforts
    - U.S. adherence to UNCLOS would jeopardize maritime intelligence gathering operations

The U.S. would benefit from ratification of UNCLOS

Ratifying UNCLOS key to advancing numerous U.S. interests

"In the final presentation, Ambassador David A. Balton discussed how **ratifying UNCLOS would advance numerous U.S. interests**. First, he noted that the United States is the world's leading maritime power. **Only as a party to UNCLOS can the United States best invoke and ensure respect for its provisions on freedom of navigation**. Second, the United States has the largest EEZ on the planet, as well as a continental shelf that is likely to be the envy of most other nations. **Only as a part can the United States best secure our rights as a coastal state under UNCLOS**. **Third, only as a party to UNCLOS can the United States make best use of the treaty's provisions on the marine environment and fisheries, or shape the rules for mining the seabed beyond the jurisdiction of any nation**. Ambassador Balton agreed with Rear Admiral Kenney that the United States would benefit from being able to use UNCLOS procedures for resolving disputes, adding that becoming a party would allow the United States to nominate members of the International Tribunal for the Law of the Sea. He also agreed that **accession would allow the United States to maximize leadership on maritime issues**. Further, Ambassador Balton emphasized that accession would better allow the United States to maintain the balance of interests in the law of the sea described by Professor Caron. Accession is preferable to reliance on customary international law because customary law is subject to erosion. Overall, Ambassador Balton explained that the United States secured everything it wanted in the convention, given that the related 1994 agreement on deep seabed mining satisfied our concerns with respect to those issues.

Next, Ambassador Balton discussed emerging issues that will best be handled under the UNCLOS framework. First, as the oceans warm the Arctic will become more accessible for shipping and oil and gas extraction, among other uses. All other Arctic nations are parties to UNCLOS, and the **United States' failure to join complicates negotiations and weakens our credibility in international talks**. Second, Ambassador Balton emphasized the disadvantage we face as a non-party in respect of our extended continental shelf, the area of seafloor beyond 200 miles from our coasts that meet certain criteria set forth in the Convention. The United States estimates that it has an extended continental shelf approximately the size of California. **Only as a party to UNCLOS can the United States best secure international recognition of the outer limits of our continental shelf.**

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0 "***National Security, Economic Well-Being, and the Law of the Sea*** ." **Environmental Law Institute**. (June 6, 2011) [**More**]

Multiple advantages for U.S. from ratification of UNCLOS

“The advantages of U.S. ratification are clear. The United States would be able to invoke clear rules to support its claims to navigational freedoms.[6] It would be able to rely on the text of the Convention to support its claims to an extended continental shelf in the Western Gap area of the Gulf of Mexico[7] and in the Arctic.[8] It would be able to utilize the principles and institutions of the Convention to work with other nations to protect the marine environment.[9] It would be able to utilize the sophisticated and flexible dispute-resolution procedures established by the Convention. It would be able to put a U.S. ocean law expert on the International Tribunal for the Law of the Sea and a U.S. scientist on the Commission on the Limits of the Continental Shelf. It would be able to participate actively in the interpretation and implementation of all aspects of this comprehensive treaty, and thus could better protect all of its ocean interests.10

[*Page 48*]

Van Dyke, Jon M. "***U.S. Accession to the Law of the Sea Convention*** ." **Ocean Yearbook**. Vol. 22. (2008): 47-59. [**More** (5 quotes)]

Consensus of Experts Advocate for U.S. Ratification of UNCLOS

A broad, bipartisan consensus supports U.S. ratification of the Law of the Sea Convention, and has consistently argued on its behalf for the past 30 years. This coalition includes high-level officials from the past six administrations and backing by all Presidents since Clinton. It also includes a range of senior defense officials including every Chief of Naval Operations. The Convention has also been strongly supported by every major ocean industry, including shipping, fishing, oil and natural gas, drilling contractors, ship builders, and telecommunications companies, and representatives of the oil and gas, shipping, and telecommunications industries testified in favor of the Convention before the Senate Foreign Relations Committee.

Broad consensus of groups with maritime interests support ratification of UNCLOS

"The debate over whether to ratify has been characterized as one between "interests with varying degrees of political and eco- nomic power."[221] Historically, the competing interests have been domestic private industries, such as petroleum, fishing, and hard minerals, government arms, such as the military and defense department, and also scientific communities.[222]

Today, the Convention enjoys widespread support from virtually all groups that have an interest on the seas, including American business groups, various military defense officials and groups, environmental and public interest organizations, high level administration officials, and legal and research bodies, satisfying rationalist observers that the right influences are in favor of the Convention.[223]

[*Page 394*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Overwhelming consensus of experts and officials is in favor of ratifying convention

"Finally, the critics brush aside the consensus among affected ocean interests and knowledgeable oceans experts in the United States in favor of their own judgment as persons who clearly lack expertise in international law or operational U.S. maritime policy. Indeed, few conventions have been so unanimously supported by knowledgeable experts and affected interests. Supporters

include every president, both Democrat and Republican, who has considered the convention subsequent to the successful 1994 renegotiation of Part XI on deep seabed mining, Joint Chiefs chairman, combatant commanders and secretaries of state from the Nixon administration to today; not to mention every affected U.S. oceans interest including the oil and gas industry, fisheries, shipping and oceanic cables industries; to marine scientists and environmentalists. Most recently, the congressional U.S. Oceans Commission and the new Bush administration Oceans Interagency Task Force both unanimously recommended Senate advice and consent on the convention. As deliberations continue, senators might want to ask who they trust more for national security advice: every chairman of the Joint Chiefs, the combatant commanders of our united geographic commands and the consistent view of the Navy since the Nixon administration, or those few who admittedly are not naval, oceans or international law experts. Further, how can the totality of U.S. agencies, military departments and private sector oceans industries representatives constitute a "special interest" as charged by the critics? By what criteria are the most vocal critics not special interests?

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Multiple U.S. administrations have continually supported ratification of UNCLOS to preserve freedom of navigation

"From the negotiating history to the present, freedom of the seas has been the principle U.S. national interest in the treaty. In early 2007, Assistant to the President for National Security Affairs Stephen B. Hadley wrote to the Chairman of the Senate Foreign Relations Committee, "the Convention supports navigational rights critical to military operations and essential to the formulation and implementation of the President's National Security Strategy, as well as the National Strategy for Maritime Security."[67] On May 15, 2007, President Bush declared, "Joining [the Law of the Sea Convention] will serve the national security interests of the United States, including the maritime mobility of our armed forces world- wide."[68] Shortly thereafter, on June 26, 2007, the Joint Chiefs of Staff, which includes the Chairman and the Service Chiefs, all signed a letter to the Senate in support of the Convention.[69]

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Successive commissions have argued strongly for US ratification of UNCLOS

“Additionally, two commissions, the National Commission on Oceans Policy and the Pew Oceans Commission, have argued in the strongest possible terms for U.S. ratification. The first, chaired by former-CNO Admiral James Watkins, in its 20 September 2004 report, An Ocean Blueprint for the 21st Century, unanimously recommended adoption and concluded: “Time is of the essence if the United States is to maintain its leadership role in ocean and coastal activities.” The presidential response to the report reflected the ongoing support of the executive branch—and especially the current administration—that “As a matter of national security, economic self-interest, and international leadership, the Bush administration is strongly committed to U.S. accession to the UN Convention on the Law of the Sea.”[3]

[*Page 53*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

Broad consensus of military, academic, and business experts have lined up in support of US ratification of UNCLOS

“Support for U.S. accession to the Convention is surprisingly broad14. Some of the architects of plans to scuttle the Convention treaty under the Reagan administration have now come around to support it because the more odious provisions were amended or eliminated since that time15 The Navy, Coast Guard, National Oceanic and Atmospheric Administration, the State Department and the White House, support accession. These groups support accession despite the fact that they occasionally squabble over its implementation, largely due to the dual interest of the U.S. (e.g., the environmental protection mandate of the Coast Guard vs. the security mandate of the Navy has put these two forces at odds in the past16). Likewise, major resource extracting industries and their trade groups, who are often at odds with environmental groups over regulations, share a common interest with many of these groups in ratifying the Convention. Finally, the most authoritative body on U.S. ocean science and policy ever assembled, the Joint Ocean Commissions Initiative, chaired by retired Navy Admiral James Watkins and former Congressman and White House Chief of Staff Leon Panetta, has indicated U.S. accession to the Convention as one of its highest priorities.

[*Page 7*]

Sagarin, Raphael , Larry Crowder et al. Balancing U.S. Interests in the UN Law of the Sea Convention. Nicholas Institute for Environmental Policy Solutions, Duke University: Durham, NC, October 2007 (8p). [**More** (4 quotes)]

U.S. ratification of UNCLOS supported by rare coalition of military, environmental, labor, and business leaders

"The other factor that is different this time as the Senate considers ratification is the overwhelming support of U.S. business. Manufacturers along with oil, telecommunications, and shipping companies, and every other sector of the economy with a stake in access to sea lines of communication and undersea resources support ratification of the convention. Both the American Petroleum Institute and the U.S. Chamber of Commerce have voiced their support. Senator Kerry is taking advantage of this support from U.S. businesses by including their representatives in upcoming hearings.

In a rare show of solidarity, American labor and the environmental community have joined hands in supporting accession. The AFL-CIO and the Seafarers International Union of North America both sent letters to the administration in the last year expressing support. A group of nine environmental conservation groups, including the Environmental Defense Fund, the Natural Resources Defense Council, the Ocean Conservancy, and the World Wildlife Fund, sent a letter to Secretary Clinton in October voicing support for ratification.

The Law of the Sea has been ratified by 162 countries, including every other member of the UN Security Council and every other industrialized nation on the planet. It undergirds the modern international order in the maritime domain, an order built by the United States and its allies. It is the only comprehensive treaty recognized worldwide that lays out the rules for vessels on the high seas. The U.S. Navy and U.S. Coast Guard, recognizing its value, operate under its guidelines even in the absence of ratification.

Ernest Z. Bower and Gregory Poling. "***Advancing the National Interests of the United States: Ratification of the Law of the Sea*** ." **Southeast Asia from the Corner of 18th & K Streets**. (May 25, 2012) [**More**]

Strong bipartisan consensus in favor of U.S. ratifying UNCLOS

"Both within Democratic and Republican presidential administrations, U.S. govern- ment officials, industry group representatives, and senior officers of the armed forces have forcefully and persuasively testified as to the merits of the LOS Convention for the United States.[5] The Treaty is strongly in the American national interest: promoting the require- ments of a global security presence, providing a framework for preservation of maritime mobility and maneuverability, creating a system for facilitating transnational trade and promoting economic prosperity, and creating a regime of binding dispute resolution and conflict avoidance that is a cornerstone for building a stable legal order for the oceans. Indeed, a comprehensive case for U.S. accession already has been made most eloquently by Ambassador John Norton Moore and retired Rear Admiral William L. Schachte in a paper that has been widely distributed on Capitol Hill.[6]

[*Page 269*]

Wilson, Brian and **James Kraska**. "*American Security and Law of the Sea*." **Ocean Development & International Law**. Vol. 40. (2009): 268-290. [**More** (6 quotes)]

Traditionally conservative groups in U.S. are beginning to see more gain to U.S. from ratification of UNCLOS than remaining outside

"The debate over U.S. UNCLOS ratification is a familiar one. It focuses on whether it is better for the United States to be inside a flawed, sometimes troublesome international system where Washington can exert power to minimize the damage the organization can do, or to remain outside such an organization, unfettered by the agreements others are making. Since the Reagan administration, the United States has generally followed the latter approach, one favored by politically conservative factions.

The emerging Arctic-related issues challenge this prevailing approach, however. Being outside UNCLOS has reduced U.S. ability to influence debates that are increasingly relevant to the country's primary interests. In response, a powerful coalition of industries, environmentalists and hawkish foreign policy groups and the Bush administration have aligned in support of the treaty -- though not yet in a coordinated manner. Traditionally conservative political groups are coming to view the price of nonparticipation as growing in relation to the sacrifices of signing on. As a result, entrenched interests aligned against the treaty are shrinking, and the question increasingly appears to be one of when UNCLOS will be ratified, not whether.

Bart Mongoven. "***The Law of the Sea: Climate Change in the Arctic and Washington Weekly*** ." **Stratfor**. (March 29, 2007) [**More**]

Importance of the Arctic region to U.S. national security is winning over many skeptics of UNCLOS and isolating remaining voices

"Opposition in the United States to ratification of UNCLOS has largely been based on arguments relating to U.S. sovereignty and the power of international organizations. Libertarian and conservative groups have said the treaty would reduce U.S. ability to move its Navy in waters heretofore understood to be open, international waters. Others have pointed to the International Seabed Authority, alleging it is too powerful since under UNCLOS it has made the power to explore deep-sea minerals no longer simply a matter of determining who was there first with a capability to exploit the resources.

Voices against ratifying UNCLOS generally have been politically conservative. With the Arctic issues rising to the surface, core conservative constituencies -- business and foreign policy hawks -- see significant threats emanating from nonparticipation and clear benefits to participation.

As the Arctic issues proliferate, however, conservatives and the foreign policy establishment are beginning to view sitting on the sidelines as increasingly disadvantageous -- as is the military. Gen. Peter Pace, chairman of the Joint Chiefs of Staff, has called U.S. ratification of the treaty "a top national security priority." With the military, conservative foreign policy establishment and business

joining together in support of ratification, the remaining conservative voices cautioning against sacrificing sovereignty have become increasingly isolated.

Bart Mongoven. "***The Law of the Sea: Climate Change in the Arctic and Washington Weekly*** ." **Stratfor**. (March 29, 2007) [**More**]

Broad and consistent consensus of military and political leaders in favor of U.S. ratification of UNCLOS

"The 1982 Convention on the Law of the Sea — the instrument that created the overarching governance framework for nearly three-quarters of the Earth's surface and what lies above and beneath it — has been signed and ratified by 161 countries, but not by the United States. The convention and the 1994 agreement on its implementation have been in force for 18 years, yet the United States, a nation with over 12,000 miles of coastline and the dominant world maritime power by any measure, joins an embarrassing short list of holdouts that includes North Korea, Syria and Iran.

This is true despite the fact that a bipartisan coalition of American business, environmental and military leaders agree that it is in our national interests to formally become a state party to this lynchpin of ocean governance. Per our constitution, the Senate must give its "advice and consent" to treaties submitted by the president for its review. Of these currently in the queue, for national-security reasons, the Law of the Sea is one of the most urgent.

This is why the secretaries of Defense and State, the chairman of the Joint Chiefs of Staff, and the heads of the Navy, Coast Guard and Marine Corps all recently testified before the Senate Foreign Relations Committee that the U.S. should join. In fact, since 1994 – when President Clinton first submitted the treaty to the Senate for its consideration following the international community changing the document's language to directly address President Ronald Reagan's initial reservations – every president, every Marine Corps and Coast Guard commandant, and nearly all chiefs of naval operations have unequivocally supported it. Put simply, there is broad consensus from our nation's military and political leadership that the United States should sign on.

Scott Borgerson, Vern Clark, Bill Cohen and Jim Loy and John Negroponte. "***The U.S. will be lost without LOST*** ." **Washington Times**. (July 16, 2012) [**More**]

Broad, bipartisan consensus because the U.S. pursued and achieved all objectives in negotiations

"JOHN NORTON MOORE: Now, this convention is one of the most important multilateral conventions in history. Today it is enforced for 154 countries plus the European Union. It is enforced for all permanent members of the Security Council with the exception of the United States. The U.S.

was the most important and most influential nation in the world in the negotiations. And it ultimately achieved every single one of its negotiating objectives in this treaty. I wish we could say that in all of the others.

Ultimately, of course, the last ones were achieved in the renegotiation in 1994 on Part 11, seabed mining, that enabled us to achieve, and more, all of the conditions set by Ronald Reagan. Now, this was not simply an accident. The United States was extremely well organized for this negotiation. We had an 18-agency interagency task force. We had 100-member advisory board that included virtually every affected industry group and environmental group in the United States. And it is not surprising that today every single president after this has been adopted, of both parties, certainly all of our government agencies, particularly our military and our chiefs of staff and our Coast Guard, all industry groups, environmental groups and basically every affected interest group in the United States is a strong supporter of moving forward.

Now, what are some of the things that we achieved? The United States achieved an expansion of resource jurisdiction that is far greater than what we achieved in the acquisition of Alaska and the Louisiana Purchase combined, an area of resource jurisdiction larger than the entire continental United States. The United States achieved every single one of its national security objectives, including particularly transit passage through, over and under straits used for international navigation.

We achieved assured access to seabed minerals with four sites set aside for the United States with an aggregate resource value of over $1 trillion. The United States basically also received a stable rule of law and stable expectations for oil and gas and fisheries and other economic development in the oceans. And even precedentially, we achieved a breakthrough. The United States, on the counsel of the authority, was the only nation in the world given a permanent seat on the council and a veto on the council

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Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

UNCLOS already enjoys global consensus among coastal states and reflects values and interests of US government

“UNCLOS provides the overarching framework governing international ocean affairs. The Convention is one of the most wide-ranging, comprehensive international Conventions and, together with its associated agreements[3], covers or touches on virtually all marine activities. UNCLOS has, moreover, achieved broad acceptance from the international community. At the time of writing the Convention boasted 164 parties, comprising 163 States plus the European Union. When it is recalled that there are 'only' 155 coastal States in the world, the near-comprehensive uptake of UNCLOS is underscored.

Indeed, despite being a non-party itself, the US nonetheless accepts that key aspects of UNCLOS, such as the maritime jurisdictional and boundary delimitation provisions, are declaratory of customary international law and conducts its policy accordingly.[4] In terms of international law and international

relations, US accession to the Convention would therefore consolidate and reinforce the oceans policy and practice pursued by successive administrations of both political persuasions in the US.

[*Page 1-2*]

Schofield, Clive and Ian Townsend-Gault. "*Time for the United States to Join the Party? Prospects for US Ratification of the United Nations Convention on the Law of the Sea*." **International Zeitschrift**. Vol. 8, No. 3 (December 2012): 1-6. [**More** (4 quotes)]

Consensus of experts is that joining UNCLOS would benefit U.S. foreign policy objectives

"The majority view of the SFRC and the opinion of every major ocean constituency group is that joining the convention is in America's foreign policy interests. Debating the merits of internationalism versus unilateralism is a great U.S. tradition, but the irony is that the convention actually allows for an expansion of U.S. sovereignty: freedom of movement for a powerful navy; a legal tool for U.S. forces to combat scourges at sea, such as piracy, drug trafficking, and human smuggling; and a process for extending U.S. jurisdiction over a vast amount of ocean space equal to half the size of the Louisiana Purchase.

[*Page 19-20*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Overwhelming and consistent bipartisan consensus for U.S. ratification of the Law of the Sea

"Since at least 1994, a strong base of support for accession to the Law of the Sea Convention in the United States has existed in the federal government, industry and civil society. It is likely that no other treaty has ever been so widely supported and yet failed to be put to a vote in the Senate for such a long duration. The Defense Department, the State Department, the Commerce Department, the U.S. Coast Guard, the oil industry, the shipping industry, and the fishing sector, as well as environmental and conservation non-governmental organizations and religious organizations all support the treaty.[4] Additionally, both the National Commission on Oceans Policy and the Pew Oceans Commission in their recent reports strongly urged immediate action by the Senate and accession to the Convention.

Further reflecting broad bipartisan support, in a highly unusual statement in the history of U.S. treaty ratification practice, all living former Legal Advisers of the U.S. Department of State issued a joint letter on April l7, 2004 to Senators William H. Frist (then Majority Leader), Richard G. Lugar (then Chairman, Committee on Foreign Relations), and John W. Warner and Carl Levin (respectively, then

Chairman and Ranking Member, Committee on Armed Services.[5] In that letter, the eight former Legal Advisers wrote:

> We are unanimous in our view that it is in the best interests of the United States that the Senate, at its earliest opportunity, grant its advice and consent to United States accession to the 1982 United Nations Convention on the Law of the Sea and to United States ratification of the 1994 Implementing Agreement that modifies Part XI of the LOS Convention.

David D. Caron and Harry N. Scheiber. "***The United States and the 1982 Law of the Sea Treaty*** ." **ASIL Insights**. (June 11, 2007) [**More**]

Despite broad consensus in favor of its ratification, UNCLOS has languished for past 20 years

"On October 7, 1994, President Clinton submitted UNCLOS and the IA to the Senate for advice and consent to accession and ratification, re- spectively. Despite widespread bi-partisan support, the concurrence of all the Federal agencies and departments with ocean interests, and support from the U.S. maritime industries (oil and gas, shipping, telecommunications, marine science, fishing) and environmental groups, the Convention and its Implementing Agreement have languished in the Senate for the past 20 years.

[*Page 761*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

UNCLOS has been studied and debated at all levels of government for decades with consensus still favoring ratification

"Rather than a "rush to judgment," it is hard to find any aspect of the Convention that has not been discussed and debated ad infinitum in the public media, in academic conferences and symposia, in legal and ocean policy literature, and in congressional hearings. It has been studied and restudied by each successive administration, and every government department and agency with a concern in the oceans supports accession. In March 2007, in testimony before the Subcommittee on Fisheries, Wildlife, and Oceans of the Natural Resources Committee of the House of Representatives, Admiral James D. Watkins and Leon E. Panetta, Co-chairmen of the Joint Ocean Commission Initiative, renewed their strong endorsement of the Convention, saying, among other things, that the failure of the United States to become a party to the Convention is "one of the most serious international ocean policy issues that remain unresolved for our nation.

[*Page 120*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

Strong public support in favor of ratifying UNCLOS specifically and U.N. approach generally

"The United Nations has taken a lead role in managing the world's oceans. In 1994, it produced the UN Convention on the Law of the Sea (UNCLOS), which defines maritime zones and serves as a "constitution for the sea." To date, 163 countries have joined in the Convention, with the United States being the only major maritime country that has not ratified the convention. According to the Foreign Policy Association's National Opinion Ballot Report, a large majority of respondents (79%) believe that the U.S. should end its holdout and officially ratify UNCLOS. Such a response may reflect a larger trend on the ballot, as 57% of balloters believe that issues such as fisheries management are best handled by the UN instead of local or regional governments.

The respondents' preference for an international approach extends outside the UN framework. As the global community debates how to handle the Arctic, which is now beginning to yield more mineral resources as the polar ice caps continue to melt, NOBR participants indicate that they would favor an international treaty to govern the use of Arctic resources. Ninety-five percent of respondents agree that the U.S. and other countries with sovereignty in the Arctic should develop an agreement "similar to the Antarctic Treaty," which bans mineral mining and reserves the region for peaceful uses such as research and tourism.

Tyler Benedict. "***Eight in ten surveyed support U.S. Ratification of UN Convention on Law of the Sea*** ." **Foreign Policy Association**. (January 8, 2013) [**More**]

U.S. ratification of UNCLOS has bipartisan support with exception of a small minority of Tea Party aligned senators

"Support for ratification has been consistently bipartisan. Proponents include the current president, as well as his predecessors, presidents Bush and Clinton; the current and former secretaries of state, including Condoleezza Rice, Colin Powell, and Madeleine Albright; the current and former chairmen of the Joint Chiefs of Staff; the current and former commandants of the Coast Guard; major environmental groups, and many others. A relatively small number of senators have held the treaty hostage.[78] Buoyed by ideological opposition to the United Nations, a small minority of opponents have stopped it from coming to a vote, even though it will advance U.S. interests in the Arctic and around the world. These senators argue that the United States does not need to be party to a treaty to enforce the rule of law. This rationale resonates with many Americans and is popular with the Tea Party but, in this case, to the great detriment of national security.

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

UNCLOS negotiations were completed in a bipartisan manner through multiple administrations

"I hope the Committee will also bear in mind that the Law of the Sea negotiations were a long-term bipartisan effort to further American interests that engaged high level attention in successive Administrations and distinguished members of both Houses of Congress. President Nixon had the vision to launch the negotiations and establish our basic long-term strategy and objectives. President Ford solidified important trends in the negotiations by endorsing fisheries legislation modeled on the emerging texts of the Convention. President Carter attempted to induce the developing countries to take a more realistic approach to deep seabed mining by endorsing unilateral legislation on the subject. President Reagan determined both to insist that our problems with the deep seabed mining regime be resolved and to embrace the provisions of the Convention regarding traditional uses of the oceans as the basis of U.S. policy. President George H.W. Bush seized the right moment to launch informal negotiations designed to resolve the problems identified by President Reagan. President Clinton's Administration carried that effort through to a successful conclusion. And now the Administration of President George W. Bush has expressed its support for Senate approval of the Convention and the 1994 Implementing Agreement.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

Convention has support of broad coalition of military, commercial, political, and environmental interests

"Moreover, the Convention had the backing of the kind of coalition that normally augurs success in Washington. There was certainly no doubt about the military's support. A so-called "24-star" letter from the Joint Chiefs of Staff called on the Senate to approve the Convention. In addition, the Convention had the support of many high-level officials in the civilian agencies. Secretary of Homeland Security Michael Chertoff, Secretary of the Interior Dirk Kempthorne, and Secretary of Commerce Carlos Gutierrez all wrote strong letters urging the Senate to act. And, as a demonstration of high-level Administration commitment, both Deputy Secretary of State John Negroponte and Deputy Secretary of Defense Gordon England testified in support of the Convention at a Senate hearing in September 2007. Moreover, several Reagan-era officials, including former Secretary of

State George Shultz and former Ambassador Ken Adelman, argued publicly that President Reagan's problems with the Convention had been fixed and that it was time for the United States to join. Finally, the Convention was also strongly supported by every major ocean industry, including shipping, fishing, oil and natural gas, drilling contractors, ship builders, and telecommunications companies, and representatives of the oil and gas, shipping, and telecommunications industries testified in favor of the Convention before the Senate Foreign Relations Committee.

[*Page 4*]

Bellinger, John B. **The United States and the Law of the Sea Convention** . Institute for Legal Research: Berkeley, CA, 2008 (12p). [**More** (6 quotes)]

Opposition to U.S. ratification of UNCLOS outnumbered by consensus of political, economic, and business leaders

"In order to have a legitimate say in the dividing of the newly available Arctic resources, one approach is that the United States should ratify the United Nations Convention on the Law of the Sea as soon as possible.[56] Almost all opposition to the convention can be attributed to old-guard politics and irrational distrust of international organizations like the United Nations. According to J. D. Watkins and L. E. Panetta, "The Law of the Sea Treaty has a diverse and bipartisan group of experienced national backers, including military leaders, environmentalists, ocean industries, think tanks and political figures who recognize and support the pressing need to sign this treaty."[57] By ratifying the treaty, the United States would not only be able to further its own goals in relation to the Arctic Scramble, but also take on a leadership role in international negotiations. Failure to do so may result in a loss of claimable Arctic territory and the resultant strategic resources.

[*Page 38-39*]

Carlson, Jon D., Christopher Hubach, Joseph Long, Kellen Minteer, and Shane Young. "*Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims*." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 21-43. [**More** (5 quotes)]

Consensus of military, business, and legal experts back U.S. ratification of UNCLOS

"Executives in the energy, telecommunications and shipping industries understand how the convention will make us more prosperous. Military commanders understand how the convention will make us more secure, and the Joint Chiefs of Staff strongly support the treaty. Some detractors of the treaty have unfairly (and inaccurately) suggested that our most senior admirals and generals support the Law of the Sea due to the persistence of a cadre of Navy lawyers. In fact, our military leaders are savvy, independent thinkers who are accustomed to gathering the facts and exercising decisive judgment. Moreover, Navy lawyers are foremost naval officers wearing the uniform and

embedded into military units in peacetime and combat. Sharing two professions, the profession of arms and the profession of law, this is not a silkstocking club of suits, but advisers who train and deploy with the force, providing advice on the projection of sea power on the water and ashore.

Kraska, James. "***Missing the Boat: Failure to join the Law of the Sea Convention harms U.S. interests*** ." **Armed Forces Journal**. (April 1, 2009) [**More**]

U.S. Commission on Oceans Policy unanimously advocated for ratification of UNCLOS after extensive study

"The U.S. Commission on Ocean Policy has taken a strong interest in the international implications of ocean policy since the inception of our work. Our 16 Commissioners were appointed by the President - 12 from a list of nominees submitted by the leadership of Congress - and represent a broad spectrum of ocean interests. The Oceans Act of 2000 (P.L. 106-256) specifically charged our Commission with developing recommendations on a range of ocean issues, including recommendations for a national ocean policy that "...will preserve the role of the United States as a leader in ocean and coastal activities."

With this charge in mind, the Commission took up the issue of accession to the LOS Convention at an early stage. At its second meeting in November, 2001, the Commissioners heard testimony from Members of Congress, federal agencies, trade associations, conservation organizations, the scientific community and coastal states. We heard compelling testimony from many diverse perspectives - all in support of ratification of the LOS Convention. After reviewing these statements and related information, our Commissioners unanimously passed a resolution in support of United States accession to the LOS Convention. The fact that this resolution was our Commission's first policy pronouncement speaks to the real sense of urgency and importance attached to this issue by my colleagues on the Commission.

Watkins, James. "***Statement of Admiral James D. Watkins: Senate Advice and Consent to the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (2 quotes)]

Consensus of military, political, and business authorities support U.S. ratification of UNCLOS to further interests in the Arctic

"In support of multilateral Arctic partnerships are a number of broad-based and disparate organizations and policies nonetheless unified in support of the issue, and additional support comes from consequential benefits inherent in UNCLOS accession. Overarching is National Security Presidential Directive (NSPD) 66, “Arctic Region Policy,” released in 2009. Among the directive’s policy statements is a robust admonishment for accession to UNCLOS:

> Joining [the UNCLOS treaty] will serve the national security interests . . . secure U.S. sovereign rights over extensive maritime areas . . . promote U.S. interests in the environmental health of the oceans . . . give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted . . . [and] achieve international recognition and legal certainty for our extended continental shelf.[19]

Furthermore, NSPD 66 persuasively promotes multinational partnership in the Arctic to address the myriad issues faced in the region.[20] Likewise, the Department of Defense, as articulated in its 2010 Quadrennial Defense Review, strongly advocates accession to UNCLOS in order "to support cooperative engagement."[21] Also among the tenacious supporters of accession are the U.S. Navy, whose leadership stresses that UNCLOS will protect patrol rights in the Arctic, and a number of environmental groups who want to advocate on behalf of Arctic fauna and flora.[22] In addition, the oil industry lobby representing Chevron, ExxonMobil, and ConocoPhillips asserts that oil and gas exploration cannot reasonably occur without the legal stability afforded in UNCLOS.[23] In a consequential benefit of accession, the extended U.S. continental shelf claims could add 100,000 square miles of undersea territory in the Gulf of Mexico and on the East Coast plus another 200,000 square miles in the Arctic.[24] Accession acts to strengthen and extend Arctic jurisdiction, open additional hydrocarbon and mineral resource opportunities, add to the stability of the international Arctic framework, and boost the legal apparatus for curtailing maritime trafficking and piracy.[25] The benefits appear to outweigh the costs as the United States is increasingly moving to a position of strategic disadvantage in shaping Arctic region policy outcomes by failing to ratify UNCLOS.[26]

[*Page 118-119*]

Smith, Reginald R. "***The Arctic: A New Partnership Paradigm or the Next "Cold War"?*** ." **Joint Force Quarterly**. Vol. 62, No. 3 (July 2011): 117-124. [**More** (4 quotes)]

UNCLOS has widespread support in the military, diplomatic, and intelligence communities

"Despite opposition by a few members of Congress, UNCLOS ratification has widespread support in the military, diplomatic and intelligence communities. The Departments of Defense, State and National Intelligence have consistently advocated that the Senate should ratify the treaty.[65] In fact, all of the members of the Joint Chiefs of Staff have written the Senate letters seeking the Senate's advice and consent.[66] Moreover, in his last NSPD before leaving office, President George W. Bush explicitly sought UNCLOS's ratification.[67] At the end of 2007, the Senate Committee on Foreign Relations voted to recommend ratification.[68] The U.S. Senate's vote is pending.

[*Page 12*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global Rush North** . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [**More** (5

quotes)]

Defense department has consistently advocated ratification of UNCLOS

Top defense officials, including the current and all former Chiefs of Naval Operations, have lined up to publicly support U.S. accession to UNCLOS. In addition, the Defense Department has repeatedly endorsed ratification in numerous studies and planning documents.

Top defense officials including all current and former Chief of Naval Operations support ratification of UNCLOS

"In recent years, many of the most senior U.S. military officers have further articulated the national security benefits of the Convention. The Navy has been one of the strongest supporters of the Convention, with every serving and former Chief of Naval Operations lining up to publicly support U.S. accession.[61] In 2004 when the U.S. Senate was actively considering the treaty, the Joint Chiefs of Staff, the worldwide four-star unified combatant commanders, and the Chief and Vice Chief of Naval Operations strongly supported U.S. accession to the Convention.[62] These uniformed senior flag and general level officers provided ample testimony to the Senate concerning the broad range of national security interests the Convention directly promoted. The treaty "helps [to] assure access to the largest maneuver space on the planet—the sea—under authority of widely recognized and accepted law and not the threat of force."[63] The United States benefits from the navigational regimes of innocent passage and transit passage through straits and archipelagos, the exercise of high seas freedoms in the EEZ and high seas, as well as the concept of sovereign immunity for warships and other public vessels and public aircraft.[64] Also in 2004, the Chairman of the Joint Chiefs of Staff said the Convention helps U.S. forces to "operate freely across the vast expanse of the world's oceans under the authority of widely recognized and accepted international law."[65] Additional testimony in support of the national security benefits of the treaty is included in the 2004 Report of the Senate Foreign Relations Committee, which voted the treaty out of committee in a bipartisan 19-0 vote.[66]

[*Page 553-554*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Military leadership has been overwhelmingly behind accession to UNCLOS

“MOORE: Second point -- they argue somehow this will be counter to the security and national military interests of the United States of America. Extraordinary since we won absolutely everything that the chiefs sought. They were a very important part of the effort. I traveled around the world with a representative of the Joint Chiefs and DOD in all of the negotiations. We won everything that the chiefs wanted. And you might note that the strongest proponents of this treaty from day one have been the United States military. So a group of non-law of the sea experts, non-international law experts, who do not know the issues, believe that somehow they know better than the chiefs of the United States who have signed a letter that I have in the back of the room called a rare 24-star letter. It's not just from the chairman of the chiefs. Every single one of the chiefs signed it and sent it to the Senate saying this is what we need.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

Defense department has endorsed passage of UNCLOS because it secures global access to the oceans

“In a 1996 report, the Department of Defense and the Joint Chiefs of Staff set forth the major national security benefits of the Law of the Sea Convention.[54] The foremost benefit is global access to the oceans throughout the world, including areas adjacent to coastal states, which include the contiguous zone and the EEZ.[55] These interests extend to U.S. security and economic interests in global high seas freedoms, including freedom of navigation, overflight, and telecommunications.[56] Benefits also include a stable, comprehensive, and nearly universally-accepted Convention, modified by the 1994 Agreement, to promote public order and free access to the oceans and the airspace above it.[57]

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Defense department has consistently advocated accession to UNCLOS as critical to U.S. Interests

“As already noted, Donald Rumsfeld played a key role in stopping the United States and other nations’ treaty ratification efforts in the 1980s. It is a compelling point, therefore, to note that Secretary Rumsfeld’s Defense Department urged Treaty accession in 2003. On October 21, 2003, a deputy assistant secretary of defense testified that the Convention is “critical to the United States

Armed Forces."[53] The basis for Defense Depart- ment accession support was based in part on navigation rights deemed "critical to mili- tary operations" and "essential to the formulation and implementation of [U.S.] national security strategy."[54] While some have contended that these and other law of the sea rights could be exercised employing the "reflection" approach, the Defense Department identified certain additional benefits that would come only with accession, includ- ing participation in international maritime fora and Convention-established entities.[55] Participation, noted the Defense Department representative, would allow the United States to "prevent the erosion of navigational rights and freedoms . . . [and work toward] international consensus proscribing the maritime trafficking of weapons of mass destruc- tion."[56] While recommending Treaty accession, the Defense Department did identify a number of issues that it deemed worthy of Senate attention, and one of these will be noted here.

[*Page 201*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

U.S. military leadership has carefully examined the implications of UNCLOS and have endorsed ratification

"Conservative political factions are not in favor of working in cooperation with United Nations (parent organization of the International Maritime Organization (IMO) Furthermore, they do not want the United States to subject itself to international tribunals have effectively prevented U.S. accession to UNLCOS. But UNCLOS accession is supported from all the military service chiefs and the Chairmen of the Joint Chiefs, who have traditionally been highly selective with respect to treaties and how they potentially affect U.S. service members. For example, they expressed concern over the Rome Statute of the International Criminal Court (ICC) because it was believed to place U.S. personnel at risk for trial by an international tribunal. But this is not true for UNCLOS because the service chiefs believe UNCLOS will support, rather than thwart, U.S. operations.[22] As the principal force behind the negotiation of UNCLOS in Montego Bay back in 1982, the treaty encompasses everything the U.S. military wants, and is not the "bogey man."

[*Page 9-10*]

Dwyer, William G. **The Evolving Arctic: Current State of U.S. Arctic Policy** . Naval Postgraduate School: Monterey, CA, September 2013 (93p). [**More** (9 quotes)]

Political opposition to ratification of UNCLOS dominated by small group of conservatives

Buoyed by ideological opposition to the United Nations, a small minority of conservative opponents in the Senate have stopped it from coming to a vote, even though it will advance U.S. interests in the Arctic and around the world.

U.S. ratification of UNCLOS has bipartisan support with exception of a small minority of Tea Party aligned senators

"Support for ratification has been consistently bipartisan. Proponents include the current president, as well as his predecessors, presidents Bush and Clinton; the current and former secretaries of state, including Condoleezza Rice, Colin Powell, and Madeleine Albright; the current and former chairmen of the Joint Chiefs of Staff; the current and former commandants of the Coast Guard; major environmental groups, and many others. A relatively small number of senators have held the treaty hostage.[78] Buoyed by ideological opposition to the United Nations, a small minority of opponents have stopped it from coming to a vote, even though it will advance U.S. interests in the Arctic and around the world. These senators argue that the United States does not need to be party to a treaty to enforce the rule of law. This rationale resonates with many Americans and is popular with the Tea Party but, in this case, to the great detriment of national security.

[*Page 14*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Conservatives are letting opposition to international cooperation trump strong economic and strategic gains U.S. would receive from ratifying UNCLOS

"Opponents are similarly reluctant to mention the unanimous support of affected U.S. industries. To oppose the treaty on economic grounds requires opponents to say that the oil, natural gas, shipping, fishing, boat manufacturing, exporting, and telecommunications industries do not understand their own bottom lines. It requires opponents to say that this diverse set of industries is spending money and time lobbying on behalf of an outcome that will be disadvantageous to their own interests.

The vast majority of conservative Republicans would support, in prospect, a generic measure that expands the ability of American oil and natural gas companies to drill for resources in new areas, solidifies the Navy's rights to traverse the oceans, enshrines U.S. economic sovereignty over our Exclusive Economic Zone extending 200 miles off our shore, helps our ocean industries create jobs, and reduces the prospects that Russia will be successful in claiming excessive portions of the Arctic. All of these conservative-backed outcomes would result from U.S. ratification of the Law of the Sea Convention. Yet the treaty is being blocked because of ephemeral conservative concerns that boil down to a discomfort with multi-lateralism.

Lugar, Richard. "***The Law of the Sea Convention: The Case for Senate Action***". Presented at "*Conference on the Law of the Sea*", **Brookings Institution**: Washington, D.C., May 4, 2004. [**More** (5 quotes)]

Only a small conservative minority holds up ratification of UNCLOS

"There are a few conservative policy makers who believe UNCLOS is an impediment to U.S. sovereignty; they do not support the U.S. joining UNCLOS.[62] But they are in the minority.[63] According to the University of Virginia Center for Oceans Law and Policy, the Secretary of Defense, Commandant of the Coast Guard, Chairmen of the Joint Chiefs of Staff and numerous elected officials support the U.S. joining UNCLOS.[64] Additionally, every president since Clinton has pushed for ratification, but the treaty has not survived the Senate, most recently in 2004.[65] The ratification of UNCLOS would help the U.S. gain greater influence, sovereignty, and improve strategic vision and cooperation in the Arctic region.[66] It appears there are a minority of influential members of the Senate who do not want the U.S. subject to the jurisdiction of an international tribunal (International Law of the Sea Tribunal), which accession would require.

[*Page 21*]

Dwyer, William G. **The Evolving Arctic: Current State of U.S. Arctic Policy**. Naval Postgraduate School: Monterey, CA, September 2013 (93p). [**More** (9 quotes)]

U.S. ratification of UNCLOS best way to preserve freedom of navigation rights

The Law of the Sea Convention is the bedrock legal instrument for public order in the world's oceans. It codifies, in a manner that only binding treaty law can, the navigation and overflight rights, and high seas freedoms that are essential for the global strategic mobility of U.S. Armed Forces, including:

- *The Right of Innocent Passage*, which allows ships to transit through foreign territorial seas without providing the coastal State prior notification or gaining the coastal State's prior permission.
- *The Right of Transit Passage*, which allows ships, aircraft, and submarines to transit through, over, and under straits used for international navigation and the approaches to those straits.
- *The Right of Archipelagic Sealanes Passage*, which, like transit passage, allows transit by ships and aircraft through, over, and under normal passage routes in archipelagic states, such as Indonesia.
- *The right of high seas freedoms*, including overflight and transit within the Exclusive Economic Zone.

UNCLOS promotes U.S. freedom of navigation in three ways

"UNCLOS promotes the United States' freedom of navigation rights in at least three ways.[39] First, the Convention limits coastal States' territorial seas to twelve nautical miles.[40] Second, UNCLOS affords innocent passage of ships and aircraft through other countries' territorial seas and archipelagoes, as well as through straits used for international navigation.[41] Finally, the Convention sets forth maximum navigational rights and freedoms for ships and aircraft in exclusive economic zones.[42] In regards to the United States' non-party status, proponents of UNCLOS argue that while these rights may exist in customary law, joining the Convention would put these provisions on firmer legal footing, as rights embodied in a treaty are more fixed than those in customary law.[43]

[*Page 122-123*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

On balance, gains from freedom of navigation rights outweigh costs of UNCLOS

"Freedom of navigation is the main reason why the George W. Bush administration announced its support for U.S. accession shortly after the 9/11 attacks in 2001.[30] The administration likely finds that the Convention's navigational and national security benefits far outweigh any costs to the U.S. joining the Convention. Military security relates to self-defense, which the Convention pre- serves,[31] and to port security, which the Convention facilitates by incorporating security requirements developed through the Inter- national Maritime Organization.[32] The Convention also assures rights of navigation and overflight, including transit passage through strategic straits and archipelagic sea lanes passage,[33] as well as the immunity of warships.[34] The U.S. insisted on strengthening rights of navigation and overflight during the Third United Nations Conference on the Law of the Sea Conference (UNCLOS III), and in making them more objective with what appears in the 1958 Territorial Sea Convention.

[*Page 628-629*]

Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Defense department has endorsed passage of UNCLOS because it secures global access to the oceans

"In a 1996 report, the Department of Defense and the Joint Chiefs of Staff set forth the major national security benefits of the Law of the Sea Convention.[54] The foremost benefit is global access to the oceans throughout the world, including areas adjacent to coastal states, which include the contiguous zone and the EEZ.[55] These interests extend to U.S. security and economic interests in global high seas freedoms, including freedom of navigation, overflight, and telecommunications.[56] Benefits also include a stable, comprehensive, and nearly universally-accepted Convention, modified by the 1994 Agreement, to promote public order and free access to the oceans and the airspace above it.[57]

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. should join UNCLOS to protect four critical rights that ensure freedom of navigation

To date, U.S. military forces have successfully protected American shipping and the homeland from

sea-based attack without the benefits of the convention. Why is it imperative to join the convention now? What does the convention provide that distinguishes it from existing treaties and the customary international law upon which the United States has depended for the past five decades?

In short, the convention provides the protection of binding international law in four categories of essential navigation and overflight rights. Together, these rights ensure the strategic and operational mobility of U.S. military forces and the free flow of international commerce at sea. Joining the convention guarantees that 156 states recognize the following basic rights of U.S. military forces, commercial ships, civilian aircraft, and the foreign-flagged vessels that carry commerce vital to U.S. economic security:

- Right of Innocent Passage. The surface transit of any ship or submarine through the territorial seas of foreign nations without prior notification or permission.
- Right of Transit Passage. The unimpeded transit of ships, aircraft, and submerged submarines in their normal modes through and over straits used for international navigation, and the approaches to those straits.
- Right of Archipelagic Sealanes Passage. The unimpeded transit of ships, aircraft, and submerged submarines in their normal modes through and over all normal passage routes used for international navigation of "archipelagic waters," such as those claimed by the Philippines and Indonesia.
- Freedom of the High Seas. The freedoms of navigation, overflight, and use of the seabed for laying undersea cables or pipes on the high seas and within the exclusive economic zone of a coastal state.

[*Page 22-23*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Ratifying convention would significantly reduce costs U.S. military incurs to protect navigation rights

"Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.[36] This resurgence threatens Convention-based navigational rights, which are at least as important today as they were during the Cold War. Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.[37] Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law. As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Commit- tee, "some coastal states contend that the navigational and over- flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming

parties to it."[38] if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program[39] or negotiating new bilateral agreements.[40] The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive-in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts-than continuing to stand outside it.

[*Page 630*]

Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Protection of freedom of navigation rights is key to laundry list of national security objectives

"The National Strategy for Maritime Security (NSMS) identifies freedom of the seas as a "top national priority."[26] Naval forces depend upon global strategic mobility and tactical maneuverability to conduct the spectrum of sea-air-land operations in pursuit of the national interest, and these operations include:

- operating the most survivable component of nuclear deterrence, ballistic missile submarines (SSBNs);[27]
- conventional global strike;[28]
- air and missile defense;[29]
- information operations;[30]
- sea and land direct attack with missiles, naval gunfire and aircraft;
- crisis and disaster response, such as tsunami relief;[31]
- maritime homeland security;[32]
- amphibious and expeditionary operations in littoral areas;[33]
- insertion of special operations forces (SOF) for missions such as counterinsurgency and counterterrorism;[34]
- constabulary functions and maritime security operations (MSOs) such as counterdrug operations[35] and piracy repression;"[36]
- counter proliferation operations such as the Proliferation Security Initiative (PSI) and the Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA);[37]
- exercise of the right of approach, approach and visit, maritime interception operations (MIO) and visit, board, search and seizure (VBSS);
- naval control and protection of shipping (NCAPS);[38] exercise of sea lines of communication (SLOCs) through the global supply chain and strategic supply;
- sea control;[39] anti-access and sea denial strategies such as mining; civil-military affairs;[40]

- security cooperation and peacekeeping;[41] and forward presence.[42]

In addition to securing the homeland, the exercise of these military activities ensures and relies on U.S. command of the global commons, which means the United States is readily able to insert power anywhere throughout the globe.[43] The Chief of Naval Oper- ations has said assuring access to the oceans and preserving the freedom to conduct naval operations is directly related to deterring war, or, if necessary, winning it.[44]

[*Page 549-50*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Ratification of UNCLOS key to preserving four critical navigation rights U.S. military needs for national security

"Our Navy can better protect the United States and the American people if we join the Law of the Sea Convention.

The Law of the Sea Convention is the bedrock legal instrument for public order in the world's oceans. It codifies, in a manner that only binding treaty law can, the navigation and overflight rights, and high seas freedoms that are essential for the global strategic mobility of our Armed Forces, including:

- The Right of Innocent Passage, which allows ships to transit through foreign territorial seas without providing the coastal State prior notification or gaining the coastal State's prior permission.
- The Right of Transit Passage, which allows ships, aircraft, and submarines to transit through, over, and under straits used for international navigation and the approaches to those straits.
- The Right of Archipelagic Sealanes Passage, which, like transit passage, allows transit by ships and aircraft through, over, and under normal passage routes in archipelagic states, such as Indonesia.
- The right of high seas freedoms, including overflight and transit within the Exclusive Economic Zone.

Innocent Passage, Transit Passage, and Archipelagic Sealanes Passage are the crown jewels of navigation and overflight. These rights are vital not just to our Navy, but also to our Army, Air Force, Marine Corps, and Coast Guard. They make it possible to move vast quantities of war materiel through the Straits of Gibraltar, Singapore, Malacca, and Hormuz and into the Arabian Gulf to Soldiers, Sailors, Airmen, and Marines in Iraq. These rights permit us to move our submarine fleet through choke points to conduct all missions. They permit the United States Air Force to conduct global missions without requirement to overfly foreign national airspace. And they ensure the uninterrupted flow of commerce to and from our shores.

[*Page 3-4*]

Walsh, Patrick M. "*Statement of Admiral Patrick M. Walsh: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention* ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (4 quotes)]

On balance, ratifying UNCLOS is best alternative for protecting US freedom of navigation rights

"The United States might react to these coastal state navigational restrictions in four possible ways.[32] First, it could acquiesce in them, a reaction that would significantly restrict navigational freedoms important to the United States. Second, the United States could continue to assert, via diplomatic channels, a customary international law right to navigation, backing up its assertions with naval exercises. Although the United States has been following this practice since 1979 under its Freedom of Navigation Program, this option is expensive. It is expensive in terms of dollars, potential confrontations, and prejudice to other U.S. interests in the coastal state.[33] Furthermore, this option may not contribute to a stable legal regime, since some U.S. claims under customary international law could compete with coastal state assertions of different emerging rules of customary international law. Third, the United States could negotiate bilateral treaties to preserve U.S. navigational rights in other states' coastal zones. This option is also expensive. Small states, not interested in sailing their vessels or conducting military exercises in U.S. waters, would expect other new military, economic, or political concessions in exchange for allowing the United States to conduct military exercises or navigate in their coastal zones. Finally, the United States could accept the multilateral Law of the Sea Convention. With respect to navigation rights, this treaty provides a stable legal base from which to promote freedom of navigation rules. Its written and hard-to- change rules, though not always highly determinate, at least narrow the range of disputes over permissible and impermissible restrictions on navigation. Convention proponents have strong consequentialist arguments to support the position that the Con- vention's freedom of navigation provisions benefit the United States.

[*Page 7-8*]

Noyes, John. "*The United States, the Law of the Sea Convention, and Freedom of Navigation*." **Suffolk Transnational Law Review**. Vol. 29. (2005-2006): 1-24. [**More** (5 quotes)]

Key advantage of U.S. ratification of UNCLOS is in reinforcing foreign perspectives on our naval rights

"One of our most important objectives in seeking a universally ratified Law of the Sea Convention is to put a stop to the erosion of high seas freedoms in coastal areas that characterized the development of customary international law in the twentieth century. There is no reason to believe this erosion will not continue in the absence of a treaty restraint. In my opinion, the most plausible way to block the gradual erosion of high seas freedoms in the exclusive economic zone, and its

eventual transformation into something much more like a territorial sea, is a widely ratified Law of the Sea Convention to which the United States is party, and with respect to which the voice and practice of the United States are prominent authoritative evidence of what the Convention means.

For operational planners, the essential question is not what we think our rights are, but what foreign governments think. We need the greatest possible influence over the perception of foreign governments regarding the source, legitimacy, and content of their obligations to respect our high seas freedoms, especially in their exclusive economic zones. We achieve that best by becoming party to the Convention. The alternatives are likely to be both less effective and more costly.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

UNCLOS supports military flexibility and U.S. is free to leave if it doesn't

"Critics of ratification argue that U.S. military flexibility under the Convention is compromised because it will need to bend to the will of Convention guidelines.[162] As discussed above, however, Convention provisions enhance flexibility by allowing access to a vast array of territorial seas.[163] Additionally, the U.S. military enthusiastically supports the Convention, giving it perhaps the strongest endorsement in the interest of national security.[164] **Admiral Vern Clark, Chief of Naval Operations, in 2004 stated**, "I fully support the Convention because it preserves our navigational freedoms, provides the operational maneuver space for combat and other operations for our warships and aircraft, and enhances our own maritime interests."[165] Furthermore, the Vienna Convention, which governs international treaties, provides that where a state's national security is threatened (or circumstances fundamentally change) it may suspend its obligations under a treaty.[166] In the unlikely event that the Convention inhibits the United States from ensuring national security, the U.S. would be no worse off since it would not be bound by the Convention in those instances.

[*Page 385-386*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Accession to UNCLOS would help safeguard navigational rights from steady erosion by excessive claims

Joining this Convention would codify several important recognized rights of navigation into a binding

legal foundation. It supports our national security interests by defining the rights of U.S. military and civilian vessels as they meet our mission requirements, reaffirms the sovereign immunity of our warships and other vessels owned by the United States and used for government noncommercial service, and preserves our right to conduct military activities and operations in exclusive economic zones. As the defense strategy places greater demands on our ability to mobilize forces, guaranteed access to shipping and overflight lanes becomes increasingly important to support our forces overseas.

Currently, the United States relies upon customary international law as the primary legal basis to secure global freedom of access. However, as emerging powers around the world grow and modernize, states may seek to redefine or reinterpret customary international law in ways that directly conflict with our interests, including freedom of navigation and overflight, potentially challenging our global mobility needs. This Convention represents the best guarantee against erosion of essential navigation and overflight freedoms that we take for granted through reliance on customary international law. Accession will give the United States leverage to counter efforts by other nations seeking to reshape current internationally accepted rules we depend on for transporting cargo and passengers.

[*Page 2*]

Fraser, William M. "***Statement of General William M. Fraser III: On Law of The Sea Convention (June 14, 2012)***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (3 quotes)]

Ratification of UNCLOS would bolster U.S. freedom of navigation rights in four ways

"Security. As the world's foremost maritime power, our security interests are intrinsically linked to freedom of navigation. We have more to gain from legal certainty and public order in the world's oceans than any other country. Our forces are deployed throughout the world, and we are engaged in combat operations in Central and Southwest Asia. The U.S. Armed Forces rely on the navigational rights and freedoms reflected in the Convention for worldwide access to get to the fight, sustain our forces during the fight, and return home safely, without permission from other countries.

In this regard, the Convention secures the rights we need for U.S. military ships and the commercial ships that support our forces to meet national security requirements in four ways:

- by limiting coastal States' territorial seas -- within which they exercise the most sovereignty -- to 12 nautical miles;
- by affording our military and commercial vessels and aircraft necessary passage rights through other countries' territorial seas and archipelagoes, as well as through straits used for international navigation (such as the critical right of submarines to transit submerged through such straits);
- by setting forth maximum navigational rights and freedoms for our vessels and aircraft in the

exclusive economic zones of other countries and in the high seas; and

- by affirming the authority of U.S. warships and government ships to board stateless vessels on the high seas, which is a critically important element of maritime security operations, counter-narcotic operations, and anti-proliferation efforts, including the Proliferation Security Initiative.

[*Page 5*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Joining UNCLOS will advance US interests by preserving key military rights

“Joining the Convention will advance the interests of the U.S. military. As the world’s leading maritime power, the United States benefits more than any other nation from the navigational provisions of the Convention. Those provisions, which establish international consensus on the extent of jurisdiction that States may exercise off their coasts, preserve and elaborate the rights of the U.S. military to use the world’s oceans to meet national security requirements. They achieve this, among other things, by stabilizing the outer limit of the territorial sea at 12 nautical miles; by setting forth the navigation regime of innocent passage for all ships in the territorial sea; by protecting the right of passage for all ships and aircraft through, under, and over straits used for international navigation, as well as archipelagoes; by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond; and by providing for the laying and maintenance of submarine cables and pipelines. U.S. Armed Forces rely on these navigation and overflight rights daily, and their protection is of paramount importance to U.S. national security.

[*Page 3*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

UNCLOS codifies essential rights and freedoms U.S. forces need to operate -- our non-party status is putting them at risk

“The Convention codifies navigation rights and freedoms essential for the global mobility of our armed forces and the sustainment of our combat troops. Benefits include:

- a 12 nautical mile limit to territorial seas

- innocent passage through territorial seas
- archipelagic sea lanes passage though island nations like Indonesia
- laying and maintaining submarine cables for communication warship right of approach and visit
- sovereign immunity of warships and public vessels
- transit passage in international straits (and their approaches)
- high seas freedoms in exclusive economic zones (EEZs)

The last two are the most important. Transit passage gives us freedom of movement above, on, and below the surface in critical chokepoints such as the Straits of Singapore and Malacca, Hormuz, and Gibraltar, and the Bab el Mandeb. Exercising high seas freedoms in foreign EEZs includes conducting military activities.

Our non-party status is hurting us. It denies us a seat at the table when the 155 parties to the Convention interpret (or try to amend) those rights and freedoms; it denies us use of an important enforcement tool against coastal state encroachment (binding dispute resolution); it hinders us in our efforts to recruit more countries to the Proliferation Security Initiative (PSI); it creates a seam between us and our coalition partners; it prevents us from gaining legal certainty for our extended continental shelf in the Arctic (and elsewhere); and it denies U.S. companies access to deep seabed mining sites.

Relying on customary international law as the basis for those rights and freedoms is an unwise and unnecessary risk. Our Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen put their lives on the line, every day, to preserve the rights and freedoms codified in the Convention; they deserve to be on the firmest legal ground possible as they go into harm's way; they deserve the legal certainty that accrues from treaty based rights.

[*Page 1*]

U.S. Navy Judge Advocate General's Corps. **Eight National Security Myths: United Nations Convention on the Law of the Sea** . Office of the Judge Advocate General: Washington Navy Yard, DC, Undated [**More** (5 quotes)]

Ratification of UNCLOS would preserve three critical military rights U.S. Navy needs to operate

"The Convention **preserves key rights of navigation and overflight**. According to Deputy Secretary of Defense John D. Negroponte, the Convention provides for a "legal framework . . . [which] is essential to the mission of the Department of Defense, and the Department of Homeland Security . . . ."[147] The Convention grants American ships the right of innocent passage, allowing ships transit through the territorial seas of foreign countries without having to provide advance notice or request permission.

Moreover, the Convention **establishes the right of transit passage** through international straits such as the Straits of Singapore and Malacca or the Strait of Gibraltar. This right, which is absolutely critical to U.S. national security, may not be suspended, hampered, or infringed upon by coastal

States.[148] Also, the Convention creates the Archipelagic sea lanes passage that allows transit through routes in archipelagic states, such as Indonesia.[149] Additionally, the provisions creating EEZ give the American military "the ability to position, patrol, and operate forces freely in, below, and above those littoral waters."[150]

Finally, the **Convention secures the right of American warships to operate on the high seas**, "which is a critically important element of maritime security operations, counter-narcotic operations, and anti- proliferation efforts."[151] The Convention's navigational rights led to its support by all branches of the military: Secretary Gates, the Joint Chiefs of Staff, the Military Department Secretaries, all of the Combatant Commanders, and the Commandant of the Coast Guard.[152]

[*Page 171*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Current UNCLOS treaty represents a victory for the U.S. in preserving critical navigational freedoms

"The critics show no understanding of the United States' continuing role as a global protector of navigational freedom. Yet a core issue at stake is the control of unilateral coastal state claims against U.S. shipping, both military and commercial. In this respect, the convention is the most important and historic achievement in the safeguarding of these interests. For example, the new provisions for the protection of straits transit and archipelagic sea lanes passage, as well as the improved provisions for innocent passage in territorial seas, are of utmost importance to U.S. naval mobility. The progressive advancements that the U.S. negotiating team achieved to this end are completely missed by the critics; by second guessing U.S. naval experts, it seems they would rather snatch defeat from the jaws of victory. Paradoxically, by opposing the convention, the critics reinforce the views of Third World nations that the United States defeated in negotiations. We must also never forget that thousands of U.S. servicemen and servicewomen, who volunteer to go in harm's way, depend on the navigation and over-flight provisions guaranteed in the convention. As General Richard B. Myers, the chairman of the Joint Chiefs of Staff, recently stated, "The Convention remains a top national security priority." (4)

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

U.S. carefully negotiated and won key concessions in framing of UNCLOS to maximally protect freedom of navigation rights

“National security interests were paramount in crafting the final text of the Convention, so it is unsurprising the treaty framework promotes regional stability, optimizes maritime strategic mobility, and yields other national security benefits. At home, the Convention supports strong flag and port state security measures and ensures the exercise of sovereignty in the territorial sea. The Convention also provides the most effective means to exercise U.S. leadership to shape the management and development of law of the sea. Abroad, the Convention facilitates combined operations with coalition partners through subscription to a common rule set, such as the Proliferation Security Initiative (PSI). The suggestion by some critics that the Convention represents a progressive confrontation of U.S. national security interests has turned historical analysis on its head, as the Convention in fact secured the essential oceans interests of the maritime powers. Senator Richard Lugar called the criticism of these “amateur admirals”[15] factually and historically incorrect, and focusing on spurious concerns over vague losses of U.S. sovereignty.[16] During the negotiations, the United States closely coordinated with the other major maritime powers— the Soviet Union, Japan, the United Kingdom and France—to accommodate high seas freedoms.[17] These states, and particularly the superpowers, demonstrated a repeated willingness to go against their usual clients and allies in favor of positions supported by the maritime powers. The politics of the negotiations reflected national interest as a function of geography, rather than superpower politics or North-South differences. The cornerstone of this coordination was achievement of the provisions protecting freedom of navigation. In the end, essentially all of the maritime security benefits of the Convention are rooted in preserving maximum freedom of the seas.

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. could more effectively advocate for and defend freedom of navigation rights as a party to UNCLOS

“Another very important step for the U.S. Government, to better ensure the freedom of navigation rights it now exercises, is to formally ratify the UNCLOS treaty. This step is not just to return to equal footing with other members on moral, diplomatic, and legal grounds in order to better support the rules-based- order that the United States government espouses, but also to be able to directly guide and protect U.S. interests in international fora and on the seas.[437] The United States signed UNCLOS in 1994 after successfully negotiating an amendment to the document to correct earlier concerns by the industrialized states, but has not formally ratified it through the Senate. The most important UNCLOS provisions, like mari- time jurisdictions and right-of-passage, are in accord with U.S. policy so that U.S. domestic law generally adheres to UNCLOS statutes, as it also does with customary international law.[438] The Department of State and DoD both support ratification to give the United States “greater credibility in invoking the convention’s rules and a greater ability to enforce them.”[439] This treaty has come before the Senate several times, as recently as 2012, only to be tabled despite

bipartisan support, mainly due to economic concerns with Part XI stipulations that cover the deep seabed.[440] A direct American voice in the Law of the Sea Treaty debates could advocate for freedom of navigation and other U.S. interests as international law inevitably evolves, in order to counter the historic trend to circumscribe rights on the high seas by reducing its openness and limiting areas of operations. Foreign military navigation rights through an EEZ are a prime example of such restrictions with 26 countries supporting China's and Vietnam's restrictive positions, including major maritime states like India and Brazil.[441] The Senate needs to ratify this treaty to allow the United States to defend actively its existing maritime legal interests and rights.

[*Page 88-89*]

Bouchat, Clarence J. **The Paracel Islands and U.S. Interests and Approaches in the South China Sea** . Strategic Studies Institute, U.S. Army War College: Carlisle, PA, June 2014 (201p). [**More** (5 quotes)]

U.S. failure to join UNCLOS puts freedom of navigation rights at risk in two ways

"First, there is a risk that important provisions could be weakened by amendment, beginning in November 2004, when the treaty is open for amendment for the first time. Currently, for example, the Convention prohibits coastal states from denying transit rights to a vessel based upon its means of propulsion. Some states, however, may propose to amend this provision to allow exclusion of nuclear-powered vessels. Under the Convention, no amendment may be adopted unless the parties agree by consensus (or, if every effort to reach consensus failed, more than two-thirds of the parties present agree both on certain procedural matters and on the proposed amendment). As a party, the United States would have a much greater ability to defeat amendments that are not in the U.S. interest, by blocking consensus or voting against such amendments.

Second, by staying outside the Convention, the United States increases the risk of backsliding by nations that have put aside excessive maritime claims from years past. Pressures from coastal states to expand their maritime jurisdiction will not disappear in the years ahead—indeed such pressures will likely grow. Incremental unraveling of many gains under the Convention is more likely if the world's leading maritime power remains a non-party.

[*Page 3*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

U.S. Navy's freedom of navigation is continually challenged by excessive claims

Coastal states are increasingly challenging US freedom of navigation rights as it remains outside of the UNCLOS framework

"Moreover, numerous states question the United States' very right to enforce navigational freedoms conferred by the Convention when it is not party to it. It is likely that U.S. accession would decrease the number of state claims inconsistent with international law and also decrease the number of freedom of navigation challenges the Navy would have to conduct.

The global demands on the Navy and Coast Guard come at a time when the size of the nation's Fleets has shrunk to unprecedented low levels. As fewer and fewer U.S. ships are available to support U.S. and coalition interests worldwide, it is more imperative than ever that these ships be able to exercise the rights of innocent passage, transit passage, and archipelagic sea lanes passage without asking prior permission or providing prior notification to coastal states. Equally important is the right of warships to operate freely and conduct military activities in the exclusive economic zones of all nations. These are rights that are being increasingly challenged by coastal nations.

[*Page 55*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

U.S. dealing with over 100 threats to our navigational freedoms that could be resolved under UNCLOS

"[MYTH]: *U.S. adherence to the Convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy).*[15]

But our navigational freedoms are indeed threatened. There are currently more than a hundred illegal, excessive claims affecting vital navigational and overflight rights and freedoms. The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights as reflected in the Convention. But these operations entail a certain amount of risk—for example, the Black Sea bumping incident with the former Soviet Union in 1988. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert its rights and affording additional methods of resolving conflict.

[*Page 120*]

Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

Currently, over 100 excessive and illegal claims threaten U.S. FON

"Myth: U.S. adherence to the convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy). Wrong--it is not true that our navigational freedoms are not threatened. There are more than 100 illegal, excessive claims around the globe that adversely affect vital navigational and over-flight rights and freedoms. The United States has utilized diplomatic and operational challenges to resist excessive maritime claims by other countries that interfere with U.S. navigational rights as reflected in the convention. On occasion, these operations have entailed a certain amount of risk (e.g., the Black Sea bumping incident with the former Soviet Union in 1988). Being a party to the convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert its rights, thus affording additional methods of resolving conflict and aligning expectations of behavior at sea.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Over a hundred excessive claims currently, some of which are directly complicating counter narcotics operations

"We will stabilize the outer permissible limit of the territorial sea of other nations at 12 nautical miles." We will gain the leverage to combat effectively excessive territorial sea claims and other excessive claims. At present, there are over a hundred excessive claims throughout the world.' These are notjust rogue states making these claims. Many, including those pertaining to the continental shelf, are from friendly nations or nations with whom we need principled, cooperative relationships. Our status as a nonparty to the Law of the Sea Convention hobbles our efforts to address these claims in an effective manner.

Specifically, I point out the counternarcotics area. There are excessive territorial sea claims that cause significant operational impediments for us on a daily basis. Our status as a nonparty makes it difficult for us to achieve effective operational agreements with those nations that have claims of territorial seas of up to two hundred nautical miles.

[*Page 447*]

Baumgartner, William D. "*UNCLOS Needed for America's Security*." **Texas Review of Law &**

Politics. Vol. 12, No. 2 (April 2008): 445-451. [**More** (3 quotes)]

U.S. freedom of navigation rights are under constant threat from "creeping jurisdiction"

"*Myth: Freedom of navigation is only challenged from "[t]he Russian navy [that] is rusting in port [and] China has yet to develop a blue water capability...."* ***(14)***

The implication here is that the principal challenge to navigational freedom emanates from a major power and that we do not have any particular national concerns about freedom of navigation. But the 1982 convention deals with the law of peace, not war or self-defense. Thus, this argument misses altogether the serious and insidious challenge, which, again, is what the convention is designed to deal with; these repeated efforts by coastal nations to control navigation, including those from U.S. allies and trading partners, have through time added up to death by a thousand pin-pricks. This is the so-called problem of "creeping jurisdiction" which remains the central struggle in preserving navigational freedom for a global maritime power. After years of effort, we have won in the convention a legal regime that supports our efforts to control this "creeping jurisdiction." To unilaterally disarm the United States from asserting what was won against illegal claimants is folly and undermines our national security.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong..*" **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

US non-party status to UNCLOS undermines is global leadership and complicates efforts to challenge excessive claims through its FON program

"The US is, of course, the world's sole superpower and its pre-eminent maritime power. Accordingly, the US clearly plays a leading role in global affairs. The US also perceives itself to be a world leader and is keen to project and promote this image and reality. The fact that the US is not a party to the Convention undermines that leadership role in the maritime sphere. Critically, when the United States comments on maritime issues of concern to it, such as regarding excessive maritime claims through the FON program or on the South China Sea disputes for instance, a frequently raised objection to Washington's interventions is that the US has not signed up to UNCLOS. This serves to compromise the credibility and authority of the US in global ocean affairs. US accession would therefore remove a somewhat irrelevant, but far from unimportant barrier to the United States playing a strong leadership role as the contemporary law of the sea. The counterpoint here is that by choosing not to participate the US is abdicating or at least undermining its credential to a leadership role in international ocean affairs. The rationale for ratification on this front alone is therefore, it is

submitted, persuasive.

[*Page 3*]

Schofield, Clive and Ian Townsend-Gault. "*Time for the United States to Join the Party? Prospects for US Ratification of the United Nations Convention on the Law of the Sea*." **International Zeitschrift**. Vol. 8, No. 3 (December 2012): 1-6. [**More** (4 quotes)]

Multiple examples where US freedom of navigation rights are threatened by its non-party status to UNCLOS

"U.S. navigation on the high seas is affected by its non-ratification of UNCLOS III. For example, if a U.S. naval task force had to rush from the Persian Gulf to a crisis along the North Korean peninsula, it could be forced to detour 3,000 miles around Indonesia.[234] Another example is the barring of U.S. tankers from the Strait of Hormuz-the strait in which most American foreign oil is shipped-by Iran.[235] Finally, Russia could institute fishing trawlers off the coast of Alaska that would take millions of tons of salmon found in American waters.[236] None of these things would be possible if the United States ratifies UNCLOS III. UNCLOS III may aid the United States in ensuring that the naval ships and submarines can navigate freely along the high seas, that cargo ships and tankers may navigate along the world's sea lanes, and that the United States retains control over the resources found in the deep sea.[237] As long as the United States remains a nonparty, it will not be able to rely on the protections provided by UNCLOS III.

[*Page 775*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

Coast guard operations impaired by U.S. non-party status to UNCLOS

"Next, Rear Admiral Frederick J. Kenney presented the importance of UNCLOS to the U.S. Coast Guard. He emphasized that on a daily basis the Coast Guard's operational officers rely on the freedom of navigation that UNCLOS attempts to preserve. The Coast Guard is the only U.S. surface presence in many parts of the world, and this widespread presence allows the Coast Guard to respond quickly to international incidents. For example, a Coast Guard cutter was the first U.S. presence in Georgia after Russian troops entered the country in 2008.

Because the United States is not a party to the Convention, however, Rear Admiral Kenney explained that the United States cannot use its dispute resolution mechanisms for resolving conflicting claims

to ocean territory. In one important dispute, the United States and Canada disagree about whether Passamaquoddy Bay is part of Canada's internal waters and thus whether Canada can block passage of commercial shipping through the bay to East Port, Maine. If plans for a liquid natural gas (LNG) terminal in East Port move forward, Rear Admiral Kenney predicts this dispute will intensify without any clear means of resolution.

Rear Admiral Kenney drew on his personal experience as a negotiator to discuss the difficulties the United States faces in negotiating other treaties because it is not a party to UNCLOS. As the primary regulator of U.S. shipping, the Coast Guard participates in treaty negotiations with the International Maritime Organization (IMO). However, the IMO's primary treaties are inextricably linked to UNCLOS, and Rear Admiral Kenney opined that the United States loses credibility in IMO negotiations because it is not a party to UNCLOS. Further, Rear Admiral Kenney suggested that bilateral agreements regarding drug enforcement would be easier to negotiate if the United States were a member of UNCLOS because they would be able to incorporate UNCLOS' enforcement mechanisms.

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0 "***National Security, Economic Well-Being, and the Law of the Sea*** ." **Environmental Law Institute**. (June 6, 2011) [**More**]

Coastal states are becoming increasingly assertive in controlling activities of other states in their EEZ

"Coastal states can also be expected to want more control of their off-shore waters and airspace for domestic security reasons.[67] As technology advances, coastal states can reasonably be expected to seek a legal regime that makes it more difficult for foreign militaries to exploit advancements in the range and accuracy of weapons and intelligence-gathering inherent in manned and unmanned aerial, surface, and underwater vehicles, as well as over-the-horizon weaponry and specialized littoral platforms.

Moreover, the nature of threats such as terrorism; weapons of mass destruction; and arms, drugs, and human-trafficking encourage coastal states to extend surveillance and control beyond their territorial seas and in some cases even into others' EEZs.[68] In the aftermath of September 11, many nations, including the U.S., have increased surveillance of their coastal areas.[69]

To varying degrees and through various methods, coastal states have objected to military activities in their respective EEZs through the years. Whatever their historical weaknesses and current political rivalries, coastal states continue to share important interests and continue to face what Professor Bernard Oxman calls the "territorial temptation" to expand control over their off-shore waters.[70]

[*Page 14*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

U.S. inability to protect naval freedoms through UNCLOS has already cost American lives

"The Law of the Sea Convention is a key weapon in this struggle for our oceans' freedom. The United States won through the negotiations the core elements of that freedom. To abandon that win is the legal equivalent of unilateral disarmament for the United States in the struggle for freedom of the seas. The price we will pay through time for any such error in judgment will be high. In essence the critics who would have us abandon a rule of law in the world's oceans may effectively be asking American servicemen and women someday to pay with their lives for the absence of such a rule of law. This is not mere hyperbole; already disputes about the oceans regime have cost American lives. Thus, an American aircraft in lawful overflight of the high seas was forced down by Peru in asserting an illegal claim over an extended area of the seas. More recently, harassment by Chinese fighters brought down a United States aircraft engaged in lawful activities under the 1982 Convention. And, at minimum, the economic cost of new naval configurations designed to get around a creeping loss of freedom – possibly with required pay-offs to coastal states – could be considerable.

[*Page 7*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004)*** ." Testimony before the Senate Committee on Armed Services, April 8, 2004. [**More** (6 quotes)]

China one of an estimated 26 other countries that are challenging U.S navigation rights with excessive claims

"In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The position of the United States and most countries is that while the United Nations Convention on the Law of the Sea (UNCLOS), which established EEZs as a feature of international law, gives coastal states the right to regulate economic activities (such as fishing and oil exploration) within their EEZs, it does not give coastal states the right to regulate foreign military activities in the parts of their EEZs beyond their 12-nautical-mile territorial waters.6 The position of China and 26 other countries (i.e., a minority group among the world's nations) is that UNCLOS gives coastal states the right to regulate not only economic activities, but also foreign military activities, in their EEZs. In response to a request from CRS to identify the countries taking this latter position, the U.S. Navy states that countries with restrictions inconsistent with the Law of the Sea Convention [i.e., UNCLOS] that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast are [the following 27]: Bangladesh, Brazil, Burma, Cambodia, Cape Verde, China, Egypt, Haiti, India, Iran, Kenya, Malaysia, Maldives, Mauritius, North Korea, Pakistan, Portugal, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, Uruguay, Venezuela, and Vietnam.[7]

Other observers provide different counts of the number of countries that take the position that UNCLOS gives coastal states the right to regulate not only economic activities but also foreign military activities in their EEZs. For example, one set of observers, in an August 2013 briefing, stated that 18 countries seek to regulate foreign military activities in their EEZs, and that three of these countries—China, North Korea, and Peru—have directly interfered with foreign military activities in their EEZs.[8]

[*Page 4*]

O'Rourke, Ronald. **Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress** . Congressional Research Service: Washington, D.C., April 11, 2014 (59p). [**More** (4 quotes)]

Freedom of Navigation program is not a long-term viable solution to address excessive claims

The United States can assert its navigational rights at any point on the globe, but it cannot be assured of a local superiority of forces simultaneously at every location of potential maritime dispute. Moreover, obvious practicality compels restraint—against both allies and potential adversaries—over maritime disputes. Even the peaceful and non-confrontational Freedom of Navigation (FON) program may present diplomatic costs and pose risks inherent in physical challenges,

Attempting to enforce navigational rights outside of UNCLOS framework would be an expensive undertaking and waste of resources

"I also believe, Mr. Chairman, that it is short-sighted to argue that, if the customary law system somehow breaks down, the United States, as the world's pre-eminent naval power, wouldn't have any trouble enforcing it. Clearly, our Navy could engage in such an effort. However, enforcing our navigational rights against every coastal nation in the event the Convention and customary law systems collapse would be very costly, both politically and economically. Moreover, it would divert our forces from their primary missions, including the long-term global war on terrorism. Excessive coastal nation claims are the primary threat to our navigational freedoms. Those claims can spread like a contagious virus, as they did in the 20th Century. The added legal security we get from a binding treaty permits us to use our military forces and diminishing resources more efficiently and effectively by concentrating on their primary missions.

[*Page 19*]

Schachte, William L. "***Statement of Rear Admiral William L. Schachte: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Armed Services Committee, April 8, 2004. [**More** (4 quotes)]

U.S. efforts to address excessive claims outside of UNCLOS framework are unsustainable

"*U.S. adherence to the Convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy).*

- It is not true that our navigational freedoms are not threatened. There are more than one hundred illegal, excessive claims affecting vital navigational and overflight rights and freedoms.
- The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights under customary international law as reflected in the Convention. But these operations entail a certain amount of risk – e.g., the Black Sea bumping incident with the former Soviet Union in 1988.
- Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert our rights and affording us additional methods of resolving conflict.

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Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Dangerous precedent to assume U.S. can continue to assert its navigational rights

"The critics also show little understanding of the realities of asserting the rule of law in the world's oceans. They seemingly contend that the United States can protect its interests by shooting its way around the oceans rather than developing a stable and favorable legal regime, defensible with force if necessary, that provides a legal basis for naval and air operations. The United States simply cannot shoot its way to acceptable resolutions of oceans disputes with Canada, Chile, Brazil, India, Italy and other democracies. Nor is it realistic to ignore the effects of law and international agreements in our interactions with others. It is hubris to believe that the United States can disregard the law without consequences, as it creates scenarios where other nations follow suit, thus compromising interests on both sides. Ironically, at a time when the president of the United States is urging others toward the rule of law as a foreign policy interest, the critics voice only disdain for that principle.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Ratifying convention would significantly reduce costs U.S. military incurs to protect navigation rights

"Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.[36] This resurgence threatens Convention-based navigational rights, which are at least as important today as they were during the Cold War.

Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.[37] Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law. As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Commit- tee, "some coastal states contend that the navigational and over- flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it."[38] if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program[39] or negotiating new bilateral agreements.[40] The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive-in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts-than continuing to stand outside it.

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Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Freedom of navigation program is no longer sufficient for US to secure its naval rights

"One method the United States has adopted to deal with state claims inconsistent with international law as reflected in the Convention is the Freedom of Navigation (FON) Program. Initiated in 1979 and continued by every administration since then, this program combines diplomatic action and operational assertion of our navigation rights to discourage state claims inconsistent with international law as reflected in the Convention. But the political, economic, and military costs of this program are not trivial, and for a Navy stretched thin to meet its urgent operational commitments, every freedom of naviga- tion challenge comes with an opportunity cost somewhere else—to say nothing of the risks to the Sailors on those ships. This was put forcefully by then-CNO Vern Clark in a letter to the Senate Armed Services Committee:

> For the many years we've remained outside the Convention, we've asked our young men and women to conduct operations, sometimes at great risk, to challenge the exces- sive maritime claims of other states. Joining the Law of the Sea Convention will let our people know that, when they're operating in defense of this nation, far from our shores, they have the backing and the authority of widely recognized law to look to, rather than depending only upon the threat or use of force.

The tense showdown between the United States People's Republic of China over the collision between a Chinese fighter and a Navy EP-3 aircraft—an event that occurred in China's exclusive economic zone—is but one indication of the risks described by Admiral Clark. sufficient for US to secure its naval rights The tense showdown between the United States and the

[*Page 55*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

Use of Freedom of Navigation missions to secure rights costs the U.S. politically and financially and detracts from other naval missions

"The costs of conducting frequent naval Freedom of Navigation missions may be significant—in political, economic, and military terms. Beyond the incidental financial costs of conducting such exercises, they sometimes require deploying naval vessels to regions they would not normally patrol. While some Freedom of Navigation missions would still be conducted, regardless of the U.S. position on the 1982 Convention, we believe that, from an operational standpoint, our dwindling naval forces would be able to shed some Freedom of Navigation commitments and that we would face fewer contentious issues if the United States were a signatory to the Treaty. As one observer put it, "If freedom of the seas has to be bought by vigilance and violence, then it will be, and the U.S. Navy will bear the brunt."[11] While there have been no flagrant incidents of a Treaty signatory denying navigational rights to the United States as a nonsignatory, a climate of periodic discord and confusion has developed surrounding some maritime controversies.[12] This climate has the potential to be particularly acute for the United States. Without a Treaty, the United States has but two instruments to safeguard these freedoms should one or more nations fail to abide customary law: freedom of navigation assertions and diplomatic actions. This method is politically costly and detracts from other Navy missions.[13]

[*Page 233-234*]

George, Cpt. V. Galdorisi USN and Cdr. James G. Stavridis USN. "*United States Convention on the Law of the Sea: Time for a U.S. Reevaluation?*." **Naval Law Review**. Vol. 40. (1992): 229-239. [**More** (2 quotes)]

Freedom of navigation program has been overwhelmed by excessive claims

"“Egregious Excessive Claims.” A ninth reason that led the United States toward accession to the Convention was the growing political and military cost of the Freedom of Navigation (FON) Program. This effort, initiated by the Carter administration in 1979 and continued under presidents Reagan, Bush, and Clinton, combined diplomatic and operational (not solely naval) means to discourage claims violating the navigational freedoms asserted by the 1982 Convention—freedoms that the US.

supported even though, for other reasons, it had not signed the treaty.[49] The FON program involved (and at this writing still does) naval exercises and consultations, bilateral and multilateral, with other governments to promote maritime stability, conformance with international law, and adherence by all nations to the customary rules and international law reflected in the Convention.

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Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

U.S. Navy has concluded that costs of unilateral enforcement of naval freedoms through Freedom of Navigation program no longer worth it

“This is just a sampling of excessive maritime claims and their sequels, but it represents the financial and diplomatic costs, as well of the risks, associated with the FON program. The case became compelling that such costs and risks would be substantially less under a specific, binding treaty.55 Two noted experts on the law of the sea, 1. Ashley Roach and Robert W. Smith, presented the position of the State Department in 1994: “Unilateral U.S. demonstrations of resolve—especially operational assertions—are sometimes viewed as antagonistic. They risk the possibility of military confrontation and of political costs that may be deemed unacceptable, with prejudice to other US. interests, including worldwide leadership in ocean affairs and support for use of cooperative, international solutions to mutual problems?“

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Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

Political costs of relying on Freedom of Navigation program no longer worth the risks

“In fact, many of the nations making claims that the U.S. considered excessive were asserting that the Convention was a legal contract, the rights and benefits of which were not necessarily available to non-parties—such as the United States. The Continual counter-assertion that these rights and benefits were already embodied in customary international law was appearing more and more difficult to sustain. In testimony before the Senate Foreign Relations Committee in the summer of 1994, the chairman of the Department of Defense Task Force on the Law of the Sea Convention, John McNeill, pointed to the likelihood of “increasingly egregious excessive claims” by many coastal states as a critically important reason to seek U.S. accession to the Convention.[57] The danger of continuing to rely on the FON program was summed up by Rear Admiral William Schachte: “The

political costs and military risks of the Freedom of Navigation Program may well increase in the changing world order."[58] Conversely, accession to the Convention, by the United States would, it was hoped, convince states making excessive claims to retract them and, perhaps more importantly, keep in check their natural desire to extend sovereignty to offshore areas, when it would be inimical to navigation and overflight rights."

[*Page 36*]

Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

Attempting to assert our rights through robust naval power is no longer relevant or practical

"Suggestions that somehow our maritime interests can be asserted solely through robust naval power are not relevant to the real world. The overwhelming majority of ocean disputes do not involve enemies or issues that warrant military action. As **Admiral Patrick Walsh testified at our first hearing in 2007**: "Many of the partners that we have in the Global War on Terror who have put life, limb, and national treasure on the line are some of the same ones where we have disagreements on what they view as their economic zone or their environmental laws. It does not seem to me to be wise to now conduct Freedom of Navigation operations against those very partners that are in our headquarters trying to pursue a more difficult challenge ahead of us, a Global War on Terror." Even a mythical 1,000 ship U.S. Navy could not patrol every strait, protect every economic interest, or assert every navigational right. Attempting to do so would be prohibitively expensive and destructively confrontational.

Lugar, Richard. "***Statement from Richard Lugar: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)*** ." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More** (2 quotes)]

U.S. cannot rely on asserting claims through Freedom of Navigation program alone

"If appropriately resourced by the combatant commanders, the Freedom of Navigation program is effective, but it is not a panacea. The United States can assert its navigational rights at any point on the globe, but it cannot be assured of a local superiority of forces simultaneously at every location of potential maritime dispute. Moreover, obvious practicality compels restraint—against both allies and potential adversaries—over maritime disputes. Even the peaceful and non-confrontational FON program may present diplomatic costs and pose risks inherent in physical challenges,[148] as was displayed by the Black Sea bumping incident in February 1988. In 1996, the National Intelligence

Council concluded that in some cases the costs, disadvantages, or risks of physically challenging excessive claims might be greater than the benefits.[149] Of course, coastal states understand this calculus and will try to manipulate it to their advantage since they have an incentive to compel the inter- national community to acquiesce in their excessive maritime claims.

[*Page 570-571*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. incurs significant political and economic costs from trying to enforce its freedom of navigation rights through the military

"Customary international law tends to be hard to enforce and maintain. For exam- ple, eighteen states continue to claim territorial sea in excess of twelve nautical miles. Thirteen states claim, historic bays inconsistent with international law. More than sixty countries delimit straight baselines along portions of their coast, many of which are drawn inconsistently with international law. Also, more than twenty states attempt to over-regulate their exclusive economic zones (EEZ), contrary to the express provisions of the Convention.

Since 1979, the United States has formally contested excessive coastal state claims, both operationally and diplomatically, through the Freedom of Navigation Program. The program is based entirely on the navigation and overflight provisions of the Convention. While this program is designed to breathe life into the terms of the Convention, Parties to the Convention are likewise capable of defining or refin- ing provisions of the Convention. By remaining outside the Convention, the United States' only way of confronting attempts by Parties to the Convention to interpret or refine Convention provisions would be by the exercise of our naval and air forces in accordance with the existing terms of the Convention. However, in presenting Ad- miral Center's paper, Commander Rosen will discuss that this will be harder to do in the years to come as we downsize. Also, as a nation committed to the rule of law, the use of military force to resolve legal conflicts between Parties and non-Parties to the Convention should not be the preferred method of challenging excessive coast- al state claims.

I would note that, in the case of the ''Black Sea Bumping Incident,'' the United States and Soviet Union approached the legal issues involved as would Parties to the Treaty in relying on the Convention's rules on innocent passage to amicably re- solve the issues raised by the incident.

Schachte, William L. "*National Security: Customary international law and the Convention on the Law of the Sea*." **Georgetown International Environmental Law Review**. Vol. 8, No. 2 (Summer 1995). [**More** (6 quotes)]

US reliance on freedom of navigation program and customary law emboldens other coastal states to make excessive claims

"When the Convention on the Law of the Sea came into effect in 1982 it sought to broadly codify and balance coastal state territorial and resource rights against the need for freedom of navigation by maritime nations.54 Coastal state territorial seas were expanded, but only after acceptance of regimes for innocent and transit passage.55 The same balance was struck when creating archipelagic lanes through island nations and allowing for high seas freedoms in the newly created Exclusive Economic Zone (EEZ) where coastal states now maintained resource rights.56,57 This area of "shared rights and responsibilities," along with coastal nation propensity to "adopt excessively generous" baselines, has proven quite contentious for the United States as it seeks to maintain freedom of navigation and peacetime access around the globe.58,59 Furthermore, coastal state interpretation of the convention in a manner most beneficial to self-interest creates major difficulties for the United States.

As a non-party to UNCLOS, the U.S. lacks "a seat at the table when the [160] parties to the Convention interpret (or try to amend)" the rights and freedoms protected within the convention, and forfeits the use of binding dispute resolution to counter coastal state encroachment.60 Instead these freedoms negotiated in the convention, but either ignored or incorrectly interpreted, must be objected to through the U.S. Freedom of Navigation (FON) Program to keep customary international law from developing contrary to U.S. strategic interests.61 Unfortunately, "that approach plays directly into the hands of those foreign coastal States that want to move beyond the Convention," because "they too cite customary international law as the basis for developing claims of coastal State sovereignty in the EEZ."62

[*Page 10-11*]

Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

Ratification of UNCLOS would remove risks inherent in unilateral enforcement of freedom of navigation rights

"*Myth: The United States can rely on use or threat of force to protect its navigational interests fully.*

Reality: The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights. But these operations entail a certain degree of risk, as well as resources. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a stronger position to assert our rights.

[*Page 18*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Reliance on customary international law and FON program should only be used as a last resort

“Some columnists and think tank analysts have argued that U.S. accession to the Convention is unnecessary because excessive maritime claims can be addressed by invoking customary international law and with “operational assertions’’ by the U.S. military. But such an approach is less certain, more risky, and more costly than taking advantage of the Convention. Customary law is by nature subject to varying interpretations and change over time. Operational assertions—sending military ship and aircraft into contested areas—involve risk to naval personnel as well as political costs. Such assertions should be conducted aggressively where needed, but avoided where possible.

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Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

U.S. ratification of UNCLOS would bolster efforts of Freedom of Navigation program

Although states making excessive claims will never publicly welcome U.S. challenges through its Freedom of Navigation program, the U.S. – as an UNCLOS party – would have greater credibility and standing to conduct challenges, reaffirming as a fellow-member the crucial tenants of an internationally accepted legal regime.

Ratification of UNCLOS would boost effectiveness and legitimacy of unilateral freedom of navigation programs

"That UNCLOS membership would promote international maritime collaboration should be obvious. Less obvious, however, is how UNCLOS membership might also facilitate unilateral action. Consider the U.S. Freedom of Navigation (FON) Program.[104] Consistent with the need to shape the law through state practice, the U.S. has historically conducted operations designed to challenge excessive maritime claims. The FON program provides a framework for conducting such operations. Although states with excessive claims will never publicly welcome U.S. challenges, the U.S. – as an UNCLOS party – would have greater credibility and standing to conduct challenges, reaffirming as a fellow-member the crucial tenants of an internationally accepted legal regime. In this context, challenges might be made more frequently and in more meaningful areas, rendering them a more potent component of U.S. strategic communication on freedom of the seas and airspace. Moreover, as an UNCLOS party, the U.S. could augment the diplomatic and operational means to challenge excessive maritime claims with the Convention's mandatory dispute procedures. The U.S. thus would have those procedures to use offensively against excessive maritime claims that are not in compliance with the Convention, including those that limit military mobility and high seas freedoms.

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Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

U.S. freedom of navigation program complemented by international agreements like UNCLOS

"To the extent the United States continues to have a need for unrestricted, legal access for its naval forces up to the territorial waters of all the countries of the world, we believe it should continue to use vehicles such as the Freedom of Navigation Program to assert these rights, but should also

supplement this with other arrangements and understandings with foreign security partners. A sufficiently dense network of such arrangements and understandings, followed by consistent practice, will ensure the vitality of customary norms. In the end, it is our view that this is an approach that will ensure the best balance among an ongoing network of lawful naval and military activities, stable international law, freedom of navigation for ocean-going commerce, and is an approach that will protect interests common to all in an internationally interdependent world.

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Galdorisi, George V. and Alan G. Kaufman. "***Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*** ." **California Western International Law Journal**. Vol. 32. (2001-2001): 253-302. [**More** (4 quotes)]

Freedom of navigation is critical to U.S. leadership and economy

Indeed, global commerce, travel, and information have greatly contributed to the growing wealth of nations and to the stability of the post-Cold War international system. The world's seas, air, space, and-more recently- cyberspace also play critical roles in states' national defense and their ability to conduct military operations worldwide. The United States relies on freedom to operate in the commons in order to protect the U.S. homeland and its vital national interests.

US freedom of navigation rights are a critical component of our global leadership

"Beyond this leadership role, vital and immediate core strategic U.S. interests hinge on accession. This has been articulated in congressional testimony by the nation's mil- itary leadership—from the Chairman of the Joint Chiefs of Staff down—and especially by successive Chiefs of Naval Operations. For example, Admiral Mike Mullen in written testimony before his confirmation hearings stated: The ability of military forces to operate freely on, over, and above the vast military maneuver space of the oceans is critical to our national security interests, the military in general and the Navy in particular. Your Navy's—and your military's—ability to operate freely across the vast domain of the world's oceans in peace and in war make possible the unfettered projection of American influence and power. The military basis for support of the Law of the Sea Convention is broad because it codifies fundamen- tal benefits important to our operating forces as they train and fight.

[*Page 53*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

Direct correlation between us economic and military power and the rights preserved by UNCLOS

"As a military superpower, the United States could heavily rely on regulations such as the UNCLOS III to provide for military defense such as navigation and overflight, military presence, and commercial advantages.372 There is a direct correlation between the economic interests of the United States and the security provided by UNCLOS III. In order for the United States to maintain its political and economic influence, it depends on the stability of the global market. The stability found in the Convention is also crucial to the exploitation of marine scientific research in drilling and fishing industries.

[*Page 790*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

Freedom of operation in the global commons has been and will continue to be a key driver of US and global economic growth

"The sea provides passageway to 45,000 merchant ships worldwide and over 90 percent of global trade.' Each year, 2.2 billion passengers, 40 percent of international tourists, and 44 million tons of freight travel by air. The global economic impact of air transport in 2007 was estimated to be $3.5 trillion, or 7.5 percent of global GDP.2 Additionally, the economic worth of the communications, imagery, and positioning data gained from satellites in space was $257 billion in 2008, and each day, financial traders in New York City transfer more than $4 trillion, or approximately 25 percent of annual U.S. GDP, via the Internet.' As the 2010 U.S. Department of Defense's QuadrennialDefense Review Report states, "Global security and prosperity are contingent on the free flow of goods shipped by air or sea, as well as information transmitted under the ocean or through space."' Access to the global commons enables these flows, in turn promoting both international stability and prosperity.

Indeed, global commerce, travel, and information have greatly contributed to the growing wealth of nations and to the stability of the post-Cold War international system. The world's seas, air, space, and-more recently- cyberspace also play critical roles in states' national defense and their ability to conduct military operations worldwide. The United States relies on free- dom to operate in the commons in order to protect the U.S. homeland and its vital national interests. Yet as the global commons grows, the number of emerging trends that threaten this freedom of action also increases.

[*Page 29*]

Murphy, Tara. "*Security Challenges in the 21st Century Global Commons*." **Yale Journal of International Affairs**. Vol. 5. (Spring/Summer 2010): 28-41. [**More** (5 quotes)]

US global leadership directly tied to its leadership and dominance over the global commons

"In 2003, Barry Posen wrote a seminal piece on the defense and security benefits of unchallenged freedom of operation in the commons entitled, "Command of the Commons: The Military Foundation of U.S. Hegemony."" Posen argues that dominance in these shared domains serves as the foundation of the leadership role that the United States holds in the international system. He states, "Command of the commons is the key enabler of the U.S. global power position. It allows the United States to exploit more fully other sources of power, including its own economic

and military might as well as the economic and military might of its allies." Posen's work on this topic brought to the forefront the role that the global commons play as a key enabler of U.S. defense and national security strategies.

[*Page 32*]

Murphy, Tara. "*Security Challenges in the 21st Century Global Commons*." **Yale Journal of International Affairs**. Vol. 5. (Spring/Summer 2010): 28-41. [**More** (5 quotes)]

Freedom of navigation is key to global economic prosperity

"Freedom of navigation also underpins global economic prosperity. The oceans, wrote Professors McDougal and Burke, were a "spatial extension resource, principally useful as a domain for movement."[20] With the increasing trend in global trade, exercising the freedom to navigate on the seas is becoming even more important. This trend is accelerating in an era of globalization. "Shipping lanes are getting busier," reports the Wall Street Journal, "not just from Asia to North America and Europe, but within Asia."[21] The initial rise of the globalized economy, which began in mercantilist Europe, can be attributed in large part to unimpeded ocean transit. Four hundred years ago, the legal scholar Hugo Grotius cogently set forth the commercial doctrine that fueled international trade. "For do not the ocean," Grotius wrote, "navigable in every direction with which God has encompassed all the earth, and the regular and occasional winds which blow now from one quarter and now from another, offer sufficient proof that Nature has given to all peoples a right of access to all other peoples?"[22] The model of freedom of the seas also is regarded as the logical analogue for developing the legal regime for outer space.[23]

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. Security in new threat environment requires agile forces with high degree of mobility

"Military operations since September 11—from Operation Enduring Freedom to Operation Iraqi Freedom to the Global War on Terrorism —have dramatically increased our global military requirements. U.S. Forces are continuously forward deployed worldwide to deter threats to our national security and are in position to respond rapidly to protect U.S. interests, either as part of a coalition or, if necessary, acting independently. U.S. military strategy envisions rapid deployment and mobility of forces overseas anytime, anywhere. A leaner, more agile force with a smaller overseas footprint places a premium on mobility and independent operational maneuver. Our mobility requirements have never been greater.

Future threats will likely emerge in places and in ways that are not yet fully clear. For these and other undefined future operational challenges, U.S. naval and air forces must take maximum advantage of the customary, established navigational rights that the Law of the Sea Convention codifies. Sustaining our overseas presence, responding to complex emergencies, prosecuting the global war on terrorism, and conducting operations far from our shores are only possible if military forces and military and civilian logistic supply ships and aircraft are able to make unencumbered use of the sea and air lines of communication. This is an enduring principle that has been in place since the founding of our country.

[*Page 3*]

Mullen, Michael G. "***Statement of Admiral Michael G. Mullen: On the Law of the Sea Convention***." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

Protection of freedom of navigation rights is key to laundry list of national security objectives

"The National Strategy for Maritime Security (NSMS) identifies freedom of the seas as a "top national priority."[26] Naval forces depend upon global strategic mobility and tactical maneuverability to conduct the spectrum of sea-air-land operations in pursuit of the national interest, and these operations include:

- operating the most survivable component of nuclear deterrence, ballistic missile submarines (SSBNs);[27]
- conventional global strike;[28]
- air and missile defense;[29]
- information operations;[30]
- sea and land direct attack with missiles, naval gunfire and aircraft;
- crisis and disaster response, such as tsunami relief;[31]
- maritime homeland security;[32]
- amphibious and expeditionary operations in littoral areas;[33]
- insertion of special operations forces (SOF) for missions such as counterinsurgency and counterterrorism;[34]
- constabulary functions and maritime security operations (MSOs) such as counterdrug operations[35] and piracy repression;"[36]
- counter proliferation operations such as the Proliferation Security Initiative (PSI) and the Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA);[37]
- exercise of the right of approach, approach and visit, maritime interception operations (MIO) and visit, board, search and seizure (VBSS);
- naval control and protection of shipping (NCAPS);[38] exercise of sea lines of communication

(SLOCs) through the global supply chain and strategic supply;

- sea control;[39] anti-access and sea denial strategies such as mining; civil-military affairs;[40]
- security cooperation and peacekeeping;[41] and forward presence.[42]

In addition to securing the homeland, the exercise of these military activities ensures and relies on U.S. command of the global commons, which means the United States is readily able to insert power anywhere throughout the globe.[43] The Chief of Naval Oper- ations has said assuring access to the oceans and preserving the freedom to conduct naval operations is directly related to deterring war, or, if necessary, winning it.[44]

[*Page 549-50*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. will be able to challenge excessive claims more effectively as a party to UNCLOS

U.S. non-party status to UNCLOS means its challenges to excessive claims are less credible than they would otherwise be. Other States are less persuaded to accept its demand that they comply with the rules set forth in the Convention, given that the U.S. has not joined the Convention.

States will be less likely to challenge U.S. with excessive claims when it is backed by its ratification of UNCLOS

"The navigation and overflight freedoms we require through customary international law are better served by being a party to the Convention that codifies those freedoms. Being a party to the Convention is even more important because the trend among some coastal states is toward limiting historical navigational and overflight freedoms. Would-be adversaries, or nations that do not support the particular missions or activities we undertake, will be less likely to dispute our lawful use of the sea and air lanes if we are parties to the Convention. We support the Convention because it protects military mobility by codifying favorable transit rights in key international straits, archipelagic waters, and waters adjacent to coastal states where our forces must be able to operate freely.

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Mullen, Michael G. "***Statement of Admiral Michael G. Mullen: On the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

Ratification of UNCLOS key to resolving numerous boundary disputes in a consistent manner

"As regards maritime boundaries, there presently exist about 200 undemarcated claims in the world with 30 to 40 actively in dispute. There are 24 island disputes. The end of the Cold War and global expansion of free market economies have created new incentives to resolve these disputes, particularly with regard to offshore oil and natural gas exploration. During the last few years hundreds of licenses, leases or other contracts for exploration rights have been granted in a variety of nations outside the U.S. These countries are eager to determine whether or not hydrocarbons are present in their continental shelves, and disputes over maritime boundaries are obstacles to states and business organizations which prefer certainty in such matters. We have had two such cases here in North America where bilateral efforts have been made to resolve the maritime boundaries between

the U.S. and Mexico in the Gulf of Mexico and between the U.S. and Canada in the Beaufort Sea. Both of these initiatives have been driven by promising new petroleum discoveries in the regions. The boundary line with Mexico was resolved in 2000 after a multi-year period of bilateral negotiations. Negotiations with Canada, however, seem to be languishing.

While such bilateral resolution is always an option, the Convention provides stability and recognized international authority, standards and procedures for use in areas of potential boundary dispute, as well as a forum for dealing with such disputes and other issues.

[*Page 4*]

Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. assertion of rights and challenges to excessive claims lack credibility as long as we remain outside of treaty

"As we look into the future, our status as a non-party will increasingly disadvantage the United States. Presently, the United States is forced to rely on customary international law as the basis for asserting our rights and freedoms in the maritime domain. In situations where coastal states assert maritime claims that exceed the rights afforded to them by the Convention, USPACOM challenges such claims through a variety of means including the U.S. Freedom of Navigation program, military-to-military communications, and diplomatic protests issued through the State Department. When challenging such excessive claims through military-to- military or diplomatic exchanges, the United States typically cites customary international law and the relevant provisions of the Convention. Unfortunately, because we are not a party to the Convention, our challenges are less credible than they would otherwise be. Other States are less persuaded to accept our demand that they comply with the rules set forth in the Convention, given that we have not joined the Convention ourselves.

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Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

U.S. is in no position to challenge excessive maritime claims as a non-party to UNCLOS

"Rising maritime powers across the globe are reinterpreting customary international law to promote their own national interests -- including in ways that may conflict with longstanding maritime norms and American interests. Nowhere is this more apparent than in the South China Sea, where

China's outsized claim to the entire region flies in the face of both traditional practices and LOSC. But China is not the only offender. Burma, Thailand, and others are joining China in more restrictive interpretations of maritime navigational rights, including anti-access norms that could constrain the U.S. Navy's ease of access in this crucial maritime domain.

Unfortunately, the United States is not in a position to rebuff these restrictive interpretations and protect the maritime norms that have been so beneficial to the global economy and U.S. security. U.S. failure to ratify the treaty has prevented the United States from taking a seat at the table to avail itself of the convention's established legal frameworks, such as the Law of the Sea Tribunal. And while the United States sits on the sidelines, other countries are engaging in discussions of maritime law, and in some places working toward consensus on issues that could have consequences for the United States for decades. Joining the treaty will allow the United States to lead these important discussions and, more importantly, enable the United States to negotiate with countries from a position of strength to protect the customary practices codified by the convention.

Ratifying LOSC will also strengthen a range of ongoing U.S. security activities. The U.S. Navy and U.S. Coast Guard are our key instruments of power at sea and ratifying LOSC will strengthen their ability to do their job and work with others to protect U.S. interests, including areas such as counter proliferation and counter piracy. More importantly, ratifying the convention would give the U.S. Navy and Coast Guard the strongest legal footing for their actions, including in places like the Strait of Hormuz, where Iran has threatened to close access to the international passageway in direct violation of the convention. As Chairman of the Joint Chiefs of Staff General Martin Dempsey recently said, "It validates the operations we conduct today and realizes our vision for a secure future."

Will Rogers. "***Law of the Sea: Less boring than you think*** ." **Foreign Policy**. (May 16, 2012) [**More**]

Ratifying UNCLOS enhances U.S.national security by improving its ability to challenge excessive claims

“The time has now come for the United States to become party to this vital convention and regain its leadership position in ocean policy affairs. One benefit: Becoming a party to UNCLOS would greatly enhance homeland security. In his **testimony before the Senate Foreign Relations Committee, Admiral James Watkins**, former Commission on Ocean Policy, called the convention “the foundation of public order of the oceans.”[7] U.S. military forces, including Coast Guard units, rely heavily on the many critical freedoms of navigation, over- flight, and operational principles codified in the convention. Under the current legal regime, the United States is not guaranteed such rights. While there is a strong argument that transit passage and archipelagic sea lanes passage have become established rights under customary international law, not all agree.

For example, the Islamic Republic of Iran, whose terri- torial waters overlap the shipping lanes in the critical Strait of Hormuz (through which much of the world’s oil passes) contends that only states that are party to UNCLOS are entitled to the full rights of transit passage.[8] Moreover, neither of these

critical navigational rights exists under any of the 1958 Geneva Conventions on the Law of the Sea, to which the United States continues to be bound. Becoming a party to the 1982 convention will supersede our obligations under the 1958 conventions and will ensure the entire range and ex- tent of our critical mobility rights in all the ocean waters of the world.

[*Page 7*]

Oliver, John T. "***A Window of Opportunity: The U.N. Convention on the Law of the Sea.*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 66, No. 3 (Summer 2009): 6-10. [**More** (5 quotes)]

U.S. ratification of UNCLOS would benefit Marine Conservation efforts

U.S. ratification of UNCLOS will have a positive effect on the environment as the conservation of ocean wildlife, the protection of delicate marine ecosystems, and the control of marine pollution are by their very nature multilateral issues. U.S. ratification will demonstrate U.S. commitment to address these problems in a cooperative manner at a time when some view U.S. policy as generally antithetical to multilateral arrangements. The environmental community strongly favors UNCLOS and U.S. ratification would send a message of support

U.S. ratification of UNCLOS would boost its international environmental leadership and support multilateral environmental cooperation

"By most accounts, U.S. ratification of UNCLOS will have a positive effect on the environment. This is not because the U.S. will be binding itself to any new substantive norms. On the contrary, most substantive provisions of UNCLOS are already part of U.S. policy and have been for many years. Despite this, the conservation of ocean wildlife, the protection of delicate marine ecosystems, and the control of marine pollution are by their very nature multilateral issues. U.S. ratification will demonstrate U.S. commitment to address these problems in a cooperative manner at a time when some view U.S. policy as generally antithetical to multilateral arrangements. The environmental community strongly favors UNCLOS and U.S. ratification would send a message of support.

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Schiffman, Howard S. "*U.S. Membership in UNCLOS: What Effects for the Marine Environment?*." **ILSA Journal of International and Comparative Law**. Vol. 11. (2004-2005): 477-484. [**More** (3 quotes)]

U.S. ratification of UNCLOS will go a long way towards promoting international protection of the environment

"Mr. Chairman, the Law of the Sea Convention is a powerful and successful environmental treaty precisely because it seeks to achieve a reasonable balance between environmental and other interests. For many years, in the law of the sea negotiations and in other fora, the United States has tried to make clear that environmental treaties must be carefully framed to produce a reasonable accommodation of diverse interests. Some people have characterized this as opposition to environmental protection. Some of the extreme rhetoric used abroad has been particularly damaging

to our reputation in important allied countries. The Senate now has a signal opportunity to set the record straight. Its approval of the Convention and the Implementing Agreement would suggest that there is every reason to ensure that the multilateral agenda is pursued carefully and that, as long as it may take, at the end of the day relevant interests are reasonably accommodated. It would announce that when that is done, America will stand second to none in joining to strengthen multilateralism, to strengthen the rule of law in international affairs, and to strengthen international protection of the environment.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

U.S. ratification of UNCLOS would boost U.S. leadership on protecting maritime environment in multiple ways

"While these powers give us a great deal of control over our interests in both environmental protection and the productive use of our continental shelf, in themselves they are insufficient to protect the full range of either our environmental interests or our energy and other interests. To protect those interests, we need to influence the laws and practices of foreign countries. It is for this reason that the Convention establishes a floor of generally accepted international standards that every coastal state must apply. Among the American interests that this protects are the following:

- Our neighbors have the same exclusive rights over the continental shelf off their coasts as we have off ours. Pollution from their activities can easily affect our waters, our resources, and our shores. This became abundantly clear a number of years ago when a pollution incident on the Mexican continental shelf gave rise to extensive public concerns in Texas and other Gulf states that our waters and coastline would be polluted. As a party to the Convention, we will have increased credibility and leverage to protect ourselves from such incidents in a way that avoids any appearance that we are bullying our neighbors.

- While every coastal state has the right to impose higher standards on its continental shelf activities, and ours are among the strongest in the world, the oil and gas industry is a global enterprise that can achieve economic efficiencies from uniform global standards regarding equipment and operations. Those efficiencies can of course help to keep down the cost of energy and free up additional capital for investment. As a party to the Convention, we will have increased credibility and leverage to promote stronger and more efficient international standards and their general acceptance.

- We live in an era of instant global news. A serious pollution catastrophe on the continental shelf anywhere in the world is likely to be reported, and its consequences televised, throughout the globe. This can stimulate public demands in many countries for new restrictions on continental shelf development. To the extent that this means that we all continue to learn from each others' mistakes, this is of course a good thing. But to the extent that public excitement

can lead to hasty and ill-considered actions either in the United States or in other countries, the economic consequences can be adverse, and the result may be an unnecessary increase in the price of energy. As a party to the Convention, we will have increased credibility and leverage to ensure the emergence and enforcement of international standards that reduce the likelihood of such events.

- Our interest in the health of the oceans throughout the world is no mere abstraction. They comprise over two-thirds of our world, and are essential to our well-being and the overall ecological balance of the planet. Marine living resources from the far reaches of the globe supply us and the rest of the world with food, with sources of recreation, with valuable scientific knowledge, and with the promise of new and more effective medicines. We have neither an environmental nor an economic interest in a race to the bottom in pollution regulation in other parts of the world that destroys marine life. As a party to the Convention, we will have increased credibility and leverage to exercise the kind of balanced global leadership in protecting the oceans that is incumbent upon the leading maritime power in the world and that the American people expect.

This is but one example of the benefits of the approach taken by the Convention to environmental protection. There are many others. The provisions that successfully accommodate the interests of states with respect to freedoms and rights of navigation and their interests with respect to prevention of pollution are obviously of great importance. The maintenance over time of a reasonable balance responsive to both navigation and environmental interests would unquestionably be advanced by U.S. participation in the Convention.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

UNCLOS greatly improves international protections for marine biodiversity

"The treaty champions the rights of the American people in the conservation of their offshore living marine resources, particularly fish. Ninety percent of the living marine resources are harvested within 200 miles of the coast. The convention confirms the validity of the United States Exclusive Economic Zone, proclaimed by President Reagan in 1983. The treaty's provisions relating to the conservation and management of living marine resources are consistent with U.S. law, policy, and practice. Its provisions on the conservation of high seas fishery resources are more critical today than they were a few years ago because of the dramatic overfishing that has occurred worldwide just in the past decade. The dispute settlement provisions of the convention as they relate to high seas fisheries will help us ensure that overfishing does not occur on the high seas adjacent to our 200-mile zone in a manner detrimental to the interests of our fishing industry.

The convention champions the rights of the American people to protect the marine mammals that

inhabit the vast ocean space. Americans care about whales and giant sea turtles and other important sea creatures. Poll after poll confirms this interest, and the treaty sets up the mechanisms whereby the United States can work to respond to these uniquely international issues.

Colson, David A. "***U.S. Accession to the UN Convention On the Law of the Sea*** ." **U.S. Department of State Dispatch**. Vol. 6, No. 7 (February 13, 1995). [**More** (3 quotes)]

UNCLOS is one of the strongest environmental treaties yet conceived

"This treaty champions the rights of the American people in the environmental arena. How does it do this? It is the strongest and most comprehensive environmental treaty in existence or likely to emerge for quite some time. The convention establishes, for the first time, a comprehensive legal framework for the protection and preservation of the marine environment. By addressing all sources of marine pollution, such as pollution from vessels, seabed activities, ocean dumping, and land-based sources, it promotes the continuing improvement in the health of the world's oceans. This treaty effectively and expressly finds the right balance between economic and environmental interests. Of particular note, it finds the right balance between America's interests as a coastal state in protecting its environment and natural resources with the American armed forces' rights and freedoms of navigation around the world.

Colson, David A. "***U.S. Accession to the UN Convention On the Law of the Sea*** ." **U.S. Department of State Dispatch**. Vol. 6, No. 7 (February 13, 1995). [**More** (3 quotes)]

U.S. accession to UNCLOS will boost ongoing efforts to develop higher international standards for marine safety and environmental protection

"The Convention is also an environmental accord that provides a comprehensive framework for the prevention, reduction, and control of maritime pollution. The Coast Guard conducts a wide-ranging port state control program to purge our waters of substandard ships and is assisting other nations in doing the same. This initiative will be enhanced through the consistent application of the Convention’s broad enforcement mechanisms. Additionally, the Convention carefully balances the rights of coastal states to adopt certain measures to protect the marine environment adjacent to their shores and the general right of a flag state to set and enforce standards and requirements concerning the operation of its vessels. Becoming a party to the Law of the Sea Convention will strengthen the international credibility of the U.S. and our efforts to guide the development of internationally accepted vessel standards, thereby improving marine safety and protection of the marine environment.

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Crowley, John E. "***Statement of Rear Admiral John E. Crowley Jr. on United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

UNCLOS would bolster U.S. efforts at international environmental protection

"Leadership in Environmental Concerns. A fourth reason for the change in the American attitude toward the Convention was a new global attitude toward management of the environment. Part XII of the Convention deals extensively with the protection and preservation of the marine environment, covering a wide array of issues, from general principles to global and regional cooperation, technical assistance, monitoring and environmental assessment, and responsibility and liability.[31] The inclusion of strong environmental protection measures in the Convention was an earlier and enduring goal of the United States. In the decade following its completion, the U.S., along with many other nations, became even more interested in preserving the environment, to the point that such concerns in many cases supplanted economic considerations.[32] Given that Part XII creates an effective, if diffuse, international mechanism for controlling marine pollution and establishes a symbiotic relationship between the Convention and other issue-specific agreements, the Clinton administration decided that agreeing to the Convention would ensure a stable regime for environmental protection.[33]

[*Page 30-31*]

Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

UNCLOS further efforts of domestic states to protect their coastlines from pollution

"With respect to protection of the U.S. coastal marine environment in particular, I would note that the Executive Branch, through the Department of Justice, the Department of Homeland Security, the Coast Guard, and the Environmental Protection Agency, has pursued a vigorous, successful enforcement initiative to detect and deter pollution from ships. In line with the policy of successive Administrations since 1983 to act in accordance with the balance of interests reflected in the Convention's provisions regarding traditional uses of the oceans, U.S. marine pollution enforcement efforts have been undertaken in a manner consistent with the Convention, including its allocation of enforcement responsibilities among coastal States, flag States, and port States in various situations.

In order to ensure that the relationship between U.S. law and the Convention's enforcement provisions is a seamless one, the Administration recommended, and the proposed resolution of

advice and consent contains, a number of understandings that, among other things, harmonize certain domestic terminology with the Convention and confirm the longstanding right of a State to impose and enforce conditions for entry of foreign vessels into its ports. The Convention's support of a State's ability to exercise its domestic authority to regulate the introduction of invasive species into the marine environment and to regulate marine pollution from industrial operations on board foreign vessels is also highlighted.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

U.S. ability to lead world in protecting marine environment hindered by its non party status to UNCLOS

"The Committee has heard from many witnesses that our failure to ratify this global treaty has hurt us to some extent economically, diplomatically and environmentally. These witnesses have rightly noted that our failure to ratify the Convention has hurt not only our international credibility, but also our ability to effect future changes in the terms and agreements upon which international law is based. **The United States is a world leader in marine conservation, and our accession to UNCLOS will greatly help us advance international standards and practices.**

While the United States is a world superpower, we must fully engage our fellow nations and secure the cooperation of the international community if we are to be successful in protecting our oceans and their resources. **For example, currently the United States adheres to the fisheries conservation measures in the Law of the Sea and subsequent Straddling Stocks Agreement, and we treat them as customary international law. However, unless we become a signatory to the treaty, we are without recourse to enforce this Agreement's terms with regard to other states which do not.** We are also unable to fully represent U.S. interests in negotiating future changes or terms to both of these agreements. Both the Pew and the Federal Oceans Commission have recently recommended accession for this purpose: to secure a positive environmental framework for U.S. ocean management. **In sum, it is impossible to be a world leader relative to the health of the oceans without full participation in the international rule of law that applies to them.**

[*Page 3-4*]

Rufe, Roger. "***Statement of Roger Rufe: On the U.N. Convention on the Law of the Sea (October 21, 2003)*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. will be better able to guide international cooperation to protect

the marine environment as a party to UNCLOS

"The vision of UNCLOS as a constitution was introduced at the beginning of this testimony, and it must be revisited here. As a constitution, UNCLOS is not meant to be an inflexible, stagnant document. Rather, its provisions must be interpreted over time, and its processes applied to our expanding environmental awareness about our world's oceans and the resources within them. In fact, subsequent multilateral environmental agreements have both reaffirmed and expanded upon UNCLOS's regime for the marine environment.[13]

The United States will be in a better position to address the existing deficiencies or limitations in the rule of law for the oceans if it becomes a signatory to UNCLOS. In its 1998 joint statement, which provides the basis for my next remarks, the environmental community urged the United States to embrace its leadership role in the world by ensuring that UNCLOS serves as a framework for securing more protective regimes for the conservation of marine ecosystems and wildlife. This role must continue beyond accession to participation and negotiation for improved international environmental practices over time. I would like to take this opportunity to briefly mention a few of these emerging and important issues.

[*Page 10*]

Rufe, Roger. "***Statement of Roger Rufe: On the U.N. Convention on the Law of the Sea (October 21, 2003)***." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. should clarify intent to make sure that Clean Water Act regulations are not nullified by UNCLOS

"The U.S. currently regulates certain industrial facilities such as seafood processing vessels, aquaculture facility discharges, and offshore oil and gas operations under the permitting requirements of Sections 402 and 403 of the Clean Water Act. The U.S. also regulates certain cruise ship operations in the waters around Alaska. Additional measures will likely be necessary to address environmental issues arising from other industrial activities on vessels.

UNCLOS, if interpreted too narrowly, could constrain the United States' ability to adopt and enforce these important measures. As noted earlier, Article 21.2 imposes limits on laws and regulations relating to "innocent passage." Article 211 also raises similar issues. We urge the Senate to include an interpretive statement on this issue as part of its advice and consent, to be included with the instrument of accession. The statement must clarify that these vessels are not engaging in or innocent passage as defined in Articles 18 and 19, and that the U.S. is free to regulate vessels operating in a capacity other than innocent passage as necessary to protect against polluting discharges from these vessels.

[*Page 9*]

Rufe, Roger. "*Statement of Roger Rufe: On the U.N. Convention on the Law of the Sea (October 21, 2003)* ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. interests in protecting marine environment would be furthered by being a party to UNCLOS

"Sustainability. The Convention also supports U.S. interests in the health of the world's oceans and the living resources they contain. It addresses marine pollution from a variety of sources, including ocean dumping and operational discharges from vessels. The framework appropriately balances the interests of the coastal State in protection of the marine environment and its natural resources with the navigational rights and freedoms of all States. This framework, among other things, supports vital economic activities off the coast of the United States. Further, the United States has stringent laws regulating protection of the marine environment, and we would be in a stronger position as a party to the Convention as we encourage other countries to follow suit.

The Convention also promotes the conservation of various marine resources. Indeed, U.S. ocean resource-related industries strongly support U.S. accession to the Convention. U.S. fishermen, for example, want their government to be in the strongest possible position to encourage other governments to hold their fishermen to the same standards we are already following, under the Convention and under the Fish Stocks Agreement that elaborates the Convention's provisions on straddling fish stocks and highly migratory fish stocks.

[*Page 8-9*]

Negroponte, John D. "*Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention* ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

UNCLOS reflects U.S. interests in protecting marine environment

"The Law of the Sea Convention provides strong protection for the marine environment. Indeed, the Rio Conference on the Environment accepted Part XII of the Convention as the core environmental provisions for the world's oceans. Not surprisingly, American environmental groups overwhelmingly support adherence to the Convention. Indeed, in one case, that of the protection of marine mammals, the Convention embodies the initiative of a United States environmental NGO. Thus, Article 65 of the Convention on the protection of marine mammals was negotiated following important work done by the Connecticut Cetacean Society. United States influence was also felt in requirements concerning monitoring, publication of reports, and assessment of potential effects of activities. The United States was further successful in avoiding any environmental double standard in

the world's oceans.

Remarkably, the important new environmental provisions of the Convention are sufficiently balanced that they enjoy the support of all United States oceans interests. Support for this Convention is that rare public policy issue on which both industry and environmental groups strongly agree.

[*Page 13*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

U.S. accession to UNCLOS necessary to provide leadership on a number of critical environmental issues

"The convention's provisions on environmental protection address all sources of marine pollution, from ships and waste disposal at sea, in coastal areas and estuaries, to airborne particles. They create a framework for further developing measures to prevent, reduce, and control pollution globally, regionally, and nationally, and they call for measures to protect and preserve rare or fragile ecosystems, the habitat of depleted, threatened, or endangered species, and other forms of marine life.

Those facts alone argue strongly for U.S. accession. To answer the question "Why now?" however, a daunting set of comparatively new ecological threats must be considered. Climate change and the burgeoning industrialization of the oceans are giving rise to severe environmental stresses that require an urgent global response. U.S. leadership is critical, not only in undertaking the research that will help us understand the effects of climate change in the marine environment and related mitigation and adaptation options, but also in tackling the problems head-on. In many respects, such leadership cannot be fully realized without accession to the convention.

[*Page 30*]

Borgerson, Scott G. **The National Interest and the Law of the Sea**. **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. ratification of UNCLOS would help restore global leadership on protecting marine environment

"While the United States took a leading role in creating UNCLOS, it is not one of the 165 countries that have ratified the treaty. At the Economist World Oceans Summit in February, Secretary Kerry criticized the U.S. Senate for inaction—while adding that the United States is nonetheless "committed to living by the law of the sea even though it isn't ratified." But there is no substitute for

ratification, which would benefit the United States for a host of reasons, both practical and symbolic. One of the most important is the signal it would send to the rest of the world. In his May speech at West Point, President Obama once again called for Senate action on UNCLOS. “American influence is always stronger when we lead by example,” he explained, “we can’t exempt ourselves from the rules that apply to everybody else.”

Preventing the continued destruction of three quarters of our planet will require inspired U.S. leadership of the sort that was on display last week in Washington. The health of the ocean is essential for the survival not only of sea life, but of human life. As oceanographer Jacques Cousteau warned in 1981, “[the ocean] is man’s only hope. …we are all in the same boat.”

Alexandra Kerr. "***‘Our Ocean’ Summit: Stemming the Tide of Ocean Degradation*** ." **The Internationalist**. (June 23, 2014) [**More**]

UNCLOS establishes comprehensive framework for environmental protection, bringing rest of the world up to environmental standards U.S. has already met

“The Law of the Sea Convention provides a comprehensive framework for international cooperation to protect the marine environment. It imposes minimum requirements—all of which are already being met by the United States—to protect and preserve the marine environment. Under the Convention, states are required to take measures to address pollution from vessels and landbased sources, to prevent the introduction of alien or invasive species, and to conserve and manage coastal fisheries.

The Convention also requires states to work together to protect the oceans. States are required to cooperate in the management of high seas fish stocks, as well as stocks that migrate between the high seas and exclusive economic zones, setting the stage for regional agreements essential to managing ocean fisheries. States are also required to work together to protect marine mammals, which are given special protections under the Convention.

The standards for environmental protection set forth in the Convention work strongly to the advantage of the United States, which has already met and in most cases significantly exceeded these standards but necessarily depends on actions by other nations to protect the marine environment.

[*Page 6*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

U.S. ratification of UNCLOS necessary to control overfishing

U.S. ratification of UNCLOS will boost efforts to manage fishing populations in multiple ways. First, UNCLOS provides a clear legal framework for resolving disputes between countries over fishing rights, as for example the disputes between the U.S. and Canada. Secondly, becoming a party to UNCLOS gives the U.S. Coast Guard more legal tools to enforce existing regulations within the U.S. EEZ. Finally, by aceeding to UNCLOS the U.S. will be able to better lead on cooperative solutions to the global problem of overfishing.

Widespread acceptance of UNCLOS is necessary for it to be successful in resolving current overfishing disputes

"**As national governments debate the merits of joining UNCLOS III, international conflicts over fishing rights continue to develop throughout the world.** Of particular note are: 1) disputes in the Spratly Islands of southeast Asia; 2) negotiations between Japan and South Korea over the Islets of Takeshima; 3) negotiations between China and South Korea involving shared waters; and 4) conflicts over conservation practices between Canada, Spain, and the United States. These disputes illustrate some of the issues that need to be settled to solve the overfishing problem. **In each instance, agreements are being worked out in accordance with UNCLOS III. Unfortunately, although UNCLOS III provides the framework to begin resolving these disputes, a great deal of uncertainty surrounding international fishing regulation continues**.[n185] In many instances who has the power to dictate fishing rights and territory remains unclear.[n186] In some cases, fishing practices that lead to unhealthy depletion of fish stocks continue unchecked.[n187] In other instances, temporary solutions are implemented, but the future still is unknown. **Widespread acceptance of UNCLOS III would provide the necessary structure to resolve these tenuous situations.**

[*Page 401-402*]

Talhelm, Jennifer L. "*Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea*." **North Carolina Journal of International Law & Commercial Regulation**. Vol. 25. (Spring 2000): 381-418. [**More** (6 quotes)]

US interest in controlling overfishing is best served by becoming a party to UNCLOS

"These agreements indicate the power that UNCLOS III has had over fishing law. Yet until major fishing nations such as the United States ratify the convention, it cannot reach its full potential. The United States will suffer if fisheries continue to decline. Although the United States played a major

role in initiating the Convention in 1973, and despite backing from President Clinton and other officials, many predict the Senate to put up a tough fight before it approves the treaty if it ever does. Opposition in the United States is primarily focused on provisions involving deep seabed mining and navigation rights for naval and air forces. The United States historically has been particularly concerned about retaining its right of innocent passage for warships through international straits.

Until the United States becomes a party to the Convention, customary international law and other treaties will set U.S. rights and duties with respect to international fishing issues. The United States is already a party to several treaties by which it implements many of the convention's international fishing goals. A number of UNCLOS III's provisions have been incorporated into U.S. domestic law. The Magnuson Stevens Fisheries Conservation and Management Act of 1976 established the United States' fishing policies. "The original act gave the United States jurisdiction over fishing grounds within 200 miles of the American coastline." Reauthorized by Congress in 1997, the act now implements tough conservation provisions.

U.S. proponents of the Convention argue that the United States can only benefit from the UNCLOS III negotiations by ratifying the treaty. Specifically, the United States would be able to take advantage of the conservation and dispute settlement provisions, while also helping stabilize "the customary rules which states now argue do or do not exist." The United States' continued absence from the treaty may undermine U.S. power to influence the international law of the sea.

[*Page 415-417*]

Talhelm, Jennifer L. "*Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea*." **North Carolina Journal of International Law & Commercial Regulation**. Vol. 25. (Spring 2000): 381-418. [**More** (6 quotes)]

US and Canadian ratification of UNCLOS necessary for its provisions on overfishing to be fully effective

"Overfishing is a tremendous problem facing the world's oceans.[n320] The problem is perpetuated by individual national conservation efforts.[n321] Although aimed at curbing overfishing, these programs have little effect if they apply only to one nation. [n322] Fish are a resource that knows no boundaries. A limit on fishing by one nation does nothing to stop overfishing by another nation that exploits the same fishery. It also can lead to international conflict, as is evidenced by the "cod war" between Iceland and the United Kingdom. Only a joint effort by the world's largest fishing nations can bring the problem under control.

UNCLOS III is not perfect. Still, it is the strongest comprehensive environmental law agreement ever created. Its provisions dealing with fisheries conservation and management stress cooperation and coordination. The Convention also provides a framework necessary to implement conservation and dispute settlement. These provisions are essential for the world to begin to solve the overfishing problem. For example, by legitimating the EEZ and other zones of control, the Convention actually encourages nations to work together. Nations must agree on boundaries and on conservation plans.

Widespread support of UNCLOS III is necessary to control overfishing. Even widespread support, however, is not enough if large fishing nations still do not adhere to the agreement. The United States and Canada have not yet ratified the convention. Without their support, the international agreement cannot be effective.

[*Page 417-418*]

Talhelm, Jennifer L. "*Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea*." **North Carolina Journal of International Law & Commercial Regulation**. Vol. 25. (Spring 2000): 381-418. [**More** (6 quotes)]

The Bering Sea "Donut Hole" convention to resolve overfishing disputes was based on and supported by UNCLOS

"UNCLOS III provisions played a key role in the resolution of a major conflict in the Central Bering Sea in 1994. n285 The problem arose in the mid1980s, when the vessels of several nations began to fish a stock of pollack in an area of the Central Bering Sea just outside the U.S. and Russian 200mile EEZs. n286 The fish stock was largely associated with the U.S. zone and its fisheries.[n287] The international fishery grew quickly, with the annual harvest soon reaching 1.5 million metric tons or more.[n288] American fishermen increasingly called on the U.S. government to control international fishing in the Central Bering Sea, also known as the "Bering Sea Donut Hole."[n289] By 1991, negotiations began among the nations that used the fishery: Russia, Japan, South Korea, China, Taiwan, Poland, and the United States.[n290] These nations debated over whether the United States and Russia had a special right to the stocks.[n291] The result was the "Donut Hole Convention,"[n292] which has been described as a "precautionary approach to stock management."[n293] Ambassador Colson has argued that UNCLOS III did not hinder the Donut Hole agreement; in fact, "the Donut Hole Convention could not have been negotiated without the framework and foundation provided by the Law of the Sea Convention."[n294] Among the requirements of the Donut Hole agreement is that fishing vessels must use realtime satellite positionfixing transmitters while in the Bering Sea so nations can ensure that vessels are there only to navigate to and from the fishing ground.[n295] The agreement also provides for boarding and inspection of fishing vessels by any party, and it establishes procedures to "ensure that no fishing occurs in the Donut Hole except in accordance with sound conservation and management rules."[n296] While the Donut Hole Convention was negotiated with UNCLOS III in mind,[n297] according to Ambassador Colson, "the Law of the Sea Convention can help the Donut Hole Convention by providing an alternative enforcement mechanism to ensure than no vessel undertakes conduct in the Central Bering Sea contrary to the provisions of the Donut Hole Convention."[n298] The dispute settlement provisions of UNCLOS III would enable the parties to "ensure enforcement of multilateral fishery conservation arrangements on the high seas ... The Law of the Sea dispute settlement option can act both as a deterrent and as a means to bring about final resolution should problems arise in the Donut Hole in the future."

[*Page 412-414*]

Talhelm, Jennifer L. "*Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea*." **North Carolina Journal of International Law & Commercial Regulation**. Vol. 25. (Spring 2000): 381-418. [**More** (6 quotes)]

Disputes over fishing rights between Canada and US could easily have been resolve through UNCLOS framework

"In another instance, Canada sparred with the United States over fishing rights. In 1994, Canada developed a plan to levy a $1100 fee on United States fishing vessels that travel along the 650mile Inside Passage from Puget Sound, Oregon and Washington to Alaska.[n231] Senator Pell argued:

> The State Department concluded that this transit fee was inconsistent with international law, and particularly with the transit rights guaranteed to vessels under customary international law and the Law of the Sea Convention. Had the United States and Canada both ratified the Law of the Sea Convention ... The Canadians might have been more hesitant to take the steps they did. In any event, the full force of the convention and the international community could have been brought to bear for a prompt resolution of the dispute.[n232]

Thus, according to Senator Pell, UNCLOS III could help the United States resolve its international conflicts over fishing.

[*Page 407*]

Talhelm, Jennifer L. "*Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea*." **North Carolina Journal of International Law & Commercial Regulation**. Vol. 25. (Spring 2000): 381-418. [**More** (6 quotes)]

US Coast Guard would be better able to control illegal fishing and poaching if US were party to UNCLOS

"The Convention also maximizes legal certainty for United States sovereign rights over ocean resources in the largest EEZ in the world, as well as energy and mineral and other resources on our extended continental shelf. **The Convention provides the mechanism to assure international recognition of additional United States sovereign rights on an extended continental shelf. Moreover, due to overfished and depleted fish populations, effective management of migratory fish stocks and fisheries will continue to be a contentious issue for the foreseeable future.** The Convention is widely accepted as the legal framework under which all international fisheries are regulated and enforced. The Convention imposes responsibilities on the coastal states to manage their fishery resources responsibly and provides a process for resolving conflicts between competing users. The Coast Guard defends United States sovereign rights by protecting our precious ocean resources from poaching, unlawful incursion, and illegal exploitation. Joining the Convention places

these sovereign rights on a firmer legal foundation, bolstering the Coast Guard's continued ability to ensure our Nation's sovereign rights are respected.

In particular, **becoming a party to the Convention will give the Coast Guard greater leverage in our efforts to eliminate illegal, unreported, and unregulated fishing.** American fishermen are currently abiding by standards contemplated by the Convention and further detailed in the related UN Fish Stocks Agreement. They are adversely affected by foreign fishermen who illegally harvest highly migratory fish stocks. In another anomalous situation, the United States is a party to the UN Fish Stocks Agreement, which is directly related to the legal regime of the Law of the Sea Convention, even though we have not joined the underlying Convention. **As a party to the Convention, we would be in a stronger position to persuade other nations to abide by the UN Fish Stocks Agreement and other modern international standards of fisheries management and thus advance our Nation's interests in this field.**

[*Page 3*]

Papp, Robert. "***Statement of Admiral Robert Papp: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (4 quotes)]

UNCLOS regime adequate for protecting fisheries stocks in the Arctic

"Without venturing into the intricacies of how an RFMO for the Arctic Ocean might be established and operated, the point is that the United States, Russia, and the other Arctic states are familiar with the challenges of managing sustainable fisheries and the consequences of failing to act proactively. Furthermore, all eight Arctic states have ratified the Fish Stocks Agreement, a strong indication "that all eight states have already accepted the principles established by [UNCLOS] that includes the enforcement of regional fisheries agreements in the high seas."[92] In short, cooperation among the Arctic states, including Russia, seems more likely than conflict on fisheries issues. The real question may be whether those states allocate sufficient resources to the enforcement of whatever regime is put in place.

[*Page 247*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

U.S. needs to engage multilaterally to prevent overfishing of Arctic fishing stocks

Not all Arctic resources are buried in the continental shelf. In the United States, fisheries and the "seafood industry account for $30 billion domesti- cally, $12 billion in exports, and employ more than 100,000.[38] In the southern Arctic region (Bering Sea and Gulf of Alaska), they are leading employers and sustain the indigenous people.[39] World-class fisheries are found in the Barents and Bering seas, the Central North Atlantic off Greenland and Iceland, and the Newfoundland and Labrador seas off the coast of northeastern Canada.[40] Regulating and monitoring these stocks in the Arctic are critical economically and strategically. If not protected, the fisheries would be decimated by overfishing. The 110th Congress stated that ''the United States should initiate international discussions and take necessary steps with other Arctic nations to negotiate an agreement or agreements for managing migratory, trans-boundary, and straddling fish stocks in the Arctic Ocean and establishing a new international fisheries management organization or organizations for the region.''[41]

The United States remains in a holding pattern. The North Pacific Fishery Management Council voted to close the Arctic to commercial fishing until it can be conducted sustainably, a management mechanism is developed, and we can implement an ecosystem-based management policy for Arctic resources.[42] At some point, the United States cannot maintain this policy unilaterally and must enforce an international regime through patrolling and monitor- ing foreign fishing and fish-processing vessels in the region.

[*Page 9*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Ratification of UNCLOS would give U.S. more resources to manage fisheries within its EEZ

"In recognizing the sovereign rights and management authority of coastal States over living resources within their EEZs, the Convention brings most fisheries under the jurisdiction of coastal States. (Some 90 percent of living marine resources are harvested within 200 nautical miles of the coast.) The Convention imposes on coastal States a duty to conserve these resources and also imposes obligations upon all States to cooperate in the conservation of fisheries populations on the high seas and of populations that are found both on the high seas and within the EEZ (highly migratory stocks, such as tuna, as well as "straddling stocks"). In addition, it contains specific measures for the conservation of anadromous species, such as salmon, and for marine mammals, such as whales. These provisions of the Convention give the United States the right to regulate fisheries in the largest EEZ in the world, an area significantly greater than U.S. land territory, which contains some of the most resource-rich waters on the planet.

[*Page 3*]

Taft, William H. "***Statement of William H. Taft IV: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea***

Convention (October 21, 2003) ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (4 quotes)]

The 1995 "Turbot war" between Spain and Canada could have been resolved with US participation in UNCLOS

"The effects of overfishing may be the most devastating in Canada.[n221] As a result, Canada has made drastic decisions in an attempt to save the fish stocks. In the 1990s, the northern cod fishery off the Grand Banks near Canada collapsed.[n222] Canada made the unpopular decision to close the fishery in an attempt to maintain sustainable fish stocks within its EEZ.

The decision focused attention on nations fishing the same stocks outside Canada's EEZ. The result was the socalled "turbot [cod] war," an open conflict with fishermen from outside Canada who were perceived to be contributing to the problems on the Grand Banks. In 1995, a Canadian vessel fired warning shots and impounded the "Estai," a Spanish fishing vessel operating on the Grand Banks off the coast of Newfoundland. In a discussion about the United States' ratification of UNCLOS III, U.S. Senator Claiborne Pell argued before the U.S. Senate that similar incidents could be avoided in the future if UNLCOS III gains widespread support:

> Had Canada and Spain both been party to the Law of the Sea Convention, this dispute could have been settled without the firing of shots. Regrettably, such incidents are the result of the growing uncertainty that prevails with regard to high seas fisheries and will only be avoided if the Convention on the Law of the Sea becomes a widely recognized instrument on which ... to establish a lasting regime for those fisheries.

[*Page 405-406*]

Talhelm, Jennifer L. "*Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea*." **North Carolina Journal of International Law & Commercial Regulation**. Vol. 25. (Spring 2000): 381-418. [**More** (6 quotes)]

UNCLOS fosters multilateral approach to managing fish stocks

"UNCLOS serves as the international foundation for fisheries management, giving coastal states sovereign rights over natural resources in their EEZs, a duty to conserve and the right to utilize fish stocks, and a duty to cooperate with other countries in the management of certain fish stocks.[51] The 1995 United Nations Fish Stocks Agreement,[52] to which the United States is a party, provides a precautionary approach to fisheries and encourages regional cooperation in management of fisheries in the high seas.[53] Although UNCLOS does not provide a detailed regime through which state parties must manage fisheries, it provides a broad framework that encourages multilateral approaches to sustainable development of fish stocks.[54]

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Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

UNCLOS obligates parties to address marine pollution, many provisions of which were taking from previous 1996 convention on Fishing and Conversation

"Another sovereignty-related issue that the Convention addresses is conservation and pollution on the seas, a pressing concern given the widespread exploitation of the sea and its resources.[43] Part XII of the Convention, entitled Protection and Preservation of the Marine Environment, imposes upon states the "obligation to protect and preserve the marine environment."[44] The Convention also includes detailed provisions that explicitly require state parties to take measures to prevent, reduce and control pollution.[45] States are required to cooperate with global and regional efforts in combating pollution by setting standards, rules, and recommended practices, many of these through appropriate international organizations.[46] Furthermore, the Convention requires states to take the affirmative step of implementing systems for monitoring and reporting the risks and effects of pollution to their marine environments.[47]

Conservation and pollution provisions are included in the 1966 Convention on Fishing and Conservation of the Living Resources of the High Seas, to which the United States is also a party.[48] As mentioned previously, this convention permits high seas fishing while also requiring states take steps to conserve the seas' living resources.[49]

[*Page 366*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Deep seabed mining has potential to cause significant environmental damage and should be regulated

Deep seabed mining could have serious impacts on the ocean environment and the future livelihoods and wellbeing of coastal communities. An international, multi-sector approach to management and protection, similar to that under development by the International Seabed Authority under UNCLOS, is needed, if we are to ensure the health and sustainable use of our oceans.

Deep seabed mining could destroy valuable biodiversity that hasn't even been discovered yet

"The seabed and deep sea is the last frontier on Earth, the vast majority of it unexplored by humans. We have more detailed maps of Mars than we have of the seafloor. Some deep-sea communities, such as those found on and around hydrothermal vents, are barely understood. First discovered in 1977, these hydrothermal vents are like underwater hot springs, spouting out clouds of metal sulphides from within the Earth. As the hot clouds cool and solidify, they create towering chimneys, known as "black smokers". The organisms that live there are like nothing else on Earth, as they draw their energy not from the sun but from the chemicals gushing from the vents. These thriving communities live in an extreme environment – one that is dark, deep (up to 5,000m depth), hot (up to 400°C), and usually strongly acidic, yet hosts an extraordinary array of life.[33] Over 700 vent species have been discovered, and due to factors such as geographical isolation, many are unique to their particular regions or even locations. Species include giant tube worms, crabs, shrimps and fish.[34] On average, two new species were discovered every month for the 25 years up to 2002[35], and we've still barely scratched the surface.

The deep sea is also the largest reservoir of marine genetic resources, and is of major interest to pharmaceutical companies, a number of which already hold patents for products discovered in the deep.[36] Enzymes from hydrothermal vent species are estimated to have an annual commercial value of $150m US dollars.[37] Despite their intrinsic ecological and scientific value and their potential benefit to humankind, deep seabed mining could destroy these genetic resources before they are fully understood or even discovered[38] – resources that could, for example, hold cures for diseases such as cancer.

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Greenpeace International. **Deep Seabed Mining: An urgent wake-up call to protect our oceans** .
Greenpeace International: Amsterdam, The Netherlands, July 7, 2013 (20p). [**More** (7 quotes)]

Deep seabed environment is a critical ecosystem that needs to be protected

“Deep seabed mining could have serious impacts on the ocean environment and the future livelihoods and wellbeing of coastal communities. Only 3% of the oceans are protected and less than 1% of the high seas[7], making them some of the least protected places on Earth. The emerging threat of seabed mining is an urgent wake-up call: the world’s governments must act now to protect the high seas, including by creating a global network of marine reserves[8] that will be crucial sanctuaries at sea for marine life and the ecosystems which we all rely on for our survival. An international, multi-sector approach to management and protection is needed, if we are to ensure the health and sustainable use of our oceans.

The remote deep and open oceans host a major part of the world’s biodiversity, and are vital for our survival on Earth.[9] The deep sea plays an important role in regulating planetary processes, including regulation of temperature and greenhouse gases.[10] It supports ocean life by cycling nutrients and providing habitat for a staggering array of species.

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Greenpeace International. **Deep Seabed Mining: An urgent wake-up call to protect our oceans** .
Greenpeace International: Amsterdam, The Netherlands, July 7, 2013 (20p). [**More** (7 quotes)]

Deep seabed mining can devastate fish stocks by disrupting the seamounts they depend on

“Seabed mining could cause fish mortality, due to habitat loss and a decline in food sources. For example, phosphate extraction proposed in shallow water near Namibia is expected to impact fish populations through habitat and food source removal, with mining operations set to take place within migratory routes and spawning grounds.39

Similarly, within the deep sea, mineral deposits often occur in habitats that support important and diverse fish populations. For example, cobalt-rich crusts are often located on the flanks and summits of seamounts, underwater mountains that host a great abundance of species. These include slow-growing fish species such as orange roughy, grenadiers and redfish, the status of which – in the cases where data exist – is generally considered already overexploited or depleted by deep-sea fishing.40 In cases where seamounts have been severely destroyed by bottom trawling, there has been no sign of recovery of large bottom-dwelling fauna five years after trawling stopped, highlighting the vulnerability of these communities.41 Research suggests that it will take many decades or more for seamount communities to recover from such trawling.42 Greenpeace has been calling for a ban on deep-sea bottom trawling to stop the potentially irreversible impacts of this destructive fishing practice on sensitive deep-sea habitats and species. The impacts of mining in these areas would be even more devastating to the already threatened fragile ecosystems of the deep ocean.

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Greenpeace International. **Deep Seabed Mining: An urgent wake-up call to protect our oceans** .
Greenpeace International: Amsterdam, The Netherlands, July 7, 2013 (20p). [**More** (7 quotes)]

Seabed mining can have a significant impact on fragile ecosystems

"Seabed mining poses a major threat to our oceans. All types of seabed mining will kill whatever can't escape the mineral extraction operations. Organisms that grow on the seabed will be smothered as a result of sediment disturbance and the discharge of waste. The current lack of scientific knowledge on the deep-sea environment, and the lack of knowledge of the technology employed, limits our ability to predict the environmental impacts of mining operations and to determine whether habitats can ever recover from the disturbance.15

We know that deep-sea species from many habitats, such as seamounts and abyssal plains, are particularly vulnerable due to their slow growth rates, their low resilience to changes in their environment, and slow recovery rates after disturbance.16 Some hydrothermal vent communities may be more resilient to impacts because of the high natural levels of turnover of these ecosystems, although this is dependent on the underlying geology and biogeography of the individual systems.17

Mining licences for hydrothermal vents have already been granted to Nautilus Minerals by the Papua New Guinean government to mine for sea floor massive sulphides in national waters 1,500 metres under the sea, despite significant environmental concerns and community opposition. A study at the mining site found 20 new species, with more species likely to be found in the future.18 The impacts on the actual mining site will be very high, but the resilience of this system is unknown, as are the effectiveness of the proposed efforts to assist natural recovery. The wider impacts of the mining operation on surrounding ecosystems are also unknown.[19]

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Greenpeace International. **Deep Seabed Mining: An urgent wake-up call to protect our oceans** .
Greenpeace International: Amsterdam, The Netherlands, July 7, 2013 (20p). [**More** (7 quotes)]

Light and noise pollution from mingling operations could disrupt fragile ecosystems

"Deep-sea communities live in relative silence, and in the dark. Studies have shown that deep-sea fish communicate at low sound frequencies26, and are sensitive to acoustic changes to sense food falls – the fall of organic matter that provides an important source of nutrients to the deep sea27. Whales rely on sound for communication and navigation, and when encountering increased noise, change their vocalisation patterns and behaviour, and move away to new areas.28 Studies show that baleen whales experience chronic stress when exposed to increased shipping noise.29 Low-

frequency mining noise could travel far from the mining site, with one estimate suggesting that noise from the Nautilus operation near Papua New Guinea could travel up to 600km from the site.30 This could have negative impacts on deep diving whales in the area.

Mining will also introduce bright light into an environment that, but for bioluminescence, is constantly dark, impacting species that are adapted to these conditions, such as deep-sea vent shrimp, which have been shown to be blinded by the lights used by researchers.[31]

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Greenpeace International. **Deep Seabed Mining: An urgent wake-up call to protect our oceans** .
Greenpeace International: Amsterdam, The Netherlands, July 7, 2013 (20p). [**More** (7 quotes)]

Interest in seabed mining is growing but not enough attention is being paid to the environmental impacts

“A growing number of companies and governments[2] – including Canada, Japan, South Korea, China and the UK – are currently rushing to claim rights to explore and exploit minerals found in and on the seabed, such as copper, manganese, cobalt and rare earth metals. There are currently 17 exploration contracts[3] for the seabed that lies beyond national jurisdiction in the deep seas of the Pacific, Atlantic and Indian oceans, compared with only 8 contracts in 2010. Contract holders will be able to apply for licences to carry out commercial mining in the high seas as soon as regulations for exploitation are developed – anticipated as early as 2016.[4] There is also significant exploration interest within national waters, particularly in the Pacific Ocean, and one licence to mine the deep seabed has already been granted in Papua New Guinean waters. However, very little is known about deep-sea habitats, or the impact that mining operations will have on ecosystems and the wider functioning of our oceans. Once thought to be relatively lifeless, scientists now recognise that the deep sea is actually a species-rich environment[5], with many species still to be discovered. Because deep-sea species live in rarely disturbed environments and tend to be slow growing and late maturing, with some unique to their particular habitat types (such as hydrothermal vents) or even specific locations, they are highly vulnerable to disturbance or even extinction.[6]

[*Page 3*]

Greenpeace International. **Deep Seabed Mining: An urgent wake-up call to protect our oceans** .
Greenpeace International: Amsterdam, The Netherlands, July 7, 2013 (20p). [**More** (7 quotes)]

Arctic environment requires special environmental protection

The ecosystem of the Arctic is more susceptible to pollution than other parts of the world which is even more critical because the Arctic region plays a key role in maintaining the health of the global environment.

Warming in the Arctic is causing rapid environmental change and species loss

"Change is happening most rapidly, and can be seen most vividly, in the Arctic. The Arctic Ocean is the least understood of all the world's oceans, but we know it is warming at approximately twice the rate of the rest of the oceans. That is causing the rapid retreat of Arctic sea ice. In September 2007, the minimum ice extent at the end of summer was 23 percent lower than what it had been in 2005, the previous record low, and 50 per- cent lower than was typical in the 1950s through the 1970s.26 Scientists from the National Snow and Ice Data Center and the National Center for Atmospheric Research have found that Arctic sea ice is melting even faster than models have projected, giving rise to predictions that the Arctic might be seasonally ice free as soon as 2013, and possibly earlier.

Such rapid change will lead to the local loss—or, in some cases, complete extinction—of certain Arctic species. Ice-associated marine algae and amphipods provide the base of the unique food web that includes a rich variety of invertebrates, fish, and birds. Ice-dependent ocean mammals, such as bowhead whales, narwhals, polar bears, ringed seals, and walruses, will also be directly affected by loss of habitat. The changes in the extent of Arctic sea ice will also have profound consequences for the world's climate, increasing the retention of solar heat and reducing the vital temperature gradient between the warmer tropics and colder polar regions, thus altering ocean currents and weather patterns throughout the Northern Hemisphere.

[*Page 31-32*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Ordinary pollutants pose special problem in the Arctic

"The same chemical, organic, and radiological pollutants that contaminate the ecosystems of the rest of the planet pose particular problems for the Arctic. The freezing temperatures of the Arctic, both on land and at sea, prevent pollutants from breaking down into non-toxic constituent components.20 For instance, although the Arctic nations stopped using leaded gasoline more than a

decade ago, the measurable lead in fish and wildlife in the area has not declined.21 In addition to the cold, the currents which flow to the Arctic from all over the world bring as much as 60% of the pollutants ultimately sited in the Arctic from somewhere else.2 2 Thus, the failure to include non-Arctic nations in future Arctic clean-up efforts would leave the majority of incoming pollutants unaddressed.

[*Page 310*]

Larkin, John E. D. "*UNCLOS and the Balance of Environmental and Economic Resources in the Arctic*." **Georgetown International Environmental Law Review**. Vol. 22. (2010): 307-336. [**More** (5 quotes)]

Fragile Arctic environment plays a major role in global environmental system

"While the Arctic suffers special harms from ordinary pollutants, the ordinary conditions of the Arctic play a special role in maintaining the global environment.2' First,the cool water of the marine Arctic plays an important role in global oceanic heat exchange, helping to keep the temperature and salinity of the tropical seas constant;24 second, the Arctic ice reflects solar energy in the form of light, further helping to cool the planet;25 third, although the Arctic is not a significant carbon sink,26 perennial Arctic ice has nevertheless trapped significant amounts of methane and carbon dioxide over the past several hundred years.27

Changes in any of these three processes have potentially major global impacts above and beyond the temperature increases generated by the underlying green- house effect. Decreased Arctic ice will result in a slower hydrological cycle, trapping heat in the tropics and the Arctic, while simultaneously mitigating the temperature effects of climate change on the North Atlantic region.28 Moreover, slower currents are less effective at transporting the evaporated freshwater that would otherwise migrate north from the tropics, creating on the one hand more severe precipitation events in the low latitudes, while on the other hand prevent- ing water vapor from traveling across continental land masses (thus resulting in droughts).2 9

Another result of melting Arctic ice is an overall rise in the global mean sea level.3° Observed increases in sea level due to Arctic melt indicate that decreases in Arctic sea ice and the Greenland ice sheet alone have already contributed a .98 ± .29 millimeter rise to global sea levels.31 Were both the Arctic and Antarctic ice to melt completely-it is difficult to imagine one without the other-the total increase in sea levels would be between seventy-five and ninety meters.32

[*Page 310-311*]

Larkin, John E. D. "*UNCLOS and the Balance of Environmental and Economic Resources in the Arctic*." **Georgetown International Environmental Law Review**. Vol. 22. (2010): 307-336. [**More** (5 quotes)]

Even routine off-shore oil extraction can be devastating in Arctic

"Off-shore mining poses serious environmental hazards that are not always visible to the naked eye. For instance, drilling can cause ocean currents to change, altering the marine environment, and affecting temperatures worldwide. 10 7 It can also destroy marine habitats and their biological communities in the vicinity of hydrothermal vents.'0 8 More obviously, oil exploration, especially in the harsh conditions of the Arctic, risks oil spills into the Arctic waters. BP Exploration (Alaska), for instance, is on average responsible for an oil spill every day in its Prudhoe Bay operation.109 These spills have the effect of depleting the popula- tions of Arctic wildlife, including game animals hunted for food by indigenous Arctic peoples."110

[*Page 320*]

Larkin, John E. D. "*UNCLOS and the Balance of Environmental and Economic Resources in the Arctic*." **Georgetown International Environmental Law Review**. Vol. 22. (2010): 307-336. [**More** (5 quotes)]

Environmental groups support UNCLOS because of treaty protections for the Arctic environment

"In spite of these efforts to raise awareness of potential adverse environmental impacts, these concerns do not seem to be slowing the push for Arctic drilling and exploration.[67] In fact, "several prominent [U.S.] environmental organizations, including the Natural Resources Defense Council and the Ocean Conservancy, formed an unlikely alliance with big oil and gas to support UNCLOS."[68] This is because UNCLOS has provisions to help protect the Arctic environment.[69] Thus, even though "pursuing oil exploration in the Arctic would threaten the region's fragile ecology,"[70] environmental groups also see internationally organized territory as a way establishing a cohesive view that will prevent pollution in the Arctic.

[*Page 156*]

Coston, Jacqulyn. "*What Lies Beneath: The CLCS and the Race to Lay Claim over the Arctic Seabed*." **Environmental and Energy Law and Policy Journal**. Vol. 3, No. 1 (2008): 149-157. [**More** (3 quotes)]

Arctic ice is melting faster than anyone predicted

"The ice was never supposed to melt this quickly. Although climate scientists have known for some time that global warming was shrinking the percentage of the Arctic Ocean that was frozen over, few predicted so fast a thaw. In 2007, the Inter- governmental Panel on Climate Change estimated that Arctic summers would become ice free beginning in 2070. Yet more recent satellite

observations have moved that date to somewhere around 2035, and even more sophisticated simulations in 2012 moved the date up to 2020. Sure enough, by the end of last summer, the portion of the Arctic Ocean covered by ice had been reduced to its smallest size since record keeping began in 1979, shrinking by 350,000 square miles (an area equal to the size of Venezuela) since the previous summer. All told, in just the past three decades, Arctic sea ice has lost half its area and three quarters of its volume.

[*Page 76*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

U.S. participation in UNCLOS key to strengthening environmental protections for Arctic region

"The environment and the management of natural resources are the most pressing security issue in the North. States are committed to addressing issues of boundaries and Arctic Ocean access through existing institutions, principally UNCLOS. Large-scale damage to the Arctic environment from transportation accidents, energy development, fishing, tourism, and the long-range transport of pollutants from the South pose greater immediate threats than classic security issues. Emergency response systems and contingency plans for the North are needed to respond to possible ship disasters, industrial pollution, oil spills, etc. Such a response system is currently non-existent or not up to the task. Given the increased shipping activity in the Arctic and the lack of ports and rescue capability, the need is growing. This should be a task for the Arctic Council in cooperation with existing specialized bodies such the International Maritime Organization.

The need for large-scale ecosystem-based management regimes to pro- tect the integrity of the Arctic Ocean is receiving increasing attention, including proposals for an Arctic Treaty or Park to manage and protect the Arctic Ocean as a commons. These proposals underlie the need for a strong Arctic Council and U.S. participation in UNCLOS in order to provide institutional protection for the Arctic Ocean.

[*Page 24*]

Yalowitz, Kenneth S., James F. Collins, and Ross A. Virginia. **The Arctic Climate Change and Security Policy Conference: Final Report and Findings** . Institute of Arctic Studies, Dartmouth College: Hanover, New Hampshire, December 1–3, 2008 (36p). [**More** (3 quotes)]

Increased arctic shipping traffic will create its own environmental problems

Increases in resource exploration result in increased navigation.[53] In addition to transportation tied

directly to oil exploration, the Arctic will also become a favored route for merchants.[54]

“There are numerous reasons to take advantage of Arctic sea routes. Not only are they much shorter than alternate shipping routes, but they also allow companies to avoid the costs associated with utilizing canals and the threats of pirates in certain parts of the world.[55] Though the trip may be economically efficient, it is still not entirely void of danger. Scientists predict that icebergs and other hazards will continue to persist well into the future, thus increasing the danger to voyages through the Arctic region.[56]

Regardless of oil spills, the animals living in the area will face changed circumstances. Ocean-bearing ships leave a significant amount of pollution behind simply by operating in the ocean.[57] In 1999, 12.5 percent of all oceanic pollution resulted from the transportation of petroleum.[58] Noise pollution is also a serious concern among environmentalists in the region.[59] If species cannot effectively communicate, scientists argue, their interactions will be limited, resulting in a less diverse and less resilient marine ecosystem.[60] Policymakers should consider this harm in relation to the special state of the Arctic ecosystem, which tends to be more sensitive to these types of external, human-caused factors.

[*Page 662-663*]

Farrens, Thomas C. "***Shrinking Ice, Growing Problems: Why We Must Act Now to Solve Emerging Problems Posed by an Ice-Free Arctic*** ." **Transnational Law & Contemporary Problems**. Vol. 19. (Spring 2010): 655-679. [**More** (5 quotes)]

Arctic environment uniquely susceptible to environmental damage for numerous reasons

“The ecosystem of the Arctic is more susceptible to pollution than other parts of the world.[28] There are several factors that contribute to the Arctic’s vulnerability:

1. Low temperatures retard the decomposition of natural and manmade substances and the breakdown of pollutants;
2. Regeneration is a protracted process because of the short growing season;
3. Large concentrations of animals heighten vulnerability to catastrophes;
4. Marine areas are particularly important in the Arctic in comparison with other regions of the globe;
5. Climatic conditions are likely to produce a more pronounced carbon dioxide-induced warming trend in the Arctic than in temperate regions and are already leading to high concentrations of air pollutants that threaten vegetation as well as human and animal life; and
6. Severe weather and ice dynamics make environmental protection and cleanup extremely difficult.29

The intricate interactions and complex food-webs within the Arctic ecosystem make these concerns

even more pronounced.[30] Simply put, the Arctic ecosystem is —extremely complex.[31] The increased navigation and resource exploration that is likely to occur raises several important concerns. Though there are problems common to both resource exploration and navigation, this Note will discuss the challenges separately.

[*Page 659-660*]

Farrens, Thomas C. "***Shrinking Ice, Growing Problems: Why We Must Act Now to Solve Emerging Problems Posed by an Ice-Free Arctic*** ." **Transnational Law & Contemporary Problems**. Vol. 19. (Spring 2010): 655-679. [**More** (5 quotes)]

UNCLOS ill suited for dealing with unique environment of the Arctic

“There is also a significant problem with the generality of environmental protections in the UNCLOS. As mentioned previously, the treaty purports to regulate activity in all of the world’s oceans.136 It does not, therefore, deal explicitly with the very unique problems facing the Arctic environment.137 Unless the international community recognizes the region’s special needs, its natural environment will continue to worsen and become even more difficult to restore.

[*Page 671-672*]

Farrens, Thomas C. "***Shrinking Ice, Growing Problems: Why We Must Act Now to Solve Emerging Problems Posed by an Ice-Free Arctic*** ." **Transnational Law & Contemporary Problems**. Vol. 19. (Spring 2010): 655-679. [**More** (5 quotes)]

U.S. ratification of UNCLOS would boost U.S. global leadership

U.S. ratification of UNCLOS would boost its leadership standing in a couple of ways. First, by acceding to the treaty, the U.S. would immediately be able to participate in the discussion around the future of the treaty and participate in maritime forums that it had previously been locked out of. Secondly, by ratifying the treaty, the U.S. would improve its soft power by showing more of a willingness to cooperate multilaterally.

Ratification of the convention is key to U.S. foreign policy objectives and leadership

"As we have testified elsewhere, the most compelling reasons that support U.S. adherence to the Convention are rooted in restoring U.S. oceans leadership, protecting national interests and enhancing U.S. foreign policy. For example, if the convention is ratified, the United States will be in a stronger position to respond to illegal oceans claims such as the harassment of the USNS Bowditch survey vessel by the People's Republic of China (PRC). The United States will also be able to advance more rapidly with offshore oil and gas development beyond 200 nautical miles (approximately 15 percent of our continental shelf), require U.S. approval for the transfer of seabed revenues and reclaim the prime deep seabed mining sites it has abandoned. Further, adhering to the convention will finally give the United States an opportunity to officially declare its views as to the correct operation of convention provisions. This will end over a decade of self-imposed silence despite efforts by extremist opponents to roll back the gains achieved in the convention.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

U.S. ratification of UNCLOS necessary for resolving conflicts and showing leadership in Asia-Pacific region

"Critics claim that the United States does not need to ratify the treaty because it already carries the force of customary international law. However, this position is viewed with skepticism by U.S. allies and open defiance by potential adversaries. Beijing, for example, has repeatedly challenged the legal right of the United States and other countries to maintain an offshore naval presence in the region's inner seas, such as the Yellow Sea and South China Sea, and China's own 200-mile exclusive economic zone. And Chinese military power, from its advanced ballistic missile program to its quickly expanding blue-water navy, raises the possibility that the new global center of power could be controlled by China.

But the Law of the Sea protects the freedom of navigation of the United States and other countries with the imprimatur of international law. The Convention was completed in 1982, and it establishes the right of naval forces to innocent passage in foreign territorial seas and the right to conduct all offshore military operations-including air and submarine operations beyond 12 nautical miles from the shore-all without seeking permission or providing advance notice or reports to any country. The treaty can thus help prevent China from standing between the United States and its treaty allies Japan, South Korea, and Australia, as well as its new strategic partners, such as India and Vietnam.

Japan, for example, is the cornerstone of U.S. interests in stability and security in the region, and is home to the forward-deployed U.S. Seventh Fleet. As the importance of the Pacific theater grows, American ships and aircraft require freedom of the seas to conduct ballistic missile-defense operations against North Korea, reassure allies that the United States is engaged in the region, or respond to another major humanitarian crisis like the 2004 tsunami.

Kraska, James. "***Lost at Sea*** ." **Foreign Policy**. (May 16, 2012) [**More**]

Ratification of convention key to U.S. soft power leadership

"Additionally, ratification of the Convention will soften the United States' image and signal much needed goodwill to the international community.[110] It has been noted that "[a]nti-Americanism has increased in recent years, and the U.S.' soft power—its ability to attract others by the legitimacy of U.S. policies and the values that underlie them—is in decline as a result."[111] Commitment to the Convention, which engages much of the international community, would be emphasized by U.S. ratification.[112] It also allows other states to place their trust in the U.S. and thus its actions on the seas. This is essential for the United States to maintain its legitimacy and ultimate leverage in the international arena.[113]

[*Page 377*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. Ratification of UNCLOS would show U.S. willingness to work multilaterally and strengthen our partnerships

"Perhaps most important of all, ratification would prove to be a diplomatic triumph. American power is defined not simply by economic and military might, but by ideals, leadership, strategic vision and international credibility.

Of course, there are those who would prefer that we have nothing to do with the United Nations, who

believe that international treaties hurt our national interests and restrain our foreign policy objectives.

All three of us have struggled while working with and through international organizations — they are unwieldy and not always responsive to American interests. But as we see in Libya today, the United Nations and other international alliances are indispensable in providing legitimacy and reinvigorating American partnerships in times of crisis. And they will ensure needed balance as rising powers inevitably challenge America's economic and military strength.

Last July, Secretary of State Hillary Rodham Clinton gained much respect by reassuring the Southeast Asian nations that the United States strongly supported multilateral efforts to address those territorial disputes in the South China Sea, and denounced China's heavy-handed, unilateral tactics. But strong American positions like that are ultimately undermined by our failure to ratify the convention; it shows we are not really committed to a clear legal regime for the seas.

For all of these reasons, ratification is more important today than ever before. At a time when America's military and economic strengths are tested, we must lead on the seas as well as on land.

[*Page A25*]

Thad W. Allen, Richard L. Armitage, and John J. Hamre. "***Odd Man out at Sea*** ." **New York Times**. (April 25, 2011) [**More**]

Accession to the convention will uniquely give U.S. access to key institutions that are deciding future of maritime domain

"As a natural corollary, the accession to the LOS Convention will provide the US access to the Convention's procedural mechanisms and institutions. This access is necessary for the US to secure and advance its national interests in the ocean space and play a meaningful role in the implementation of the law of the sea in the contemporary world. Firstly, accession to the LOS Convention will provide US a seat in the Commission on the Limits of the Continental Shelf (CLCS Commission), which in turn will help US to secure and advance its claim for the extended continental shelf beyond 200 nautical miles. Secondly, the US will have access to the International Sea-bed Authority (ISBA Authority) decision-making process as the member of its Council. This will help the US to protect its interests in the deep sea-bed mining activities. Thirdly, the US will get a seat in the judicial body - International Tribunal for the law of the Sea (ITLOS). This will facilitate US active participation in the judicial dispute settlement concerning ocean matters related to the interpretation or/and application of the LOS Convention. Broadly, the access to the UNCLOS-related institutions will provide an opportunity to the US to play an active role in the implementation and development of the law of the sea in the contemporary world.

[*Page 15-16*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

U.S. ratification of UNCLOS would restore leadership on maritime affairs

“Assistant Secretary of State John F. Turner cited the urgency for accession at the outset of his testimony: “there are important reasons for the United States to become a party to this Convention and to do so now.”[67] Not surprisingly, the State Department highlighted accession as a means of maintaining U.S. leadership in global matters; contributing to the ongoing evolution of international law-making; and supporting peaceful methods of international dispute resolution. In an effort to perhaps illustrate the dwindling opportunity to portray the United States as being at the forefront, Turner explained, “as of today, 143 parties, including most of our major allies, have joined the Convention. It is time for us to take the opportunity to demonstrate U.S. leadership on ocean issues by becoming a party to the Law of the Sea Convention.”[68]

[*Page 202*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

U.S. ratification of UNCLOS will restore its leadership in maritime affairs and arctic policy more generally

“The United States has historically been the world leader in protecting the common interest in navigational freedom and the rule of the law in the oceans. However, America has temporarily lost that leadership by its continued non-adherence to UNCLOS. U.S. accession to the Convention will restore that role and advance U.S. leadership in Arctic Ocean issues.

Joining UNCLOS will put the United States on an even footing with the other Arctic nations, as America assumes the chairmanship of the Arctic Council from Canada in 2015. All of the Council’s member States (except the United States) and its 12 observer States are parties to the Convention. Moreover, in 2008, the five Arctic coastal States (Canada, Denmark, Russia, Norway and the United States) declared at Ilulissat that the law of the sea, as reflected in UNCLOS, is the legal framework that governs the Arctic Ocean, and there is no need for a new legal regime to govern the Arctic Ocean.[53] Therefore, U.S. participation in the Arctic Council recognizes UNCLOS as the governing framework in the Arctic

[*Page 771-772*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Ratifying UNCLOS would restore US maritime leadership role and give it a role in shaping the future of the convent

“UNCLOS would also greatly enhance the global leadership position ofthe United States in maritime affairs, an area in which the Coast Guard has long played a vital role. Many states have excessive claims with respect to baselines, historic bays, territorial seas, straits, and navigational restrictions which, in the opinion of many, are not permissible under the Convention. As a non-party, our ability to seek to roll back these excessive claims is severely inhibited. Failure to accede to UNCLOS will materially interfere with our ability to engage with other states to improve maritime governance, a maj or part of the Coast Guard's current strategy for maritime safety, security, and stewardship. Our non-party status is an obstacle that we must overcome in developing virtually any new multilateral maritime instrument. For example, several key states whom we want to join the Proliferation Security Initiative (PSI) often question our non-party status. Likewise, while the United States has long played a key role in the International Maritime Organization (IMO) to promote maritime safety and efficiency and to protect the marine environment, our leadership position is being undermined by our current outsider status.

As a non-party, the United States has no "seat at the table" in virtually all matters concerning the Convention. The United States does not have a judge on the Law of the Sea Tribunal nor a decision-maker or staff experts on the Continental Shelf Committee. And despite the fact that the 1994 "Part XI Implementation Agreement" guarantees the United States a permanent seat on the International Seabed Authority (ISA) and a veto on all key decisions of that body, as a non-party, we cannot play that critical role. In article after article, UNCLOS reflects diplomatic victory after victory for the United States. However, as a non-party, we cannot take advantage of these benefits. One of the key reasons that the congressionally mandated U.S. Commission on Ocean Policy has consistently and unanimously called for the United States to accede to the Convention was to regain its ocean policy leadership position.

[*Page 584*]

Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

Ratification of UNCLOS is a critical test of U.S. global leadership

“The “Preeminent Global Power.” The tenth, and final, factor bearing upon the Clinton administration’s decision to sign the Agreement and recommend accession to the Convention was its desire for the nation to retain leadership in maritime affairs generally. Rear Admiral Sehachte went so far as to say that “as the preeminent global power in the 1990s and beyond, the United States is uniquely positioned to assume a more visible leadership role in achieving a widely accepted international order to regulate and safeguard the many and diverse activities and interests regarding the world’s oceans."[60]

The Clinton administration realized that US. refusal to accede to a Convention widely regarded as one of the most important international agreements ever negotiated would raise fundamen tal questions regarding not only the future legal regime applicable to the world's oceans but also the overall role of the United States. By actively promoting “leadership for peace” in the politically and economically important matter of rationalizing maritime laws and regulations, the United States hoped to be able to ensure itself a major role in shaping a posthegemonic global order.[61] Conversely, the White House recognized that if the United States remained outside the Convention, it would not be in a position to influence the treaty’s further development and interpretation, transition, and refinement.[62] More broadly, continued mute opposition seemed likely not only to jeopardize important national interests in the law of the sea but also to be seen as an implicit rejection ofthe very goal ofworld order through international law. In even less charitable eyes, it might be construed as a belief that unilateralism is a viable policy when backed by military force.[63] It appeared that full participation in the Convention offered an opportunity to exercise world leadership in a context far broader than had been possible during the Cold War.

[*Page 36-37*]

Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

Ratification of UNCLOS would boost U.S. credibility with our allies

“United States allies, almost all of whom are parties to the Convention, would welcome U.S. adherence as a sign of a more effective United States foreign policy. For some years I have chaired the United Nations Advisory Panel of the Amerasinghe Memorial Fellowship on the Law of the Sea in which the participants on the Committee are Permanent Representatives to the United Nations from many countries. Every year our friends and allies ask when we will ratify the Convention, and they express to me their puzzlement as to why we have not acted sooner. In my work around the world in the oceans area I hear this over and over – our friends and allies with powerful common interests in the oceans are astounded and disheartened by the unilateral disengagement from oceans affairs that our non-adherence represents;

[*Page 21*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

U.S. would have more flexibility to negotiate other unacceptable treaty provisions after it has resolved its hypocrisy on UNCLOS

“Efforts to renegotiate other unacceptable treaties would receive a boost when an important argument now used by other nations against such renegotiation with us is removed. This argument now used against us, for example, in the currently unacceptable International Criminal Court setting, is: “[W]hy renegotiate with the United States when the LOS renegotiation shows the U.S. won’t accept the Convention even if you renegotiate with them and meet all their concerns?” Let me emphasize this point. The United States will be severely damaged in its international engagement if other nations believe that we will not adhere to agreements, whether they are in our interest or not. And this is particularly true after other nations accommodate the United States in all that it asks in a renegotiation and then see United States inaction toward the renegotiated agreement. If we are to maintain our negotiating leverage we must demonstrate that we distinguish between good and bad international agreements and that we accept the good while rejecting the bad; finally

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Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Becoming party to the convention would strengthen US leadership role within IMO

“The shipping standards negotiated at the IMO are the fabric of the port state control regime that is underpinned by the Convention. It is the Convention that sets forth the responsibilities of flag states, port states, and coastal states for shipping, and the Convention is the agreement that holds nations accountable for adhering to those responsibilities. Because of the currently anomalous situation where the United States is a party to the substantive IMO standards, but not the underlying legal framework of the Convention, our ability to ensure comprehensive global accountability demanded by the port state control framework is weakened. Acceding to the Convention would strengthen Coast Guard negotiation efforts at the IMO, where we lead in the continued development of these important international standards. Although other countries look to us for leadership, there is growing skepticism for certain U.S. negotiating positions because the United States is not a party to the Convention. Becoming party to the Convention would increase the Coast Guard’s credibility as a leader at IMO and result in greater effectiveness in ensuring that U.S. interests are reflected in the standards that are ultimately adopted. The Coast Guard needs the Convention to better promote United States safety, security, and environmental interests at the IMO.

[*Page 3*]

Papp, Robert. "***Statement of Admiral Robert Papp: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (4 quotes)]

Upon ratification, U.S. will accrue numerous opportunities to regain its maritime leadership role within UNCLOS

"Until our prolonged non-adherence to the 1982 Convention, the United States has been the world leader in protecting the common interest in navigational freedom and the rule of the law in the oceans. We have at least temporarily forfeited that leadership by our continued non-adherence. United States ratification of the Convention will restore that leadership. Specifically, ratification will have the following effects, among others:

- The United States will be able to take its seat on the Council of the International Seabed Authority. The authority is currently considering a mining code with respect to polymetallic sulfides and cobalt crusts of the deep seabed. Council membership will also give us important veto rights over distribution of any future revenues from deep seabed exploitation to national liberation groups;

- The United States should, at the next election of judges for the International Tribunal for the Law of the Sea, see the election of a United States national to this important tribunal. Since this Tribunal frequently considers issues relating to navigational freedom and the character of the 200 mile economic zone it is a crucial forum for the development of oceans law;

- The United States should, at the next election of members of the Commission on the Limits of the Continental Shelf, see the election of a United States expert to the Commission. This Commission is currently considering the Russian claim in the Arctic that is of real importance for the United States (and Alaska) and for appropriate interpretation of the Convention respecting continental margin limits. Over the next few years the Commission will begin to consider many other shelf limit submissions, beginning next with Australian and Brazilian claims. This is also the Commission that ultimately must pass on a United States submission as to the outer limits of our continental shelf beyond 200 nautical miles. The early work of the Commission, as it begins to develop its rules and guidelines, could significantly affect the limits of the United States continental shelf. Not to actively participate in the work of this Commission could result in a loss of thousands of square kilometers of resource-rich United States continental shelf;

- The United States will be able to participate fully in the annual meeting of States Parties that has become an important forum for ongoing development of oceans law. Of particular concern, United States presence as a mere observer in this forum has in recent years led to efforts by some to roll back critical navigational freedoms hard won in the LOS negotiations where we were a leader in the negotiations and our presence was powerfully felt; and

- The United States will be far more effective in leading the continuing struggle against illegal oceans claims through our participation in specialized agencies such as the International Maritime Organization; in bilateral negotiations such as those with the archipelagic states; in acceptance by other states of our protest notes and our ability to coordinate such notes with others; and generally in organizing multilateral opposition to threats to our oceans interests

and the rule of law in the oceans.

[*Page 7-8*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention: Urgent Unfisinshed Business*** ." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (5 quotes)]

U.S. ratification of UNCLOS critical to naval soft power needed for cooperation with other navies

Although there may have been a time when the U.S. could simply declare its will and rely on the persuasive power of its global presence and naval gross tonnage to ensure cooperation, the guarantors of success in the modern maritime domain are more likely successfully coordinated coalitions and bilateral relationships. UNCLOS membership would provide a strong foundation for both.

U.S. failure to ratify UNCLOS complicates U.S. efforts to get other nations to cooperate on anti-piracy initiatives

"The continued failure to ratify LOSC will not prohibit the United States from taking action against piracy. The United States conducts counter-piracy operations today despite its reluctance to ratify LOSC. The U.S. Navy and Coast Guard often execute such operations using the legal authorities granted under the 1988 Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention) – to which the United States is a party.[15] Regardless, U.S. Navy and Coast Guard officials continually argue that LOSC adds legitimacy to counter-piracy efforts. In an era of hybrid threats in the maritime domain, this added legitimacy will make it easier for the United States to cooperate with international partners in this area.

[*Page 3*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

Global naval leadership in current era requires emphasis on cooperative security

"As an UNCLOS party, the U.S. would assume a natural leadership role, facilitating coalitions and eliciting support from nations inclined to support the legal prerequisites for military maritime mobility. The U.S. relies on this support in a variety of contexts, ranging from the International Maritime Organization and regular bilateral interactions with partners and allies, such as the Proliferation Security Initiative,[100] where there is direct evidence that non-party status has inhibited U.S. counter-proliferation efforts.[101] UNCLOS membership would also enhance the U.S.' influence with other states as they continue to evaluate their own practices and legal positions.[102]

Although there may have been a time when the U.S. could simply declare its will and rely on the persuasive power of its global presence and naval gross tonnage to ensure cooperation, the guarantors of success in the modern maritime domain are more likely successfully coordinated coalitions and bilateral relationships.[103] UNCLOS membership would provide a strong foundation for both.

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Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

Coast Guard relies on international cooperation with allies under UNCLOS framework and would be Bette served if US were also a party to the convention

"For many of the laws the Coast Guard enforces, especially those involving drug trafficking, illegal immigration, and counterterrorism, we leverage international partnerships to monitor, interdict, and prosecute those who threaten our Nation's security. Our international partners are overwhelmingly parties to the Law of the Sea Convention. Our status as a non-party presents an unnecessary obstacle to gaining their cooperation. Accession to the Convention would most effectively cement a common cooperative framework, language, and operating procedures used in securing expeditious boarding, search, enforcement, and disposition decisions, thereby enabling on-scene personnel, cutters, and maritime patrol aircraft to pursue further mission tasking.

We also must cooperate and engage with our international partners to advance global and regional security priorities. Strengthening these relationships is crucial for sustaining our international leadership. Acceding to the Convention is an important step to achieving these goals. Frequently, the Coast Guard works internationally to train other nations' navies. These navies more closely resemble the Coast Guard in authority and activity, uniquely positioning us to expand important maritime partnerships. The Convention serves as our guiding framework in helping these navies develop domestic law, protocols, and strategies. The Coast Guard needs the Convention to better promote United States security interests through capacity building. Building this capacity is an important force multiplier for the Coast Guard that further secures stability of the oceans, promotes efficient maritime commerce, and aids us in achieving strategic objectives regarding safety, security, and environmental protection.

[*Page 2*]

Papp, Robert. "***Statement of Admiral Robert Papp: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (4 quotes)]

Protection of global commons will require cooperative efforts to develop and strengthen international governance regimes

"Twenty-first century global challenges demand global solutions that harness innovation to develop countermeasures and collaboration-between private and public sectors, and among global state and non-state actors-to ensure these threats are adequately addressed. International efforts to modernize and strengthen governance regimes are an important additional step, as international legal frameworks and norms put pressure on states to act in ways that support the global good. By working toward these goals in concert with other nations, U.S. leaders can help ensure the continued openness of the global commons, the literal and virtual foundations upon which international security is pursued, achieved, and protected.

[*Page 41*]

Murphy, Tara. "*Security Challenges in the 21st Century Global Commons*." **Yale Journal of International Affairs**. Vol. 5. (Spring/Summer 2010): 28-41. [**More** (5 quotes)]

Current U.S. national maritime strategy recognizes need to focus on a cooperative approach to security

"In 2008, the National Defense Strategy signed by Secretary of Defense Robert M. Gates reinforced the main tenets of the Coopera- tive Strategy for 21st Century Seapower, issued in 2007 by the chief of naval operations and the commandants of the Marine Corps and the Coast Guard. 18 Both strategies emphasize that the prevention of war is the best way to achieve U.S. national security, and both highlight the fact that a strengthened system of alliances and partnerships is an essential component of building stability, collective security, and trust. The Cooperative Strategy for 21st Century Seapower is aptly named and uniquely relevant when considering the question of whether to join the convention. Its main points are:

- Preventing wars is as important as winning wars.
- U.S. maritime power comprises six core capabilities that emphasize preventing war and building partnerships: deterrence, sea control, power projection, maritime security, humanitarian assistance, and disaster response.
- Expanded cooperative relationships with other nations will contrib- ute to the security and stability of the maritime domain to the benefit of all.
- Trust and confidence cannot be surged; they must be built over time while mutual understanding and respect are promoted.
- Global maritime partnerships provide a cooperative approach to maritime security, promoting the rule of law by countering piracy, terrorism, weapons proliferation, drug trafficking, and other illicit activities.

This strategy predicts that "increased competition for resources, coupled with scarcity, may encourage nations to exert wider claims of sovereignty over greater expanses of ocean, waterways,

and natural resources—potentially resulting in conflict."

[*Page 38*]

Borgerson, Scott G. The National Interest and the Law of the Sea . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. naval maritime strategy founded on cooperative engagement with other navies and ratification of UNCLOS is critical to support that

"Our Maritime Security Strategy is founded upon the basic truth that nations with common interests in international commerce, safety, and security can work together to address common challenges. While the Armed Forces of the United States will always enjoy the capability to unilaterally conduct military operations wherever and whenever necessary, we also know that global security depends upon a partnership of maritime nations sharing common goals and values.

Global maritime security is undergoing significant transformation today, and as the world's foremost maritime power, the United States is both expected and required to lead that transformation. We must lead and manage a maritime security domain in which friendly navies, coast guards, and industry develop common interoperability protocols and information sharing frameworks. In turn, these arrangements must enable distributed maritime operations appropriately scaled to address the full range of 21st Century maritime security challenges, including proliferation of WMD, terrorism, piracy, and transnational criminal activities such as narcotics and human trafficking.

Joining the Law of the Sea Convention is critical to the success of our Maritime Security Strategy. By joining the Convention the United States will be able to effectively develop and lead an association of maritime partners dedicated to ensuring public order in the world's oceans.

[*Page 7-8*]

Walsh, Patrick M. "***Statement of Admiral Patrick M. Walsh: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (4 quotes)]

Current U.S. plans for 1,000 ship navy depend on a unifying legal framework like UNCLOS

"Admiral Harry Ulrich, Commander, US Naval Forces Europe, espouses a relatively simple formula for the global war on terrorism: have more partners than your ad- versaries have. The reasons are elementary. The struggle against disorder knows no flag. Waging that struggle has become a

team sport. Vice Admiral Morgan has been the leading voice for the 1,000-ship multinational navy/Global Maritime Partner- ship, a concept designed to attract the kind of partners Admiral Ulrich seeks. Does the Global Maritime Partnership (and the Global Fleet Station initiative[70]) need a unifying global maritime strategy that promises to respect the rules of interna- tional law? Many of the potential 1,000-ship-navy partners think so.[71]

In their response to the November 2005 "1,000 Ship Navy" article by Admirals Morgan and Martoglio,[72] the naval commanders of France, Ghana, India, Portugal and Spain all referred to the rule of law or legal considerations.[73] The French com- mander, for example, observed that any 1,000-ship-navy operations must be "in full compliance with the UN Convention on the Law of the Sea . . . ." Portugal ex- pressly referred to the "rule of law," and India asked whether the 1,000-ship con- cept should be established under the aegis of the United Nations. Admiral Soto of the Spanish Navy observed that "[t]ogether we must find a legal solution to pre- serving the natural flow of friendly maritime trade while denying freedom of action to those criminals who attempt to use the maritime space for illegal activities." It seems clear that respect for international law has the potential to unite or fracture the embryonic 1,000-ship navy.

[*Page 14-15*]

Allen, Craig H. "***The Influence of Law on Sea Power Doctrines: The New Maritime Strategy and the Future of the Global Legal Order*** ." **International Law Studies**. Vol. 84. (2008): 3-31. [**More** (3 quotes)]

Foreign navies demanding U.S. act in accordance with UNCLOS before committing to cooperation

"One year later, many of those same foreign CNOs were asked to respond to Admiral Mullen's plan for a new US maritime strategy.[74] Once again, interna- tional law figured prominently in several of the responses. The Commandant of the Brazilian Navy urged that the new strategy "be guided by principles sanctioned by international law," a viewed shared by the Secretary General of the Peruvian Navy and the Portuguese Navy Chief of Staff. Their counterpart in Colombia emphasized the need for an "international legal mechanism of cooper- ation." Uruguay's reply was also directly on point: "Multilateral cooperation among navies is legitimate activity when it is based on the law." The Commander of the Lebanese Navy cited the 1982 LOS Convention and cautioned against the United States acting alone, while the new Chief of Staff for the Spanish Navy highlighted the need for the US Navy "to operate alongside its allies in accordance with international law." The Australian Maritime Doctrine elegantly and forcefully captures the central importance of law and legitimacy for one of America's most respected partners:

> Australia's use of armed force must be subject to the test of legitimacy, in that the Government must have the capacity to demonstrate to the Parliament and the electorate that there is adequate moral and legal justification for its actions . . . . [T]his adherence to legitimacy and the democratic nature of the Australian nation state is a

particular strength. It is a historical fact that liberal democracies have been more successful in the development and operation of maritime forces than other forms of government, principally because the intensity and complexity of the sustained effort required for these capabilities places heavy demands upon a nation's systems of state credit, its technological and industrial infrastructure, and its educated population. Sophisticated combat forces, in other words, depend directly upon the support of the people for their continued existence.[75]

[*Page 15-16*]

Allen, Craig H. "***The Influence of Law on Sea Power Doctrines: The New Maritime Strategy and the Future of the Global Legal Order*** ." **International Law Studies**. Vol. 84. (2008): 3-31. [**More** (3 quotes)]

U.S. navy recognizes value of cooperative, multilateral approach exemplified by UNCLOS

"In Working with Other Nations, a U.S. Navy strategy white-paper, Navy strategists suggest that multi-lateral, combined naval operations with friendly nations is the preferable way to further political, economic, and se- curity objectives in an economically and politically interdependent world.[261] United States national security continues to require forward naval presence to ensure that information, capital, raw material, and manufactured goods flow freely across borders and oceans.[262] One way to secure forward naval presence in foreign EEZs without contention and confrontation is by "establishing relations with security partners in peacetime before the onset of a crisis."[263] A useful legal tool in support of this strategy is to create consensus on the law through multi-lateral cooperation and agreement.[264]

[*Page 298*]

Galdorisi, George V. and Alan G. Kaufman. "***Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*** ." **California Western International Law Journal**. Vol. 32. (2001-2001): 253-302. [**More** (4 quotes)]

US ratification of UNCLOS critical to building and preserving soft power US navy needs to engage globally

"Beyond the Arctic, the committee anticipates increased HA/DR missions by U.S. naval forces as a result of projected increases in extreme climatic events. To support this potential increasing mission for humanitarian assistance to climate refugees and disaster-relief operations, allied partnerships will be essential. Hence the committee sees ratification of the Convention as an important national priority to leverage the enormous "soft power" of the treaty to share burdens and

reduce the national security risks to the naval and joint forces and the nation. Becoming a party to the Convention then is clearly in the U.S. naval forces' best interests as the Arctic opens as a fifth ocean of interest.

[*Page 28*]

Committee on National Security Implications of Climate Change for U.S. Naval Forces. **National Security Implications of Climate Change for U.S. Naval Forces** . National Research Council: Washington, D.C., 2011 (226p). [**More** (5 quotes)]

U.S. can't pursue cooperative maritime strategy while still relying on customary international law

"*Myth 1: "We don't need no stinkin' UNCLOS! " as customary international law will protect important U.S. interests.*

Not so. The Convention provides clear legal rules in a written, comprehensive treaty, as opposed to sometimes fuzzy customary international law that is easily challenged by unilateral claims and altered by countries' practices over time. The United States was one of only four countries to vote against the Convention in 1982 and continues to be aligned with such non-signatories as North Korea, relying on a curious mixture of customary law and unofficial adherence to UNCLOS provisions. We can't have it both ways, especially as we seek international partnership in other critical areas of national concern-such as the I.OOO-ship navy and a variety of international governance regimes for the good order and security of the maritime commons.

Truver, Scott C. "*UNCLOS Mythbusters*." **U.S. Naval Institute Proceedings**. Vol. 133, No. 7 (July 2007): 52-53. [**More** (4 quotes)]

Legitimacy of naval operations is an important consideration and one that would be improved by US ratification of UNCLOS

"Certainly ratification will place the United States on firm legal standing, but more importantly, ratification will add significantly to the legitimacy of U.S. operations conducted under the framework of UNCLOS. But does obtaining legitimacy carry enough weight to warrant ratification? And would ratification increase the legitimacy of U.S. action? Absolutely. Through theory and practical application, legitimacy, like the other principles of war, has come to form the bedrock foundation by which joint operations are planned and conducted.[38] Legitimacy isn't, however, just "an other principle" of warfare that can be brushed aside when inconvenient. Instead, and rightfully so, legitimacy concerns often times drive commanders to operate within a multinational construct.[39] Thus, sustaining legitimacy is, and will remain, a priority for leaders at all levels of the military and must be included in the planning and execution phases to ensure operations are viewed in a

favorable light post implementation.[40] Moreover, legitimacy is no longer an imperative solely for the politician or diplomat; that line has become hopelessly blurred.[41] Instead, legitimacy has become "a prime example of the nexus between politics and war."[42] In other words, it sends a clear message to the world that military actions match rhetoric with respect to the rule of law.[43] Furthermore, speaking to the issue of UNCLOS directly, legitimacy is the seam created when U.S. policy is to operate within international law, but not as part of it. Thus, legitimacy is not legality, although the law is certainly a component.[44] Clearly U.S. Freedom of Navigation and Proliferation Security Initiatives, both underwritten by UNCLOS provisions, are at least debatably legal under current practice but still they fail to achieve widespread international approval.

[*Page 8*]

Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

US navy's emphasis on a cooperative strategy lacks necessary emphasis on international law it will need to succeed

"“Sea power” encompasses both naval power and maritime power. Naval power combines strategy and doctrine with warships and aircraft in order to de- ter maritime threats, win war at sea, and project power ashore. The more inclusive concept of “maritime power” applies all components of diplomatic, in- formational, military, and economic aspects of national power in the maritime domain. The expanded notion of sea power as against purely naval power is de- pendent upon the regimes created by progressive maritime law. The primary beneficiaries of this phenomenon in the United States are the Coast Guard and Marine Corps, which share a history of maritime constabulary operations—positioned at the seam between peace and war and embracing the geographic dimensions of land and sea. In contrast, for decades the Navy marginalized amphibious warfare; only in the last decade has this mind-set changed. It is no coincidence, however, that while the Coast Guard and Marine Corps have become more relevant, the Navy still struggles to find its place amid a network of new regimes that enable coalition maritime constabulary operations and the building of maritime security capacity and partnership. The Cooperative Strategy of 2007 attempts to serve as a framework to fill this void, but problems of adapting to the new approach persist. Four years after introducing the “thousand-ship navy” concept and a year after soliciting inputs from American embassy posts, the Pentagon still has yet to implement its vi- sion for the Global Maritime Partnership.17 Furthermore, the new legal net- works and partnerships that facilitate maritime coalitions should have been central to the Cooperative Strategy; instead, the document barely mentions in- ternational law, obliquely noting that “theater security cooperation” requires, among other things, “regional frameworks for improving maritime gover- nance, and cooperation in enforcing the rule of law,” at sea.18 Although the strategy correctly suggests that “trust and cooperation cannot be surged,” it fails to promote America’s great strength in broadening the rule of law in the oceans. The lack of a specific reference to the global network of international laws that implicitly underlie the Cooperative Strategy represents a missed op- portunity to play to the core U.S. strength, focus the purpose and goals of na- tional maritime security, and reassure states skeptical of American

intentions.

[*Page 121*]

Kraska, James. "*Grasping the Influence of Law on Sea Power*." **Naval War College Review**. Vol. 62, No. 3 (Summer 2009): 113-135. [**More** (4 quotes)]

International maritime law has evolved to act more to foster coordination and cooperation than to set limits

"Over the past two decades international maritime law has evolved from a set of rules designed to avoid naval warfare, by keeping maritime powers apart, toward a new global framework designed to facilitate maritime security cooperation, by bringing naval forces together to collaborate toward achieving common goals. The effects of this change are far-reaching—for the first time, law is a force multiplier for pursuing shared responsibilities in the maritime domain. In a departure from the past hundred years of state practice, the contem- porary focus of international maritime law now is constructive and prospective, broadening partnerships for enhancing port security, as well as coastal and in-shore safety, extending maritime domain awareness, and countering threats at sea. In contrast, the predominant influence of law on sea power from the first Hague conference in 1899, through two world wars, and continuing until the end of the Cold War, was focused on developing naval arms-control regimes, refining the laws of naval warfare, and prescribing conduct at sea to erect "firewalls" that separated opposing fleets. The maritime treaties were designed to maintain the peace or prevent the expansion of war at sea by controlling the types and numbers of warships and their weapons systems and by reducing provocative or risky behavior.

Today treaties do more than reduce friction and build confidence: contemporary international maritime agreements spread safety and security through networks or coalitions. Laws and international institutions have become catalysts for fostering coordination among states and distributed maritime forces and spreading the rule of law at sea, and as a consequence, the strategic, operational, and political "landscapes" of the oceans have decisively changed.

[*Page 113-114*]

Kraska, James. "*Grasping the Influence of Law on Sea Power*." **Naval War College Review**. Vol. 62, No. 3 (Summer 2009): 113-135. [**More** (4 quotes)]

Ratifying UNCLOS is critical for supporting U.S. cooperative maritime strategy

"Becoming a Party to the Law of the Sea Convention directly supports our National Strategy for Maritime Security. As the President noted in the opening pages of the Strategy: "We must maintain a military without peer – yet our strength is not founded on force of arms alone. It also rests on

economic prosperity and a vibrant democracy. And it rests on strong alliances, friendships, and international institutions, which enable us to promote freedom, prosperity, and peace in common purpose with others." That simple truth has been the foundation for some of our most significant national security initiatives, such as the Proliferation Security Initiative. As the leader of a community of nations that are Parties to the Convention, more than 150 in total, the United States will be better positioned to work with foreign air forces, navies, and coast guards to address jointly the full spectrum of 21st Century security challenges.

[*Page 5*]

England, Gordon. "***Statement of Gordon England: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention (September 27, 2007)*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (2 quotes)]

UNCLOS treaty helps establish needed rule of law and governance regime for oceans

Since UNCLOS is the basis of modern international law of the sea, the U.S. should ratify the Convention in order to more effectively exercise, maintain, and perpetuate its leadership and to strengthen the normative framework that UNCLOS provides.

UNCLOS has proven itself as valuable global framework for resolving maritime conflicts

"This narrative on the importance of international law at sea is at odds with much of the conventional wisdom that characterizes the oceans as an ungoverned legal vacuum.[19] The global order of the oceans springs from the architecture of the international law of the sea and of the IMO, and the new maritime security regimes fall within those frameworks. The 1982 Law of the Sea Convention was the first—and remains the foremost—international instrument for realizing collaborative approaches to maritime security. Attempts in 1930, 1958, and 1960 at developing a widely accepted multilateral framework on oceans law had either ended in utter failure or achieved only modest gains. In contrast, UNCLOS contributes directly to international peace and security, by replacing abundant conflicting maritime claims with universally agreed limits on coastal-state sovereignty and jurisdiction. The treaty is anchored in a set of navigational regimes that establish common expectations, delineating the rights and duties of flag, port, and coastal states. Even though some state parties occasionally propose rules that evidence unorthodox misreadings of the convention—such as China's bogus security claims in the East China and Yellow seas—UNCLOS has served as a stabilizing force, a framework that protects and promotes the principal American interest in freedom of the seas. In doing so the multilateral agreement, which now has more than 155 state parties, picked the international community out of what D. P. O'Connell once described as an "intellectual morass" in which competing opinions and views served as a substitute for law. As a result, the number of controversies in the oceans has declined.

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Kraska, James. "*Grasping the Influence of Law on Sea Power*." **Naval War College Review**. Vol. 62, No. 3 (Summer 2009): 113-135. [**More** (4 quotes)]

UNCLOS is a remarkable peacetime achievement in resolving border disputes without conflict

Boundaries have been the root of many a war throughout the history of civilization. This convention

and the acceptance that it has secured throughout the world, largely as the result of U.S. leadership, "is truly remarkable. Through 10 years of tenacious negotiations, such understandings and commitments were obtained with over 160 governments. To bring international stability to claims of national jurisdiction in the oceans is the convention's greatest accomplishment.

Vital U.S. security interests are protected by the treaty. Spokesmen from the Defense Department are here to address these issues, so let me note only that in the post-Cold War era the United States must ensure that the lines of communication over and under the sea and through the air are freely available in order to project power to distant regions. Constant vigilance and a willingness to assert our rights is always required. But the job is easier if there is fundamental international agreement on a comprehensive, widely accepted convention. We had better think long and hard before we discard the sea treaty on ocean law--an agreement that contains a consensus on these basic fundamental issues, not only among our long-time NATO allies and the OECD countries, but among the countries of the former Soviet Union, the former Eastern bloc nations, the Middle East countries, and China, among others.

Colson, David A. "***U.S. Accession to the UN Convention On the Law of the Sea*** ." **U.S. Department of State Dispatch**. Vol. 6, No. 7 (February 13, 1995). [**More** (3 quotes)]

U.S. can best leverage norming effect of international law by ratifying UNCLOS

"Third, leverage the gravitational power of international norms. The United States should continue to bring its diplomatic power to bear to persuade and encourage parties to pursue diplomatic or institutional measures. Continued American leadership in this regard may also give encouragement to other states inclined to voice similar expectations. American persuasive power would also be strengthened by a reassertion of the American leadership role over the development of international law of the sea. Since UNCLOS is the basis of modern international law of the sea, the U.S. should ratify the Convention in order to more effectively exercise, maintain, and perpetuate its leadership and to strengthen the normative framework that UNCLOS provides.

[*Page 8*]

Dutton, Peter A. "***Viribus Mari Victoria? Power and Law in the South China Sea*** . Presented at "*Managing Tensions in the South China Sea*", **Center for Strategic and International Studies**: Washington, D.C., June 5-6, 2013. [**More** (3 quotes)]

U.S. ratification of UNCLOS will help U.S. resolve 30-40 existing boundary disputes

As regards maritime boundaries, there presently exist about 200 undemarcated claims in the

world with 30 to 40 actively in dispute. There are 24 island disputes. The end of the Cold War and global expansion of free market economies have created new incentives to resolve these disputes, particularly with regard to offshore oil and natural gas exploration. **During the last few years hundreds of licenses, leases or other contracts for exploration rights have been granted in a variety of nations outside the U.S. These countries are eager to determine whether or not hydrocarbons are present in their continental shelves, and disputes over maritime boundaries are obstacles to states and business organizations which prefer certainty in such matters.** We have had two such cases here in North America where bilateral efforts have been made to resolve themaritime boundaries between the U.S. and Mexico in the Gulf of Mexico and between the U.S. and Canada in the Beaufort Sea. Both of these initiatives have been driven by promising new petroleum discoveries in the regions. The boundary line with Mexico was resolved in 2000 after a multi-year period of bilateral negotiations. Negotiations with Canada, however, seem to be languishing.

Another area where bilateral boundary discussions are in process is the Barents Sea where Russia and Norway are trying to address a number of serious issues. For a long period of time there has been a moratorium on delimitation for the development of mineral resources in the central part of the Barents, which the Russians believe could be as rich in hydrocarbons as the Caspian.

While such bilateral resolution is always an option, **the Convention provides stability and recognized international authority, standards and procedures for use in areas of potential boundary dispute, as well as a forum for dealing with such disputes and other issues.**

[*Page 5-6*]

Kelly, Paul L. "***Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling*** ." **Global Offshore Drilling 2005 Conference**. (April 19, 2005) [**More**]

U.S. needs to accede to UNCLOS to be able to hold other countries to same rule of law standard

LOSC provides a formal and consistent framework for the peaceful resolution of maritime disputes. It defines the extent of control nations can legally assert at sea and prescribes procedures to counter excessive maritime claims. Acceding to LOSC will increase our credibility in invoking and enforcing the treaty's provisions and maximize our influence in the interpretation and application of the law of the sea. Recent interference with our operations in the Western Pacific and rhetoric by Iran to close the Strait of Hormuz underscore the need to use the Convention to clearly identify and respond to violations of international law that seek to constrain access to international waters. As a party to the Convention, we will bolster our position to press the rule of law and maintain the freedom to conduct military activities in these areas.

[*Page 2*]

Greenert, Jonathan. "***Statement of Admiral Jonathan Greenert: The Law of the Sea***

Convention: Perspectives from the U.S. Military." Testimony before the Testimony before the U.S. Senate Committee on Foreign Relations, June 14, 2012. [**More** (2 quotes)]

U.S. accession to UNCLOS would greatly improve our ability to advocate for international rule of law

"Supporting the United States interest in fostering the rule of law in international affairs. Certainly the promotion of a stable rule of law is an important goal of United States foreign policy. A stable rule of law facilitates commerce and investment, reduces the risk of conflict, and lessens the transaction costs inherent in international life. Adherence to the Law of the Sea Convention, one of the most important law- defining international conventions of the Twentieth Century, would signal a continuing commitment to the rule of law as an important foreign policy goal of the United States;

[*Page 12*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention: Urgent Unfisinshed Business***." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (5 quotes)]

U.S. can best demonstrate rule of law leadership by ratifying the Law of the Sea

"The US also needs to continue to bring its diplomatic power to bear to persuade and encourage parties to pursue non-coercive measures. American persuasive power would be strengthened by a reassertion of the American leadership role over the development of international law of the sea. Since UNCLOS is the basis of modern international law of the sea, the U.S. should ratify the Convention in order to more effectively exercise this leadership from within the ranks, not just from outside them. It is my view that the American policy of neutrality on the outcome of sovereignty disputes is a good one, as long as the dispute is resolved without coercion of any kind. However, the US should not be neutral about disputes over how to divide water space and the resources in them. The US, indeed all countries, have a vital interest in the strength of the methods of UNCLOS for allocating coastal state rights to resource zones. Not history, not power, but international law must be the guide.

Dutton, Peter A. "***Testimonty of Peter A. Dutton: On China's Maritime Disputes in the East and South China Seas***." Testimony before the U.S.-China Economic and Security Review Committee, April 4, 2013. [**More** (2 quotes)]

UNCLOS regime empirically has already shown that it is a stabilizing force

Syria and Cuba both reworked their maritime law following model set by UNCLOS

"At a recent meeting of the Non-Aligned States in Cuba, for example, member states reaffirmed their support for applying the principles set forth in the Convention to the maritime territorial disputes in the East China Seas. In a more specific example, in December 2003, Syria adopted a new maritime law that rescinded its previous 35-nautical mile (nm) territorial sea, establishing a 12- nm territorial sea in conformity with the Convention.[126] At the same time, Syria rolled back a 41-nm contiguous zone claim to a 24-nm contiguous zone[127] and adopted a 200-nm EEZ,[128] with these changes placing Syria in compliance with Convention in most respects. These provisions mark an improvement over previous Syrian government positions in relation to maritime claims, although Syria still has some work to do to modify other excessive coastal state claims and enter into complete compliance with international law.

[*Page 567*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Customary international law is no longer sufficient to protect U.S. interests

Opponents of UNCLOS claim that the United States should not become a party because the United States already enjoys the benefits of UNCLOS through customary law and, therefore, should not unnecessarily incur the treaty's burdens. However, this ignores the fact that customary law can change and can also be influenced by how parties to UNCLOS decide to interpret its provisions.

Relying on customary international law to preserve freedom of navigation is not timely enough of a response for commercial interests

"The Convention guarantees rights of innocent passage through territorial seas, transit passage through straits and archipelagoes, and freedom of all vessels on the high seas. Seafaring vessels, such as container ships, crude oil tankers, and bulk carriers, carry over 95 percent of all goods imported to or exported from the United States. Guaranteeing their free movement is both an economic and a national security concern, as these ships transport the majority of this country's oil and other crucial commodities and goods.

The Convention's detractors argue that U.S. ships can rely on customary international law to ensure their mobility. But customary international law is not well- suited to the needs of business. By definition, it is hard to find and apply customary law because it does not exist in one place. Its rules can and will shift over time. Shipping companies benefit from a set of stable, written rules that they can easily reference during a dispute. The Law of the Sea Convention serves this function by codifying key navigational rights in a single, central authority.

[*Page 6-7*]

Donohue, Thomas J. "***Statement of Thomas J. Donohue: The Law of the Sea Convention: Perspectives from Business and Industry***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (7 quotes)]

Customary international law is no longer viable because of the increasing number of excessive claims

"UNCLOS opponents are correct on at least one point. The customary international law of the sea – at least as generally understood today – is consistent with U.S. national security interests. The U.S.

government has said as much.[15] However, in relying on the apparent harmony between UNCLOS and customary law as rationale for the U.S. to remain outside the treaty, opponents have failed to address a critical question: What if UNCLOS or customary law changes? Is it possible that today's favorable legal environment could evolve adversely to U.S. interests?

The question is more than speculative. Through the years, a variety of nations have advanced legal theories inconsistent with critical U.S. ocean policy interests.[16] Historically, these nations have lacked the will or ability to affect meaningful change in the international law of the sea. Today, however, this dynamic is changing.

Consider, for example, U.S. military operations in the off-shore area known as the EEZ, as codified by UNCLOS, comprising the waters beyond a nation's territorial sea extending a maximum of 200 nautical miles from the coast.[17] For years, the U.S. has consistently maintained the right under customary international law to conduct military activities in coastal state EEZs.[18] Over the past decade, however, the People's Republic of China has initiated confrontations with U.S. ships and aircraft operating in the Chinese-claimed EEZ and its associated airspace. The Chinese have boldly rejected long-standing U.S. positions on customary international law and also challenged conventional interpretations of critical UNCLOS provisions.

[*Page 1-2*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

While the risks to the US from its non-party status may have been negligible, this is no guarantee that this will continue

"Rightly so, opponents point out that over the past 30 years the consequences of remaining a non-party have been negligible, especially with respect to national security.[33] Unfortunately, this in no way guarantees similar results in the future.

Although status quo advocates frequently acknowledge that the United States is already bound by the convention through customary international law and President Reagan's 1983 Ocean Policy, this isn't the same as being a party to the convention.[34] Furthermore, this is almost circular logic to show that the United States can exploit the convention's customary law status to receive protection while still operating as a non-party. Such is the case with submissions to the Commission on the Limits of the Continental Shelf (CLCS), economic security within the U.S. exclusive economic zone (EEZ), deep-seabed mining, and freedom of navigation on the high seas.[35]

This practice, however, is a slippery slope because, "customary law does not provide the precision and detail of a written document. It may establish a principle, but its content may remain imprecise, subject to a range of interpretations."[36] Taking this a step beyond disagreement over interpretations,

customary law can and will change and as the U.S. Navy Judge Advocate Corps (JAG) asserts, “relying on customary international law as the basis for...rights and freedoms is an unwise and unnecessary risk.”[37]

It is not too late to accede to the convention, and unlike opponents and status quo advocates would have the public believe, there are still good reasons to take the next step and lock into the convention while conditions remain favorable to U.S. interests.

[*Page 6*]

Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

China and other counties are reinterpreting customary international law to detriment of the U.S.

“LOSC critics often argue that the treaty’s navigational provisions are redundant given that countries – including the United States – comply with customary international law. However, as navies around the world modernize, states may seek to redefine or reinterpret customary international law in ways that directly conflict with U.S. inter- ests, including freedom of navigation. Ratification will help the United States counter efforts by rising powers seeking to reshape the rules that have been so beneficial to the global economy and to U.S. security. China, for example, seeks to alter customary international law and long-held interpretations of LOSC in ways that will affect operations of the United States as well as those of many of its allies and partners. Some U.S. partners and allies share China’s view on some of these issues. Thailand, for example, has adopted China’s view that foreign navies must have consent of the coastal state before conducting military exercises in its Exclusive Economic Zone (EEZ), a view that runs counter to traditional interpretation of the treaty.[10] LOSC provides a legitimate and recognized framework for adjudicating disagreements that will enable the United States to sustain access to the global commons.

[*Page 2*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

Customary international law is unstable and has been slowly eroding navigational rights -- ratifying UNCLOS will provide stability

“The Convention reduces, but doesn’t wholly eliminate, the indeterminacy inherent in customary law. The Convention also provides greater stability and predictability. Here it should be noted that the LOS Convention’s articles can only be amended through an elaborate process that, by design, provides the kind of stability the U.S. has long sought in the maritime domain. By contrast,

customary law rules evolve by the practice of nations asserting, acceding to or persistently objecting to new norms, thus introducing unwelcome uncertainty into the nation's maritime affairs. Moreover, as Edwin Williamson, President George H.W. Bush's State Department Legal Advisor noted, the history of customary international law "reflects a steady deterioration of the freedom of the seas to the detriment of the essential rights of maritime nations, such as the U.S."

Allen, Craig H. "***The International Law of the Sea: A Treaty for Thee; Customary Law for Me?*** ." **Opinio Juris**. (June 14, 2012) [**More**]

Customary international law increasingly being forced to adapt quickly to technology

"Custom can also develop rapidly based upon interpretations of treaties, as well as the rulings and declarations of international bodies and courts that can declare an existing customary rule.[87] In the past 50 years, customary rules have developed quickly in response to technological innovation or in times of fundamental change.[88] Moreover, rapid changes to custom do not require multiple instances of state practice,[89] particularly when a state with special influence in the field seeks change.[90] Most recently, the terrorist attacks on the World Trade Center and Pentagon resulted in changed custom concerning the use of force in self-defense against non-state actors[91] and those who support or harbor terrorists.[92] Such changes to the well-settled field of international humanitarian law would have been unthinkable in an earlier era.

[*Page 17*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

Customary international law lacks the certainty and stability needed for military and commercial activities

"There is at least a germ of truth in this argument. The United States and its maritime activities are functioning reasonably well under the customary regime of the law of the sea. Most of the Convention is indeed a codification of customary international law. President Reagan's 1982 statements acknowledged this and pledged that the United States would abide by its rules.[41] But customary law does not provide the precision and detail of a written document. It may establish a principle, but its content may remain imprecise, subject to a range of interpretations. With respect to the exclusive economic zone (EEZ), for example, it is generally conceded today that the principle of the zone has become a part of customary international law. But what about its content? The details are contained in a set of articles codifying a series of compromises worked out in meticulous detail in

the negotiations leading up to the signing of the Convention. The rules for determining the allowable catch of the living resources of the EEZ, the determination of the coastal State's capacity to harvest them, the determination of the allowable catch by other States and the rules governing the coastal State's establishing of terms and conditions for foreign fishermen in their EEZs are laid out in detail.[42]

Customary rules are fuzzy around the edges and may not be recognized as binding by an opposing State. The "jurisdiction creep," which continued after the 1958 and 1960 First and Second UN Conferences on the Law of the Sea, illustrated the futility of relying on customary law to protect our vital security interests. Only a written document can provide the certainty and stability required by our governmental agencies and private maritime enterprises. And in any dispute with a foreign State to secure its compliance with the rules set forth in the Convention, arguments based on a written agreement rather than an asserted principle of customary international law would be much more effective.

[*Page 118*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

Simply asserting customary international law will not accrue all benefits of the convention

“International customary laws have developed out of “concordant practice by a number of states . . . over a considerable period of time,” when such practice is thought to be required by, or consistent with, the prevailing international law, and when such practice is generally accepted by other states.[117] As mentioned in section III, the Convention itself is based in part on international customary laws. In addition, when an issue is not regulated by the Convention, the customary laws serve a gap-filling role, and because the Convention binds only its signatories, customary international law remains an important means of transacting with non-signatories of the Convention.[118] However, the Convention expands the “existing norms to suit new developments where the existing norms are no longer sufficient,” creates new norms, and in some cases replaces old norms that are no longer appropriate.[119] Thus, asserting customary international law will not secure all the benefits of the Convention for the United States because the signatories of the Convention do not have to extend specific rights established in the Convention, or those which are modifications of the existing rules, to non-signatories.[120] For example, Canada may choose not to grant the United States the right of scientific research in the EEZ or in the continental shelf.[121]

[*Page 166*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

It is not a credible position for the US to rely on customary international law precedents from half a century ago

“And this expression of the national interest has been the precise locus of the isolationist backlash against UNCLOS. Treaty opponents have been unable to mount a serious challenge to the underlying substantive policy goals in favor of ratification of the Convention by the United States. The ability of the U.S. Navy to project power, under its Freedom of Navigation (FON) program as part of UNCLOS,[9] has received a lot of negative attention of late, as coastal states (especially archipelagic nations and those bordering strategic straits)[10] have renewed attempts to limit access by constraining the doctrines of innocent and transit passage under UNCLOS. Treaty opponents have cleverly argued that there is no need for the U.S. to ratify UNCLOS because all of its FON provisions are already reflected in customary international law (CIL). The problem – as recognized by the Pentagon – is that CIL formulations for FON are largely derived from the state practice following the 1958 Geneva Conventions (to which the U.S. is a party).[11] It is not a credible international legal position, however, to rely on CIL frozen-in-time nearly a half-century ago. In order for the U.S. to effectively object to improper impositions of navigation interferences by coastal states, there must be a baseline (both literally and figuratively)[12] of state behavior – and that standard is UNCLOS.

[*Page 24*]

Bederman, David J. "***The Old Isolationism and the New Law of the Sea: Reflections on Advice and Consent for UNCLOS*** ." **Harvard International Law Journal Online**. Vol. 49. (2008): 21-47. [**More** (3 quotes)]

Customary international law is not reliable because it is ambiguous and lacks certainty needed for investment

“Furthermore, experts often disagree on the existing norms of international law.[122] The ambiguity exists because the international customary law that applies to ocean activities is derived from numerous conventions, judicial decisions, state practice, and interpretations by international organizations. The customary law is not universally accepted, and it changes over time based on state practice.[123] To obtain financing and insurance and avoid litigation risk, “U.S. companies want the legal certainty that would be secured through the Convention’s procedures in order to engage in oil, gas, and mineral extraction on our extended continental shelf.”[124] Also, American companies may not use customary law to claim the right to seabed mining. There is no customary practice for dealing with seabed mining, and such practice is necessary for the formation of customary law.[125]

Moreover, because it is so difficult to prove the extent of customary law, according to some experts, “[a]bsent express agreement, mandatory obedience to the decisions of international organizations or tribunals is for all practical purposes out of the question.”[126] The weaker the sense of legitimacy, the less restrained state practice is likely to be. There is a tendency among nations “to take treaty

obligations more seriously than customary law obligations," which leads to increased self-restraint.[127] As Admiral Mullen testified when he was Vice Chief of Naval Operations, "[i]t is too risky to continue relying upon unwritten customary international law as the primary legal basis to support U.S. military operations."[128]

[*Page 166-167*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Stability of UNCLOS regime preferrable to alternative of customary international law

"Those who believe the costs of ratification outweigh the benefits, because most of the benefits are already provided by customary law, might want to consider the global state of affairs that would unfold if the 160+ nations that are already a party to the Convention—including the critical straits states—chose to follow the U.S. lead and eschew adherence to a meticulously drafted convention in favor of malleable customary law rules. While the Convention's 320 articles and 9 annexes are not always a model of precision, one can certainly question whether the Convention ambiguities the opponents point to are any clearer under the corresponding customary law and whether rule stability is better served by a conventional regime or the practice of 160+ states.

Allen, Craig H. "***The International Law of the Sea: A Treaty for Thee; Customary Law for Me?*** ." **Opinio Juris**. (June 14, 2012) [**More**]

UNCLOS preferable to customary international law because it is stable and consistent

"First, customary international law is, by its very definition, a fluid and changing concept. Vague on details, it is a constantly evolving process created by claim and counterclaim. As a result, there is much less agreement on the details of the customary Law of the Sea. Therefore, customary international law does not provide the kind of stability and predictability that we need for an uncertain political landscape. By contrast, the Convention locks in the rules that promote maximum maritime flexibility while at the same time ensures that coastal state interests are accommodated. This balance between maritime and coastal interests enhances the Conven- tion's long term viability as well as its widespread acceptability among diverse inter- est groups. In short, the Convention will foster the legal stability that the United States and the rest of the international community has sought for so long.

The end of the Cold War has not changed the fact that many of our economic, political, and military

interests are located far away from American shores. Recent events in Haiti, the Persian Gulf, the former Yugoslavia, Somalia, and Rwanda serve as important reminders that we still live in an uncertain and potentially dan- gerous world. While the specific threats and challenges that the United States will face in the years ahead undoubtedly will differ from those that dominated our think- ing over the past forty years, capable, vigilant forces will continue to be required to deter aggression and, if deterrence fails, to take necessary action.

The Convention provides the stability and predictability we seek to ensure the flexibility and mobility for our military naval and air forces, as well as our seaborne and airborne commercial activities around the world. By serving as a source of au- thority, the Convention guides the behavior of nations, promotes stability of expecta- tions, and provides a framework for issue resolution. In effect, it provides the legal predicate for our armed forces to respond to crises expeditiously and, importantly, at minimal diplomatic and political costs. And while the Convention may not pre- clude all attempts by coastal and archipelagic states to impede navigational freedoms, it puts the world community on notice that these freedoms have a solid legal basis and enjoy broad support among the major maritime and industrialized nations.

Schachte, William L. "*National Security: Customary international law and the Convention on the Law of the Sea*." **Georgetown International Environmental Law Review**. Vol. 8, No. 2 (Summer 1995). [**More** (6 quotes)]

Relying on our understanding of customary international law assumes all countries share our interpretations

"Some states, especially developing nations, do not embrace customary inter- national law to the same extent that the United States and other maritime powers do. Those states view it as a body of law frequently formed without their participation and consent, law that only promotes the interests of developed nations—often former colonial powers. Developing countries prefer the relative certainty of inter- national agreements concluded on the basis of equality of nations.

Similarly, some Convention signatories, a number of whom are near or adjacent to important waterways used for international transit, have asserted that the Con- vention is a legal contract—and therefore its rights and benefits, such as transit passage and archipelagic sea lanes passage, are not available to non-parties. We do not accept these claimed restrictions on international transit rights, but such issues would be mooted under a universal Convention to which the United States is a Party.

As a recent example of potential difficulties, in July 1994, in the context of their right to exploit seabed resources in the strategic straits of Malacca, Malaysia stated that the ''newness'' of the transit passage regime casts doubts as to its status as a customary international law principle.

Schachte, William L. "*National Security: Customary international law and the Convention on the Law of the Sea*." **Georgetown International Environmental Law Review**. Vol. 8, No. 2 (Summer 1995). [**More** (6 quotes)]

Should not depend on customary international law to protect U.S. interests

"Admiral Clark's statement indicates that becoming a party to UNCLOS will help solidify United States rights that now exist only in customary international law.[95] Opponents of UNCLOS claim that the United States should not become a party because the United States already enjoys the benefits of UNCLOS through customary law and, therefore, should not unnecessarily incur the treaty's burdens.[96] however, ignores the fact that customary law can change and can also be influenced by how parties to UNCLOS decide to interpret its provisions.[97] If the United States is not a party, it will have no say as to how the law develops.[98] By becoming a party to UNCLOS, the United States will be able to ensure that the law of sea develops in congruence with its national security and other interests.[99]

[*Page 129*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

Relying on customary international law to protect naval rights is insufficient for four reasons

"Opponents also contend that accession is basically unnecessary for the United States to enjoy the benefits of the Convention. On this view, we get the benefit of the rest of the world treating the Convention's provisions as customary international law without having to sign up ourselves. And, the argument goes, if there are any deficiencies in our legal rights, the U.S. Navy can make it up through force or the threat of force. So why join the Convention and subject ourselves to, for example, third-party dispute settlement?

This argument misses some key points:

First, asserting customary international law does not secure all the benefits of the Convention for us. For example, as a non-party, we do not have access to the Continental Shelf Commission and cannot nominate nationals to sit on it.

Second, relying on customary law does not guarantee that even the benefits we do currently enjoy are secure over the long term. Customary law is not the most solid basis upon which to protect and assert U.S. national security and economic rights. It is not universally accepted and changes over time based on State practice. We therefore cannot assume that customary law will always continue to mirror the Convention, and we need to lock in the Convention's rights as a matter of treaty law. As Admiral Mullen testified when he was Vice Chief of Naval Operations, "[it is too risky to continue

relying upon unwritten customary international law as the primary legal basis to support U.S. military operations." One irony of this debate is that some of the opponents of the Convention are the same people who most question the viability of customary international law.

Third, to obtain financing and insurance and avoid litigation risk, U.S. companies want the legal certainty that would be secured through the Convention's procedures in order to engage in oil, gas, and mineral extraction on our extended continental shelf. So, while it may be true that the Navy will continue to exercise navigational rights with or without the Convention, U.S. companies are reluctant to begin costly exploration and extraction activities without the benefit of the Convention.

Fourth, military force is too blunt an instrument to protect our asserted customary international law rights, especially our economic rights. It is simply unrealistic and potentially dangerous to rely solely on the Navy to ultimately secure the benefits of the Convention. The Navy itself has made clear that treaty- based rights are one of the tools it needs in its arsenal.

[*Page 6-7*]

Bellinger, John B. **The United States and the Law of the Sea Convention** . Institute for Legal Research: Berkeley, CA, 2008 (12p). [**More** (6 quotes)]

US uniquely disadvantaged in its reliance on customary international law to secure navigation rights

"In addition, as you know, customary international law depends in part on State practice and is subject to change over time. This is less so in the case of treaty or convention-based international law, which comes from written and agreed upon terms and conditions that are contained in such treaties or conventions. Ironically, by not being a party to the Convention and relying on customary international law, our rights within the maritime domain are less well defined than the rights enjoyed by virtually all of the other nations within the PACOM AOR, and around the world with over 160 Nations as parties. Moreover, by remaining outside the Convention, we leave ourselves potentially in a situation where other nations feel they can ignore the Convention's provisions when dealing with the United States, in favor of what they may view as less clear and more subjective obligations that may exist in customary international law.

[*Page 3*]

Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

UNCLOS provides benefits to freedom of navigation beyond capacity of customary international law

Each year the United States challenges dozens of states for asserting legal rights that impede freedom of the seas. Iran, North Korea, and China have all challenged the U.S. navy's free passage through their EEZ. By codifying the right to pass freely through the exclusive economic zone of foreign states without restrictions on cargo or formation, the Law of the Sea strengthens America's ability to project power.

But these rights are already recognized as customary international law. What does the Convention add? For one, it makes these rights stronger. Written treaties are perceived as more powerful than customary laws. By signing the Convention, the United States gives added weight and stability to customary rights, and pushes recalcitrant states to respect navigational freedoms.

More importantly, the Convention creates a forum to change navigational rights. It is possible, though unlikely, that future deliberations under the Convention might create rules that undermine freedom of navigation. If the United States fails to ratify the Convention, it will lose the opportunity to defend these rights. The problem is not that other states can stop the U.S. Navy from sailing where they want to sail. The problem is that they can raise the costs of doing so. If a nation decides to forbid U.S. ships their legal right to pass, America could use force to assert our right. But, realistically, it will be more likely to seek legal remedy. Signing the Convention lowers the cost of projecting power.

[*Page 3*]

Friedman, Benjamin and Daniel Friedman. **How the Law of the Sea Convention Benefits the United States** . **Bipartisan Security Group**: Washington, D.C., November 2004 (7p). [**More** (4 quotes)]

Favorable status of customary international law of the sea for the U.S. military is starting to change, necessitating codification by ratifying UNCLOS

UNCLOS opponents are correct on at least one point. The customary international law of the sea – at least as generally understood today – is consistent with U.S. national security interests. The U.S. government has said as much.15 However, in relying on the apparent harmony between UNCLOS and customary law as rationale for the U.S. to remain outside the treaty, opponents have failed to address a critical question: What if UNCLOS or customary law changes? Is it possible that today's favorable legal environment could evolve adversely to U.S. interests?

The question is more than speculative. Through the years, a variety of nations have advanced legal theories inconsistent with critical U.S. ocean policy interests.16 Historically, these nations have lacked the will or ability to affect meaningful change in the international law of the sea. Today, however, this dynamic is changing.

Consider, for example, U.S. military operations in the off-shore area known as the EEZ, as codified by UNCLOS, comprising the waters beyond a nation's territorial sea extending a maximum of 200 nautical miles from the coast.17 For years, the U.S. has consistently maintained the right under customary international law to conduct military activities in coastal state EEZs.18 Over the past

decade, however, the People's Republic of China has initiated confrontations with U.S. ships and aircraft operating in the Chinese-claimed EEZ and its associated airspace. The Chinese have boldly rejected long-standing U.S. positions on customary international law and also challenged conventional interpretations of critical UNCLOS provisions.

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Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

Reliance on customary international law and FON program should only be used as a last resort

"Some columnists and think tank analysts have argued that U.S. accession to the Convention is unnecessary because excessive maritime claims can be addressed by invoking customary international law and with "operational assertions'' by the U.S. military. But such an approach is less certain, more risky, and more costly than taking advantage of the Convention. Customary law is by nature subject to varying interpretations and change over time. Operational assertions—sending military ship and aircraft into contested areas—involve risk to naval personnel as well as political costs. Such assertions should be conducted aggressively where needed, but avoided where possible.

[*Page 3-4*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

Fallacy of composition disproves argument that U.S. can rely on customary international law -- even if true, it wouldn't be in our interest if others followed our example

"Putting aside for now the potential consequences of blurring the distinction between broadly ratified convention regimes and customary law for other subject areas of concern (e.g., the 1977 Additional Protocols to the Geneva Conventions and the Rome Statute for the ICC), one might reasonably ask what response such a position might invite from other states that are now parties to the LOSC. Could they too circumvent the LOSC's ban on reservations and avoid its compulsory dispute settlement provisions by renouncing the LOSC in favor of customary law? Even if empirically sound, the argument that nothing is to be gained by the United States in ratifying the LOSC, because all of the best parts either codified existing customary law when the Convention was opened for signature or later (i.e., between 1982 and 1994, when it entered into force) ripened into customary law, must be tested against the fallacy of composition. If that is true for the U.S., wouldn't it also be

true for the 160+ nations that are already parties to the LOSC? In short, do regimes founded on rules of customary law better serve the national and shared interests than those founded on treaties?

The common understanding of the fallacy of composition is that what might be true for the one is not necessarily true for the many. If one person in a crowd stands on tiptoes to see better he might be better off, but if everyone does it no one is better off. The economist John Maynard Keynes referred to the analogous "paradox of thrift," by which he meant that if one person saves a substantial portion of her earnings she may be better off, but if everyone saved as much it could lead to a recession.

Allen, Craig H. "***The International Law of the Sea: A Treaty for Thee; Customary Law for Me?*** ." **Opinio Juris**. (June 14, 2012) [**More**]

U.S. reliance on customary international law to secure rights is "less certain, more risky, and more costly"

"If it ratifies UNCLOS, the United States seeks to gain "maximum freedom to navigate and operate off foreign coasts without interference," for both security and economic purposes.[87] If the United States does not ratify UNCLOS, it may attempt to assert these freedoms under customary international law. However, its ability to do so is growing weaker, as when coastal States extend their exclusive economic zones, "customary international law may . . . evolve[] in a way contrary to [American] [i]nterests."[88] Customary law is "not universally accepted, evolves based on State practice, and does not provide access to the Convention's procedural mechanisms, such as the continental shelf commission."[89] The United States may make excessive maritime claims through customary international law or military operations, but either such approach is "less certain, more risky, and more costly" than working under the UNCLOS framework.[90]

[*Page 319*]

Watson, Molly. "***An Arctic Treaty: A Solution to the International Dispute over the Polar Region*** ." **Ocean and Coastal Law Journal**. Vol. 14, No. 2 (2009): 307-334. [**More** (4 quotes)]

UNCLOS has empirically been successful

One way to determine the extent to which UNCLOS's navigational provisions have achieved the status of binding international law is to study the behavior of nations. The consistent practice of states—maritime states, coastal states, UNCLOS members, and nonmembers—indicates that the UNCLOS navigational provisions are almost universally accepted law.

UNCLOS has already proven itself as a powerful mechanism to bring rule of law to maritime realm

"Hans Morgenthau, an astute observer of international politics and founder of the modern school of political realism, dedicated his life to the study of the "struggle for power." "All history shows," he wrote in his classic treatise, "that nations active in international politics are continuously preparing for, actively involved in, or recovering from organized violence in the form of war."123 The Convention serves as a powerful tool to shift maritime political dis- putes from being a cause for violence and naval warfare to a legal based order, approaching the vision of Myres S. McDougal and William T. Burke of a "public order of the oceans."124 As the nego- tiations for the Convention were drawing to a close, Ambassador John Norton Moore understood that the United States was reach- ing its objective of replacing the "struggle for power" at sea with the "struggle for law" in the world's oceans, reducing, and perhaps one day eliminating, an entire class of maritime conflicts as a cause of war.125 Toward that end, the Convention successfully has influ- enced numerous countries to conform their conduct and maritime claims to the Convention, typically in a manner that inures great benefit to global stability and security. These positive adjustments and reductions in excessive maritime claims constitute the "dogs that didn't bark" in law of the sea. Over time, the individual and cumulative effect on U.S. national security and global interests has been positive.

[*Page 566-567*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Existing treaties that laid the foundation for UNCLOS have been empirically obeyed by most parties

"There are many multilateral treaties that fill in the UNCLOS framework. These instruments are widely accepted and implemented, and they promote order and the free flow of commerce by prescribing universal standards for vessel construction, operation, and management, for the training and qualification of mariners, and the like. In accordance with the 1982 United Nations Convention on

the Law of the Sea, they assign compliance responsibility to flag states.However, in the spirit of "trust but verify," they contain real enforcement mechanisms that enable coastal and port states to safeguard their vital interests, even in the face of occasionally lackadaisical flag-state oversight. Taken together, this "other" law of the sea serves a valuable purpose, the promotion of vessel safety and security and environmental stewardship. Statistics suggest that it is achieving its goals.

[*Page 94*]

Norris, CDR Andrew J. "***The "Other" Law of the Sea*** ." **Naval War College Review**. Vol. 64, No. 3 (Summer 2011): 78-97. [**More** (4 quotes)]

Most coastal states have already adapted their maritime law to bring it into compliance with UNCLOS

“Other states have also recognized the Convention’s positive legal force—most recently Japan, India, and Mexico at the UN General Assembly’s Sixth Committee (Legal).[135] Those nations credited the Convention with operating as a fundamental document for advancing the “rule of law” throughout the world. Most coastal states, in fact, have adjusted their maritime claims to be in conformity with the Convention. For example, 144 States claim a terri- torial sea of 12 nm or less, in accordance with Article 3 of the Convention.[136] Throughout the globe, many countries have areas within their law or state practice that are noncompliant, but “state practice complies largely” with the Law of the Sea as reflected in the Convention.[137] Even in these instances, however, diplomacy operates within the context of the rules reflected in the Convention.

[*Page 568*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Procedures of CLCS commission are empirically working with countries working peacefully together to resolve disputed claims

“For purposes of this assessment, however, the crucial point is that mechanisms exist for the peaceful establishment of these claims through the submission of scientific evidence to the Commission.[58] And the Arctic states, including Russia, have been following the rules of the game, and, in some instances, working together to develop the necessary scientific data.[59] It is important to keep in mind that while these claims may implicate very large tracts of territory (as Russia’s initial application certainly did), there is nothing inherently illegitimate about such claims; the extent of “the submerged prolongation of the land mass of the coastal State” and “the slope and the rise” of “the sea-bed and subsoil of the shelf” does not command a pari passu distribution of continental shelf

among the Arctic states.[60] In brief, some states' shelves may simply be bigger than others. This outcome could be entirely consistent with the rule of law.

While there are legitimate reasons to be concerned that the Commission is overworked and understaffed, there is currently no indication that any country, Russia included, is prepared to charge ahead with an Arctic claim that has not received the Commission's approval.[61] Consistent with that view, it has emerged that February 2009 talks between Canada and Russia included discussion of a potential joint submission from Canada, Denmark, and Russia to the Commission.[62] Such an application would not determine competing claims among the three countries, but would allow for demarcation of the area under the control of those coastal states from the area beyond. Furthermore, the collaboration required to produce a joint submission could itself be a valuable confidence-building measure that would defuse nascent disagreements over exactly where final borders should be drawn.

[*Page 238-239*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

U.S. freedom of navigation disputes have decreased due in part to the influence of UNCLOS

"One effective component of the struggle for law at sea and the preservation of freedom of the seas is the U.S. Freedom of Navigation (FON) program. The FON program began, more than twenty-five years ago to tangibly exhibit the U.S. determination not to acquiesce to coastal states' excessive maritime claims. When the program began in 1979, U.S. military ships and aircraft were exercising their rights against excessive claims of about thirty-five countries at the rate of about thirty to forty challenges annually.140 As late as 1998, the United States was conducting more than twenty- five operational assertions each year.141 But by 1999 the decline in operational challenges led the Department of the Navy and the Department of Commerce (within which the National Oceanic and Atmospheric Administration resides) to recommend an expansion of the program to "exercise openly the traditional freedoms of nav- igation and overflight in areas of unacceptable claims."

In 2000, the United States conducted challenges against just fifteen states.143 The cumulative report for the years 2000 to 2003 and the 2004 report show further decline.144 By 2005, the Depart- ment of Defense reported conducting operational challenges against only six nations: Cambodia, Ecuador, Philippines, Indone- sia, Iran, and Oman. That level of operational assertions remained steady in 2006, with challenges reported against the excessive maritime claims of the Philippines, Indonesia, Iran, Oman, and Taiwan.146 The steady decline in freedom of navigation challenges over the last ten years is attributable to two factors: (1) a reduction in the number of excessive claims due to the constructive influence of the Convention and (2) Department of Defense resource constraints imposed by a declining naval force structure coupled with competing tasking in support of the War

on Terror.

[*Page 569-570*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Consistent practice of states illustrates that UNCLOS freedom of navigation provisions have become customary international law

"One way to determine the extent to which UNCLOS's navigational provisions have achieved the status of binding international law is to study the behavior of nations. Behavior in conformity with the convention—known as "state practice"—is additional evidence that its navigational provisions reflect international law. Indications that a state is acting in conformity with international law may be found in states' "legislation, the decisions of their courts, and the statements of their official government and diplomatic representatives." A nation's inaction regarding a particular navigational provision may also be viewed as state practice because it can be deemed to be acquiescence.

The consistent practice of states—maritime states, coastal states, UNCLOS members, and nonmembers—indicates that the UNCLOS navigational provisions are almost universally accepted law. The Restatement of the Law, Third, of the Foreign Relations Law of the United States notes:

> [B]y express or tacit agreement accompanied by consistent practice, the United States, and states generally, have accepted the substantive provisions of the Convention, other than those addressing deep sea-bed mining, as statements of customary law binding upon them apart from the Convention.

[*Page 14*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS*** ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

Bilateral treaties are not an alternative to UNCLOS

Bilateral arrangements between states over ECS claims are not a viable alternative to the existing UNCLOS regime. The comprehensive international UNCLOS regime was proposed in the first place as a way of reducing the transaction costs of formulating all of these bilateral treaties. Additionally, they would have dubious legal validity, especially in regions like the Arctic where all other nations besides the U.S. have already ratified the treaty.

US attempts at bilateral diplomacy only complicating disputes, should agree to international framework of UNCLOS

"Matters are further complicated by political relations, as the five coastal Arctic States are not the only nations with a foothold in the Arctic, let alone with an interest in new sources of fuel. Among the littoral States themselves, the position of the United States also adds to the uncertainty. The U.S. already maintains a significant commercial presence in the Arctic and fosters economic ties with other Arctic Nations, which will be affected by the claims of other States vying for sovereignty. For example, the U.S. currently imports mass amounts of oil from Norway and would likely stand to gain if Norway established a recognized claim to Arctic reserves. To this end, the U.S. ambassador in Oslo, John Doyle Ong, inserted himself in the ongoing negotiations between Russia and Norway over the Barents Sea in 2005. Yet this has not prevented America from collaborating with other Arctic States, or from exploring the possibility of its own claim based on the limits of Alaska's continental shelf.

The need for a functioning legal order capable of governing the various competing claims of Arctic sovereignty is manifest. Despite the Convention's deficiencies, it is an authoritative, internationally recognized regime with comprehensive maritime jurisdiction under which legal claims to the Arctic may be advanced and disputed.

[*Page 227-228*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Bilateral treaties are not a sufficient substitute for UNCLOS regime in settling Arctic disputes

The Western Gap agreement has clear implications for the Arctic, where the United States shares a

potential extended continental shelf with both Russia and Canada. **UNCLOS opponents suggest**

“**that questions regarding international legal title to the U.S. potential extended continental shelf in the Arctic will be resolved conclusively when the United States enters bilateral agreements with Russian and Canada respectively.[156] As simple and therefore attractive as this position may be, it begs several questions.**

Under what legal authority would the Arctic neighbors have the right to divide and claim for themselves an area lying, at least in theory, beyond their respective national jurisdictions? **Even assuming a legitimate legal basis to claim their extended continental shelves and delimit them bilaterally, what basis would the states have for desiring to and concluding their agreements outside the UNCLOS framework, including ignoring Article 82 royalty payments?** Finally, even if Russia and Canada— both UNCLOS member states—choose to comply with UNCLOS on their respective sides of delimited shelves, might they object to the United States not doing so on its side, and, if so, would they pursue their objections? And how might the outer limits of the U.S. extended continental shelf in the Arctic be determined given the geographic differences from the Western Gap situation where there were only two geographically opposite states with no third state or area interests involved?

The simple answer is that only by acceding to the convention can the United States obtain its full continental shelf rights in the Arctic.

[*Page 15*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Bilateral agreements over seabed jurisdiction would be abrogated by UNCLOS framework

“Additionally, entering into a treaty with other countries in which each country would recognize each other’s claim relating to deep seabed development would be of dubious legal validity. Article 137(3) of the Convention provides that “no state or natural or judicial person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.”[133] Thus, entering into a treaty with other Arctic nations which have ratified the Convention and upon which the Convention is binding would not assure the United States access to mineral resources beneath the Arctic Ocean.[134]

[*Page 168*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Joint ventures with signatory nations not an acceptable alternative because U.S. companies would be bound by treaty without accruing its benefits

"The renegotiated International Seabed Authority, established under the treaty, provides property rights for U.S. firms to develop deep-sea mining sites that require security of tenure before they can justify the large investments required. Further, the treaty grants the U.S. the only permanent veto as to how the modest royalties, collected in return for secure property rights, are to be distributed to state parties.

Most troubling, when asked by the chairman how he would provide security of tenure sought by U.S. firms, Mr. Rumsfeld suggested that they should operate through joint ventures with other nations. His answer, implicitly understanding that U.S. nonadherence can in no way alter the international regime now in force for 161 countries, and that our firms would still operate under the treaty regime, needlessly throws away U.S. jobs, Treasury tax receipts, and critical U.S. access to strategic minerals. It would also mean no U.S. veto over any distribution of revenues, amendments to Part XI, or rules and regulations for mining.

The treaty provides property rights for miners in an area of the ocean not under the sovereignty of any nation. Absent U.S. adherence, U.S. firms cannot mine the deep seabed—as they will not have the security of tenure necessary to expend the $2 billion to $3 billion for a deep-seabed mining operation. These operations are of utmost importance for the U.S.—at stake is U.S. access to strategic minerals of copper, nickel, cobalt, manganese and rare earths worth about $1 trillion.

Moore, John Norton. "***Conservatives and the Law of the Sea Time Warp*** ." **Wall Street Journal**. (July 8, 2012) [**More**]

Bilateral agreements are problematic for addressing Arctic disputes for a number of legal reasons

"When discussing the Arctic legal regime, the whole is not the sum of its parts. Returning briefly to the Ilulissat Declaration, the coastal Arctic states agreed together to leave the Arctic region largely unregulated, a problematic course of action given the increasing level of activity in the region.[90] In addition to remembering the inadequacy of the Ilulissat Declaration, especially as perhaps the exemplification of the failures of purely bilateral talks, there are some general concerns to also consider when evaluating the salience of a bilateral solution. First, any solution crafted through using UNCLOS is a erroneous course given the US' reluctance to ratify the treaty.[91] Second, any solution to the Arctic problem is only as effective insofar as the sovereigns are willing to implement that solution[92], and given the previously noted insistence on the Ilulissat Declaration's sufficiency, why would states then decide to negotiate a new regime amongst themselves bilaterally? Third, communal concepts like the "common heritage of mankind"[93] or mediation processes are likely to fail

because Arctic states not only disagree on the legal standards upon which such mediation would be made[94], but it is also unclear under customary international law (as codified by UNCLOS) about what level of responsibility each state owes to the other given the geographic nature of the Arctic Ocean.[95] Fourth, bilateral agreements and negotiations have failed to truly resolve some key border disputes, and if after all of this time, why should the international community assume that the states will solve these issues sua sponte?[96] Finally, and most perniciously, the nature of the substantive problems in the Arctic virtually guarantee that bilateral legal methods will be unable to achieve a resolution. Mostly because each of the state's individual policy goals are inopposite to other state's goals, and because each state may believe that it can achieve a superior outcome through its own means than through voluntary dispute resolution.[97] This final point, of course, opens up a large range of additional issues that are surveyed below.

[*Page 25-26*]

Check, Terence Andrew, Jr. **Finding the Right Forum: The Need for Novel Multilateral Diplomatic Solutions to Resolve Competing Territorial Claims Over the Arctic's Natural Resources** . , October 31, 2013 (30p). [**More** (8 quotes)]

Political differences between Arctic states and competing goals doom bilateral approach to resolving disputes

"Problematically, despite the increasingly obvious nature of the Arctic jurisdiction quandary, there exists a fair degree of disagreement on how to view Arctic both within the channels of government and academia.[98] These fundamental differences of opinion doom a potential bilateral solution, because a treaty between one or more states would necessarily require disambiguation and a clarification on where each party stands.[99] At a basic level, bilateral negotiations and a treaty mechanism will fail for three primary reasons. First, there is simply too much at stake in terms of both economic benefit and environmental risk: no state wants to assume liability for the wide range of environmental catastrophes that may befall energy developers,[100] nor does any state want to negotiate away a potential energy windfall either.[101] Thus, given the great uncertainties of the Arctic, there is little incentive for states to constrain their EEZ claims via treaty, even though the need for a governance regime for the Arctic is becoming all the more necessary as time goes on. Second, the diplomats and leaders of the coastal Arctic states have explicitly provided in one form or another that the current status quo is enough, thus a bilateral treaty is unlikely to arise on its own.[102] Furthermore, a bilateral treaty would likely undermine whatever cooperation may exist between the coastal Arctic states by forcing a confrontation over the various boundaries, a confrontation that no one wants to have. Third, despite scholars' and politicians' insistence that nothing is wrong in the Arctic, the truth may be a little more nuanced for several reasons. Historically, the Arctic has been a theater of military tension and political gamesmanship,[103] and despite current trends, there is no geopolitical guarantee that such tensions may not arise again.[104] To illustrate this point, Arctic powers have begun to project their military power in the High North, for example, Russia has been building a large fleet of

icebreakers to guard their interests.[105] In this vein perhaps, the Russian Federation may have the most to lose and the most to gain in the Arctic Ocean[106], even though Russia's interests may be in direct conflict with some of the interests of Scandanavian states.[107] Thus, not only is a bilateral solution untenable, but there is some evidence to suggest that a multilateral mechanism may bear fruit.[108] To solve the problem of Arctic territorial claims, multilateral fora like the Arctic Council and the NATO-Russia Council may be excellent environs for crafting a new solution.

[*Page 26-27*]

Check, Terence Andrew, Jr. **Finding the Right Forum: The Need for Novel Multilateral Diplomatic Solutions to Resolve Competing Territorial Claims Over the Arctic's Natural Resources** . , October 31, 2013 (30p). [**More** (8 quotes)]

U.S. ratification of UNCLOS key to a number of maritime industries

Without the universally recognized legal regime governing the exploitation of the mineral resources of the deep-sea beyond the zones of national jurisdictions that UNCLOS provides, US companies will not assume the investment rights associated with such projects until it was clear who had “clear legal title” to the resources extracted.

U.S. industries view accession to the treaty as essential to doing business in international waters

“U.S. industry and trade groups have fallen in behind the Law of the Sea Convention in order to be able to sponsor U.S.-based businesses in operations that involve territory within and beyond America’s Exclusive Economic Zone, and particularly in the Arctic, areas that call for “the maximum level of international legal certainty,” Clinton said at the May hearing.

To that end, American companies like Lockheed Martin, which has a 40-year history in sea floor exploration and is known as a “pioneer investor” under terms of the Convention, refuse to pursue exploitation of minerals as a U.S. operation without being party to the Convention, because it is the accepted international framework for obtaining secure title to deep seabed mining claims.

[*Page 20*]

Daisy R. Khalifa. "***Point/Counterpoint*** ." **Sea Power**. (July 1, 2012) [**More**]

Major trade industry groups support US ratification of UNCLOS because they understand the impact it would have on facilitating international trade

“Another key purpose of the Coast Guard is to promote safe and secure international trade. The Convention promotes the freedom of navigation and overflight by which international shipping and transportation help supercharge the global economy. Some ninety percent of global trade tonnage, totaling over six trillion in value, including oil, iron ore, coal, grain, and other commodities, building materials, and manufacturer goods, travels on and over the world's oceans and seas each year.[33] By guaranteeing merchant vessels and aircraft their right to navigate on, over, and through international straights, archipelagic waters, and coastal zones, the provisions of UNCLOS promote dynamic international trade. It reduces costs and eliminates delays that would occur if coastal states were able to impose the restrictions on such navigational rights that existed prior to the Convention.

At the same time, UNCLOS encourages international cooperation to enhance the safety and security of all ocean-going ships. Whether it involves lumber and winter wheat shipped from the Pacific Northwest to Japan, high- quality, low-cost goods from Singapore to Long Beach, or oil from the Persian Gulf to Europe, free, safe, and secure commercial navigation and flights provide great economic and security benefits to all ofus. That is the key reason the U.S. Chamber of Commerce, shipping industry, aviation industry, and other international trade groups have called for immediate accession to the Convention.

[*Page 583-584*]

Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

U.S. will be left out of coming ocean-based economic boom unless it ratifies UNCLOS

"The vastness of ocean space and the limits of our knowledge concerning the oceans' future economic potential also make it critically important that the United States plays a central role in the future implementation of the convention. The convention facilitates the conduct of marine scientific research to expand understanding of the marine realm. As knowledge increases and as technology advances, the oceans may hold enormous, and as yet only dimly perceived, potential. When coupled with America's unrivaled capacity for technological innovation, new ocean uses may become essential to helping drive economic prosperity for future generations. In the midst of a historic economic crisis, the United States needs to position itself by joining the treaty in order to secure its share of ocean industries of the future and the high- paying jobs they will create.

[*Page 29*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Ratification of UNCLOS would provide U.S. companies "clear legal title" to resources extracted, igniting an economic boom

"In June of 2012, the Senate Foreign Relations Committee held an array of hearings on UNCLOS to drum up congressional support for the Convention's ratification. Senator John Kerry lead the charge and invited key players from the oil and gas, telecommunications, offshore mining, manufacturing, shipping, environmental, and tourism industries. Their argument was straightforward: without a universally recognized legal regime governing the exploitation of the mineral resources of the deep-sea beyond the zones of national jurisdictions, US companies would not assume the investment rights associated with such projects until it was clear who had "clear legal title" to the

resources extracted. Uniformly, these industry leaders testified that accession to UNCLOS would provide such clarity, which would subsequently create jobs, protect the environment, and ultimately lead to a stronger US economy.

Issak Hurst. "***The Law of the Sea and Its Effects On Offshore Mining*** ." **Alaska Business Monthly**. (November 1, 2013) [**More**]

Ratification of UNCLOS is key to helping U.S industries figure out methane hydrate industry potential

“Ratification of the Law of the Sea Convention also has an important bearing on a longer-term potential energy source that has been the subject of much research and investigation at the U.S. Department of Energy for several years: gas hydrates.

Gas hydrates are ice-like crystalline structures of water that form “cages” that trap low molecular weight gas molecules, especially methane, and have recently attracted international attention from government and scientific communities. World hydrate deposits are estimated to total more than twice the world reserves of all oil, natural gas and coal deposits combined.

Methane hydrates have been located in vast quantities around the world in continental slope deposits and permafrost. They are believed to exist beyond the EEZ. If the hydrates could be economically recovered, they represent an enormous potential energy resource. In the U.S. offshore, hydrates have been identified in Alaska, all along the West Coast, in the Gulf of Mexico, and in some areas along the East Coast. The technology does not now exist to extract methane hydrates on a commercial scale. Joint industry/government groups of scientists have been at work in the Gulf of Mexico examining the hydrate potential in several deepwater canyons. This work is intended to help companies find and analyze hydrates seismically and to complete an area-wide profile of hydrate deposits.

Kelly, Paul L. "***Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling*** ." **Global Offshore Drilling 2005 Conference**. (April 19, 2005) [**More**]

U.S. economy will benefit from resource exploitation in territory gained by ratifying UNCLOS

“From an economic perspective, the United States emerges a clear winner under the convention’s provisions on the exclusive economic zone (EEZ) and the continental shelf, due to its lengthy coastline and island possessions that border on several particularly productive ocean areas such as the Bering Sea. The United States has the largest and richest EEZ in the world. Also, our extended continental shelf has enormous potential due to oil and gas reserves, particularly in the Bering, Chukchi, and Beaufort Seas west and north of Alaska.

Discoveries by the crew aboard the USCG icebreaker Healy reveal that the U.S. continental shelf in the Arctic Ocean is much more extensive than originally thought. Nevertheless, only by becoming party to the convention and participating in its processes can the United States obtain secure title to these vast resources, adding an area twice the size of the Louisiana Purchase (some 290,000 square miles) for U.S. sovereign resource exploitation.[5]

Despite claims from critics of the convention that the United States could and should develop its continental shelf resources beyond 200 miles without becoming a party to UNCLOS, it stands to reason that any oil, gas, or mining company would want the legal certainty of the convention before investing billions of dollars to develop an offshore feld, no matter how rich it might be.[6] In addition, the convention's deep seabed mining provisions, as amended in 1994, would permit and encourage American businesses to pursue free-market-oriented approaches to deep ocean mining, including in the Arctic Ocean.

[*Page 54*]

Oliver, Dr. John T. and Steve G. Venckus. "***The U.N. Convention on the Law of the Sea: Now is the time to join*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 70, No. 2 (Summer 2013): 53-56. [**More** (4 quotes)]

U.S. ratification of UNCLOS critical to giving U.S. industries a chance to compete for resources

"At issue, in light of China's emergence as an economic power, technology leader and a nation with a defined oceans strategy, and the activity of Russia and others in the Arctic region, are serious concerns that the United States is falling behind by not securing its sovereign rights to the vast resources of its continental shelf beyond 200 miles from shore — and to explore for more around the world — matters that encompass economic losses as well as national security threats.

Proponents, largely within industry, are anxious to see the United States accede to the Convention. In doing so, the country gains the legal authority to sponsor U.S. companies eager to secure rights to oil and gas reserves, and to leverage investments upwards of $2 billion for mining deep seabeds for valuable metals and rare earth elements. More than 40 countries have begun the process of securing their own continental shelf rights, according to State Depart- ment data.

"Chinese, Indian and Russian companies are exploring deep seabeds for rare earth elements and valuable metals, but the United States cannot sponsor our companies to do the same," Secretary of State Hillary Clinton said in a videotaped statement last December to the Pew Business Roundtable. "Joining the Convention will level the playing field for American companies so they have the same rights and opportunities as their competitors."

[*Page 10*]

Daisy R. Khalifa. "***A Seat at the Table: Arguments intensify for U.S. to join U.N. Law of the Sea***

Convention ." **Seapower**. (May 1, 2012) [**More**]

U.S. energy and mining interests are at a considerable disadvantage if U.S. remains outside convention

"American energy and deep-seabed companies are at a disad- vantage in making investments in the OCS due to the legal uncertainty over the outer limit of the U.S. continental shelf, nor can they obtain international recognition (and, as a result, financing) for mine sites or title to recovered minerals on the deep seabed beyond national jurisdiction. Even if U.S. firms were to unilaterally set out on their own, because the United States has negligible mineral-processing technology, they would have difficulty finding international partners to buy unprocessed minerals because they would have been obtained outside of the agreed regime.

[*Page 35*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. resource extraction industries realize they have more to lose being outside of the treaty and have lined up in favor of it

"Opponents of UNCLOS claim that accession will also harm U.S. commercial interests in the world's oceans. The provisions on seabed mining, in particular, are seen as an attempt at international wealth redistribution.65 Additionally, there is a fear that the ISA would have the power to enforce an international tax on resources extracted from the seabed.66

Although these commercial concerns resonate with many economic conservatives, they are among the easiest to debunk, primarily by examining the economic consequences the United States will face if it does not accede. Claims to mineral rights in the Arctic are governed by UNCLOS provisions on an extended continental shelf, and the United States may lose these claims without representation on the ISA or State Party status.67 Additionally, many economic concerns ring hollow in the face of favorable opinions of the treaty by U.S. industries affected by such regulations.68 For example, the oil and gas industries have agreed to pay any tax levied on deep seabed extractions.69

[*Page 361-362*]

Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

Accession to UNCLOS necessary before businesses will invest in lucrative but risky deepwater and arctic resource development

“Recent discoveries by the U.S. Coast Guard (USCG) icebreaker Healy reveal that the U.S. continental shelf in the Arctic Ocean is much more extensive than originally thought. Only by becoming party to UNCLOS and participating in its processes, however, can the United States obtain secure title to these vast resources, adding some 290,000 square miles for sovereign resource exploitation.2 9 Moreover, no American business enterprise is likely to invest the many billions of dollars necessary to develop a distant, deep-water off-shore oil or gas field, no matter how rich it might be, unless it has an undisputed right to do so under both domestic and international law.3 ° In addition, the Convention's deep seabed mining provisions, as amended in 1994, would permit and encourage American businesses to pursue free-market- oriented approaches to deep ocean mining. The 1994 "Part XI Implementing Agreement" was crafted in such a way so as to protect the interests of investors and the United States.3 As a result, the off-shore oil and gas and mining industries all strongly support accession to UNCLOS. Economic self- sufficiency and development of off-shore ocean resources contribute directly to our national security.

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Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

Ratifying UNCLOS would help U.S. reduce expenses and unlock more revenue from energy and mineral resources

“And ratifying the treaty saves the United States boatloads of cash. Approving it would allow us to reduce our military expenditures yet maintain naval strength at a time when our nation’s debt keeps climbing. One example is over piracy. The total economic costs of Somali piracy in 2011 were approximately $7 billion by some estimates. Signing the treaty would allow the U.S. to better coordinate anti-piracy and anti-terrorism efforts alongside the international community. Instead of policing the world’s waters by ourselves, we could share the burden.

Signing the treaty, then, reduces costs and danger for our already overextended navy.

What’s more, approving the treaty is similar to the best kind of business decision: it reduces expenses and puts money in our pocket. It provides for Exclusive Economic Zones, or exclusive privileges to manage the natural resources near our coast. No country stands to benefit more from these zones than the United States. As Citizens for Global Solutions points out: “The American zone is larger than that of any country in the world. The size of [America’s] zone is…bigger than the lower 48 states combined.” With increased access to the ocean’s resources – including mineral-rich waters near our shores – we can boost the economy, increase domestic energy production and bring back more jobs.

Capt. (Ret.) Gail Harris. "***U.S. Must Remove UNCLOS Handcuffs*** ." **The Diplomat**. (March 23, 2012) [**More**]

Risks to companies from engaging in resource extraction without UNCLOS protection are greater than risks from UNCLOS added liability

"Third, U.S. companies have been unwilling to begin costly exploration and extraction activities in reliance on theoretical and untested legal arguments that have not been accepted by other countries and that are flatly contrary to the terms of Law of the Sea Convention. Companies instead want the clear legal certainty provided by the Convention before making investments that could run into the billions of dollars. Critics of the Convention who are concerned about the possibility of international litigation should be much more concerned about the possibility of lawsuits against the United States or U.S. companies if the United States were to engage in resource extraction on the U.S. extended continental shelf or on the deep seabed contrary to the terms of the Convention, than about possible environmental claims against the United States if the U.S. were to join the Convention. Moreover, a U.S. company that initiates deep seabed mining outside the Convention risks having a foreign company sponsored by a country that is party to the Convention jump on its claim after it has proven to be profitable. No U.S. company would want to take that legal risk.

[*Page 7-8*]

Bellinger, John B. "***Testimony of John B. Bellinger III: On Law of The Sea Convention (June 14, 2012)*** ." Testimony before the June 14, 2012, June 14, 2012. [**More** (5 quotes)]

Offshore oil and gas development dependent on legal protection of UNCLOS

Offshore operations are capital-intensive, requiring significant financing and insurance. Oil and natural gas companies do not want to undertake these massive expenditures if their lease sites may be subject to territorial dispute. They operate transnationally, and need to know that the title to the petroleum resources will be respected worldwide and not just in the United States.

Oil, gas, and mining interests have made it clear that they won't operate without legal protection from UNCLOS

"Until we ratify the treaty, no U.S. companies will operate on the extended continental shelf. Aside from a small pocket of territory in the western Gulf of Mexico where we have bilaterally negotiated a boundary with Mexico, companies cannot be granted the certainty that leases of these regions would not be challenged in international courts.

Without becoming party to the treaty and gaining a seat at the negotiating table where decisions are made about how to partition out extended-shelf claims, we will be unable to assure industries that the international community will recognize a U.S. lease. Businesses, even those with extremely deep pockets such as Big Oil and Lockheed Martin, have been very clear: If we don't ratify, they won't operate. Companies want to create those jobs, generate revenue, and increase domestic production. But no certainty means no investment. No treaty means no security, no jobs, no dollars, no resources. It's that simple.

Michael Conathan. "***Conservatives Disregard Traditional Allies to Oppose the Law of the Sea*** ." **Think Progress**. (June 13, 2012) [**More**]

Oil and gas companies not willing to undertake extensive capital investments required to develop offshore without legal stability provided by UNCLOS

"Offshore operations are capital-intensive, requiring significant financing and insurance. Oil and natural gas companies do not want to undertake these massive expenditures if their lease sites may be subject to territorial dispute. They operate transnationally, and need to know that the title to the petroleum resources will be respected worldwide and not just in the United States. Availability of clear legal title is crucial to realizing the potential of U.S. offshore areas both now and in the future, as drilling technology continues to advance and make new projects feasible. As ExxonMobil emphasized

in its recent letter to this Committee, before it undertakes the immense investments required to explore and develop resources beyond 200 miles, “legal certainty in the property rights being explored and developed is essential.”

[*Page 4*]

Donohue, Thomas J. "***Statement of Thomas J. Donohue: The Law of the Sea Convention: Perspectives from Business and Industry*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (7 quotes)]

Oil and gas industry unwilling to rely solely on rights outlined in 1958 convention

“Critics suggest accession to UNCLOS is not required in order for the United States to claim an ECS, since the 1958 Continental Shelf Convention and the 1945 Truman Proclamation already support a unilateral U.S. claim. Although that may be true, the metric for determining the outer extent of the ECS is more generous in UNCLOS than in the 1958 Convention or the Truman Proclamation, both of which rely on an “exploitability criterion” to identify the outer limit of the ECS.[30] More importantly, the U.S. oil and gas industry believes that unilaterally claiming an ECS outside UNCLOS may be challenged by other nations in courts throughout the world, and has therefore repeatedly argued that legal certainty/security of tenure to explore and exploit the resources of the ECS can be obtained only through UNCLOS.[31] The bottom line is that U.S. industry will not invest in offshore oil and gas production in the ECS unless the United States is a party to UNCLOS.[32]

[*Page 765-766*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

U.S. failure to ratify UNCLOS will leave U.S. commercial mining and energy interests without legal protection

“Offshore oil and natural gas exploration along the extended continental shelf – an area beyond the 200-nautical-mile EEZ – is expected to increase U.S. reserves over the next decade. However, the United States cannot secure internationally recognized sovereign rights to those resources unless it ratifies LOSC. While the United States enjoys national jurisdiction over living and non-living resources above and below the seabed out to 200 nautical miles, claims to resources beyond the EEZ must be formally made to the U.N. Commission on the Limits of the Continental Shelf, the international body established by LOSC for parties to adjudicate claims to the extended continental shelf. Without the United States ratifying LOSC, U.S. companies operating beyond the EEZ would be considered on the high seas and beyond the formal legal protection of the United States. As a result,

offshore drilling companies have increasingly expressed their concern about the lack of legal protections afforded to U.S. companies and have indicated a reluctance to assume significant risk in operating in areas beyond U.S. jurisdiction. In short, U.S. failure to ratify LOSC could have a chilling effect on commercial resource exploration and exploitation on the extended continental shelf.

[*Page 4-5*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

Multinational corporations prefer stability of international regimes like UNCLOS over arbitrary local jurisdictions

"The isolationists were also concerned that U.S. corporations could be subject to the compulsory dispute resolution measures in the Convention. This highlights the limited knowledge of those who signed the letter to Senator Reid. Lawyers who practice international law prefer international arbitration or appearing before an international tribunal rather than local adjudication in a country whose legal system may not be well-established. These U.S. senators seem to believe that by bypassing UNCLOS ratification, disputes will be subject exclusively to U.S. law. This belief is incorrect, as U.S. corporations have subsidiaries worldwide that are subject to lawsuits in local jurisdictions.

[*Page 142*]

Bonner, Patrick J. "***Neo-Isolationists Scuttle UNCLOS*** ." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 135-146. [**More** (6 quotes)]

Oil and gas industries favor UNCLOS because it provides legal framework for accessing resources outside EEZ

"Offshore petroleum production is a major technological triumph. We now have world record complex development projects located in 7,500 feet of water in the Gulf of Mexico which were thought unimaginable a generation ago. Even more eye-opening, a number of exploration wells have been drilled in the past four years in over 8,000 feet of water and a world record well has been drilled in over 10,000 feet of water. New technologies are taking oil explorers out more than 200 miles offshore for the first time, thus creating a more pressing need for certainty and stability in delineation of the outer shelf boundary. Before the LOS Convention there were no clear, objective means of determining the outer limit of the shelf, leaving a good deal of uncertainty and creating significant potential for conflict. Under the Convention, the continental shelf extends seaward to the outer edge of the continental margin or to the 200-mile limit of the EEZ, whichever is greater, to a maximum of 350 miles. The U.S. understands that such features as the Chukchi Plateau and its component elevations, situated to the north of Alaska, are not subject to the 350-mile limitation. U.S. companies

are interested in setting international precedents by being the first to operate in areas beyond 200 miles and to continue demonstrating environmentally sound drilling development and production technologies.

Today our industry associations and their member companies are devoting much time and money lobbying for increased access to public lands within the U.S. Exclusive Economic Zone. The Law of the Sea Treaty will provide access opportunities to explore vast acreage beyond 200 miles off the coast of any nation that can delineate its shelf in a manner that meets the requirements of Article 76 of the Convention.

Kelly, Paul L. "***Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling*** ." **Global Offshore Drilling 2005 Conference**. (April 19, 2005) [**More**]

Oil and gas industry strongly supports U.S. accession to UNCLOS to regain the leadership role in maritime affairs it has lost

"From an energy perspective, potential future pressures are building in terms of both marine boundary and continental shelf delineations and in marine transportation. The LOS Convention offers the U.S. the chance to exercise needed leadership in addressing these pressures and protecting the many vital U.S. ocean interests. Notwithstanding the United States' view of customary international law, the U.S. petroleum industry is concerned that failure by the United States to become a party to the Convention could adversely affect U.S. companies' operations offshore other countries. In November 1998, the U.S. lost its provisional right of participation in the International Seabed Authority by not being a party to the Convention. At present there is no U.S. participation, even as an observer, in the Continental Shelf Commission— the body that decides claims of OCS areas beyond 200 miles— during its important developmental phase. The U.S. lost an opportunity to elect a U.S. commissioner in 2002, and we will not have another opportunity to elect a Commissioner until 2007.

The United States should also be in a position to exercise leadership and influence on how the International Seabed Authority will implement its role in being the conduit for revenue sharing from broad margin States such as the U.S., yet the U.S. cannot secure membership on key subsidiary bodies of the Seabed Authority until it accedes to the Convention. Clearly United States views would undoubtedly carry much greater weight as a party to the Convention than they do as an outsider. With 145 countries and the European Union having ratified the Convention, the Convention will be implemented with or without our participation and will be sure to affect our interests.

It is for these reasons that the U.S. oil and natural gas industry supports Senate ratification of the Convention at the earliest date possible.

Kelly, Paul L. "***Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling*** ." **Global Offshore Drilling 2005 Conference**. (April 19, 2005) [**More**]

Offshore petroleum companies looking to UNCLOS to provide legal title to areas beyond U.S. EEZ

"Offshore petroleum production is a major technological triumph. We now have world record complex development projects located in 5,000-6,000 feet of water in the Gulf of Mexico which were thought unimaginable a generation ago. Even more eye- opening, a number of exploration wells have been drilled in the past three years in over 8,000 feet of water and a world record well has been drilled in over 9,000 feet of water. New technologies are taking oil explorers out more than 200 miles offshore for the first time, thus creating a more pressing need for certainty and stability in delineation of the outer shelf boundary. Before the LOS Convention there were no clear, objective means of determining the outer limit of the shelf, leaving a good deal of uncertainty and creating significant potential for conflict. Under the Convention, the continental shelf extends seaward to the outer edge of the continental margin or to the 200-mile limit of the EEZ, whichever is greater, to a maximum of 350 miles. The U.S. understands that such features as the Chukchi Plateau and its component elevations, situated to the north of Alaska, are not subject to the 350-mile limitation. U.S. companies are interested in setting international precedents by being the first to operate in areas beyond 200 miles and to continue demonstrating environmentally sound drilling development and production technologies.

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Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. non-party status to UNCLOS has thwarted offshore oil and gas development beyond the U.S. EEZ

"More rapid development of the oil and gas resources of the United States continental shelf beyond 200 nautical miles. The United States oil and gas industry is poised in its technology to begin development of the huge continental shelf of the United States beyond 200 miles (approximately 15% of our total shelf). But uncertainties resulting from U.S. non-adherence to the Convention will delay the substantial investment necessary for development in these areas. Moreover, U.S. non-adherence is causing the United States to lag behind other nations, including Russia, in delimiting our continental shelf. Delimitation of the shelf is an urgent oceans interest of the United States;[13]

[*Page 10*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention: Urgent Unfisinshed Business*** ." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (5 quotes)]

Legal certainty provided by UNCLOS is required before companies will be willing to invest in oil and gas exploration

"Given the price of gasoline today, surely there is broad agreement that the United States needs to get on with the task of developing the oil and gas of our continental margins beyond 200 miles. Without adherence to the Convention that is unlikely to happen for years to come. The large investments that must be made to drill in deep water simply will not be made without legal certainty and security of tenure. Further, the United States has a crucial interest in protecting navigational freedom for the oil and gas brought to the United States that is so crucial for our economy. About 44 % of U.S. maritime commerce concerns petroleum and its products. To put this in further perspective, offshore oil and gas is now the world=s largest marine industry, with oil production alone in the range of $300 billion per year. For these and other reasons of relevance to our security interest in oil and gas, and the interests of our oil and gas industry, Mr. Paul L. Kelly, speaking on behalf of the American Petroleum Institute, the International Association of Drilling Contractors, and the National Ocean Industries Association, **testified before the Senate Foreign Relations Committee** and the Senate Environment and Public Works Committee that "the U.S. oil and natural gas industry supports Senate ratification of the Convention at the earliest date possible;"[3]

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Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004)***." Testimony before the Senate Committee on Armed Services, April 8, 2004. [**More** (6 quotes)]

Oil and gas industry strongly supports accession to UNCLOS in order to protect U.S. interests

"In conclusion, from an energy perspective we see potential future pressures building in terms of both marine boundary and continental shelf delineations and in marine transportation. We believe the LOS Convention offers the U.S. the chance to exercise needed leadership in addressing these pressures and protecting the many vital U.S. ocean interests. Notwithstanding the United States' view of customary international law, the U.S. petroleum industry is concerned that failure by the United States to become a party to the Convention could adversely affect U.S. companies' operations offshore other countries. In November 1998, the U.S. lost its provisional right of participation in the International Seabed Authority by not being a party to the Convention. At present there is no U.S. participation, even as an observer, in the Continental Shelf Commission--the body that decides claims of OCS areas beyond 200 miles--during its important developmental phase. The U.S. lost an opportunity to elect a U.S. commissioner in 2002, and we will not have another opportunity to elect a Commissioner until 2007.

The United States should also be in a position to exercise leadership and influence on how the International Seabed Authority will implement its role in being the conduit for revenue sharing from

broad margin States such as the U.S., yet the U.S. cannot secure membership on key subsidiary bodies of the Seabed Authority until it accedes to the Convention. Clearly United States views would undoubtedly carry much greater weight as a party to the Convention than they do as an outsider. With 143 countries and the European Union having ratified the Convention, the Convention will be implemented with or without our participation and will be sure to affect our interests.

It is for these reasons that the U.S. oil and natural gas industry supports Senate ratification of the Convention at the earliest date possible.

Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. needs to ratify UNCLOS to guide CLCS rules or guidelines regarding methane hydrates

"In the Methane Hydrate Research and Development Act of 2000 Congress mandated the National Research Council to undertake a review of the Methane Hydrate Research and Development Program at the Department of Energy to provide advice to ensure that significant contributions are made towards understanding methane hydrates as a source of energy and as a potential contributor to climate change. That review is now underway. The U.S. Navy has also done work on gas hydrates, as has the U.S. scientific community, including universities such as Louisiana State University and Texas A&M. Significant research is also being conducted by scientific institutions in Japan. The United States needs to have a seat at the table of the Continental Shelf Commission in order to influence development of any international rules or guidelines that could affect gas hydrate resources beyond our EEZ.

[*Page 5*]

Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. failure to ratify UNCLOS could adversely affect interests of oil and gas industry overseas

"In conclusion, from an energy perspective we see potential future pressures building in terms of both marine boundary and continental shelf delineations and in marine transportation. We believe the LOS Convention offers the U.S. the chance to exercise needed leadership in addressing these pressures and protecting the many vital U.S. ocean interests. Notwithstanding the United States' view of customary international law, the U.S. petroleum industry is concerned that failure by the United States to become a party to the Convention could adversely affect U.S. companies'

operations offshore other countries. In November 1998, the U.S. lost its provisional right of participation in the International Seabed Authority by not being a party to the Convention. At present there is no U.S. participation, even as an observer, in the Continental Shelf Commission— the body that decides claims of OCS areas beyond 200 miles— during its important developmental phase. The U.S. lost an opportunity to elect a U.S. commissioner in 2002, and we will not have another opportunity to elect a Commissioner until 2007.

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Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

Rejection of UNCLOS is crippling U.S. seabed mining and oil and gas industry efforts to develop seabed

"With respect to our oil and gas and deep seabed mining industries, however, there are especially compelling reasons why the United States needs to promptly adhere to the Convention. Our oil and gas industry is simply unlikely to move forward in development of the continental margin of the United States in areas beyond 200 nautical miles until United States adherence solidifies the legal regime for them in such areas. And our deep seabed mining industry is now moribund, and will remain so, absent United States adherence to the Convention. The United States led the world toward development of the technology for the recovery of deep seabed minerals. Our industry collectively expended more than $200 million to identify and obtain international recognition for five prime mine sites. At present three of those sites lie abandoned and the other two are on hold with zero chance of activity absent United States adherence. The Congress should clearly understand that accepting the arguments of the critics and opposing moving forward with the Convention is to permanently put the innovative United States deep seabed mining industry out of business, and to accept a reality that only the firms of other nations will be able to mine the deep seabed.

[*Page 11-12*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Oil and gas industry are strong proponents of U.S ratification of UNCLOS

"The Foreign Relations Committee heard testimony by Paul Kelly, on behalf of petroleum and other industrial associations, advocating Treaty accession as a means of facilitating energy development on the continental shelf beyond 200 nautical miles. While the Convention allows for

continental shelf claims to 350 miles and in some cases even beyond this, as a non–state party, the United States has no treaty-based means of making such a claim. Kelly painted a picture of an energy industry ready, willing, and able to move oil and gas extraction production into deepwater areas beyond 200 nautical miles of the United States.[85] Citing technology that now allows for oil and gas development in water depths approaching two kilometers, Kelly pointed out that “U.S. companies are interested in setting international precedents by being the first to operate in areas beyond 200 miles and to continue demonstrating environmentally sound drilling and production technologies.”[86] While Kelly touted the ambitious and environmentally sound plans of industry, the environmental community had its own advocate citing the myriad reasons for Treaty accession.

[*Page 204*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

U.S. ratification of UNCLOS key to development of deep seabed mining industry

The development of deep seabed claims is incredibly expensive. Companies in the U.S. are reluctant to invest heavily in deep seabed mining because of the risk that their activities would not withstand a legal challenge since the U.S. is not a party to the Convention. Conversely, foreign companies, because their governments have joined the Convention, have access to the international bodies that grant the legal claims to operate in the deep seabed area. The U.S. cannot represent the interests of its companies in those bodies.

DSHMRA does not give mining companies the needed certainty they need to operate in international waters

"But the DSHMRA does not grant that authority, coun- tered Caitlyn Antrim, executive director of the Rule of Law Committee for the Oceans, a nonpartisan educa- tional group whose purpose is to inform public discourse regarding U.S. interests in accession to the Convention. She said the DSHMRA was a framework and never was considered, in and of itself, sufficient.

"It was intended to be a transition to the Law of the Sea Convention and, in fact, it has those provisions in there saying that when a Law of the Sea Convention is in force for the United States, those provisions of the law that are not appropriate to it will be inactive," Antrim told Seapower. "If only U.S. companies were mining the deep ocean floor or, as in the 1980s, only non-parties to the Convention had such capability, then operating under domestic legislation outside the Convention might be an option for business investors.

"But now, with 12 sites being explored under the Convention, and five more applications up for review this summer, customary behavior has already established the Convention as the only legal regime for seabed min- ing beyond national jurisdiction that has international legitimacy," she said. "And with the International Seabed Authority preparing to develop regulations for commer- cial exploration of seabed minerals, the domestic U.S. regime is falling even further behind."

[*Page 18*]

Daisy R. Khalifa. "***Point/Counterpoint*** ." **Sea Power**. (July 1, 2012) [**More**]

Lack of legal certainty has stalled deep seabed mining industry

"Moreover, mining companies much prefer the known difficulties of operating on land to those of operating on the seabed. The risks of working in a place where volcanic activity seems to have

stopped but may suddenly resume are uncertain. So indeed are the possible obligations to repair the underwater environment: no legal codes are yet in place for deep-sea mining. That helps to explain why the only places in which companies have dipped more than a toe in the water are in exclusive economic zones, which are not just shallower than many parts of the distant ocean but also within the legal ambit of a national authority.

Seafloor mining beyond countries' territorial waters is regulated by the International Seabed Authority, set up under the United Nations Convention on the Law of the Sea. So far it has issued only eight licences, all for exploration, not production, all for nodules, not massive-sulphide deposits, and all to governmental or quasi-governmental agencies (of China, France, Germany, India, Japan, Russia, South Korea and an east European consortium). No wonder. Commercial miners want both a clear title to their holding and exclusive rights to exploit it. They also have to answer to shareholders.

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0 "***Seabed Mining: The unplumbed riches of the deep*** ." **The Economist**. (May 14, 2009) [**More**]

US accession to the convention would provide domestic deep seabed mining industry strong leadership and legal stability

"Lockheed Martin, the only U.S. company with active claims to deep seabed sites under a U.S. law predating the Law of the Sea Convention, recently wrote to this Committee urging the Senate to approve the Convention. Lockheed has invested hundreds of millions of dollars on research and development related to deep seabed mining over the past 40 years. The company's letter made clear that the multibillion dollar investments now required to launch an ocean-based resource development business will only occur if it can obtain the security of tenure and clear legal rights offered under the Convention. With Lockheed and potentially other U.S. companies poised to expand their operations and create new jobs, Senate accession to this treaty would allow investor dollars to stay here.

Equally important to U.S. companies contemplating deep seabed mining activities is U.S. leadership in the ISA. The next several years will be formative for the nascent deep seabed mining industry. As I mentioned earlier, the Convention's deep seabed mining regime was overhauled in 1994, resulting in a system that is uniquely favorable to American interests. Those reforms included a permanent U.S. seat on the Council of the ISA. But the U.S. has not assumed that seat, and cannot guide the development of new rules pertinent to deep seabed mining activities while outside the Convention.

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Donohue, Thomas J. "***Statement of Thomas J. Donohue: The Law of the Sea Convention: Perspectives from Business and Industry*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (7 quotes)]

Seabed mining companies will only lose rights if US remains outside of UNCLOS

The taxation objection made by opponents is often coupled with an argument that US companies that had invested millions of dollars in exploration costs would lose their existing claims under US law. This argument ignores the fact that the 1994 Agreement grandfathers these holders into the treaty regime based on arrangements no less favorable than those granted to holders of claims already registered with the Authority upon certification by the US government and the payment of a $250,000 application fee (a fee that is half of the fee established in the 1982 Convention). As Ambassador Colson pointed out in the 1994 hearings, "If the U.S. does not become Party to the Convention, international recognition of the rights of the U.S. licensed consortia could be jeopardized."

[*Page 120*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

If U.S. remains outside UNCLOS, U.S. firms will have no legal rights to deep seabed mining resources

"Moreover, to mine deep seabed minerals requires security of tenure for the billion dollar plus costs of such an operation. Our industry has emphatically reminded us that they cannot mine under a fishing approach in which mining is a free-for-all concept, as the critics seem to suggest. Rather, they must have both the exclusive rights to mine sites and international recognition of titles to the minerals recovered. These requirements led to the formation of a limited international agency to provide security of tenure and title for mineral resources of the seabed beyond national jurisdiction, which was otherwise owned by no one. The ISA was a necessary specialized agency of strictly limited jurisdiction to deal with security of tenure and stable property rights so that investors can amortize their debt. Quite contrary to the recent testimony of one critic before the Senate Committee on Environment and Public Works, the ISA would not have "the exclusive right to regulate what is done, by whom, when and under what circumstances in subsurface international waters and on the sea-floor." (12) Rather, the ISA is a small, narrowly mandated international agency that has emphatically no ability to control the water column and only functional authority over the mining of the minerals of the deep seabed beyond national jurisdiction. Again, this is a necessary requirement for seabed mining, an area beyond which any nation has sovereignty, to provide security of tenure to mine sites, without which mining will not occur. By not adhering to the treaty, the United States will simply lose its deep seabed mine sites--the best in the world--and our seabed mining industry will be permanently deep-sixed.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Deep seabed mining investors committed to abiding by UNCLOS framework

"There are many misconceptions as to what the signing of UNCLOS would mean for the United States and deep seabed mining. It is argued that by ratifying UNCLOS, including the Agreement, states will inevitably have to discontinue their unilateral attempts at deep seabed mining.133 However, this is unfounded as the law of the deep seabed was intentionally not settled in order to produce solid negotiations of the sort that resulted in UNCLOS. 134 Most, if not all, of the potential deep seabed mining nations are dedicated to the adoption of UNCLOS and the Agreement.135 The potential deep seabed mining countries understand that there is a lack of economic viability in the present deep seabed mining industry, and "it is inconceivable that the necessary financial markets would support unilateral mining if it is contrary to the principles" of UNCLOS.

[*Page 764*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

U.S. failure to ratify UNCLOS will leave U.S. commercial mining and energy interests without legal protection

"Offshore oil and natural gas exploration along the extended continental shelf – an area beyond the 200-nautical-mile EEZ – is expected to increase U.S. reserves over the next decade. However, the United States cannot secure internationally recognized sovereign rights to those resources unless it ratifies LOSC. While the United States enjoys national jurisdiction over living and non-living resources above and below the seabed out to 200 nautical miles, claims to resources beyond the EEZ must be formally made to the U.N. Commission on the Limits of the Continental Shelf, the international body established by LOSC for parties to adjudicate claims to the extended continental shelf. Without the United States ratifying LOSC, U.S. companies operating beyond the EEZ would be considered on the high seas and beyond the formal legal protection of the United States. As a result, offshore drilling companies have increasingly expressed their concern about the lack of legal protections afforded to U.S. companies and have indicated a reluctance to assume significant risk in operating in areas beyond U.S. jurisdiction. In short, U.S. failure to ratify LOSC could have a chilling effect on commercial resource exploration and exploitation on the extended continental shelf.

[*Page 4-5*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. has choice of agreeing to mineral and resource provisions of UNCLOS by ratifying treaty or foregoing ability to extract valuable resources at all

"And it's not just about oil and gas. Rare-earth metals are compounds integral to the production of modern devices including cell phones, hybrid cars, and even precision-guided missile systems. Currently more than 95 percent of rare-earth metals are produced in China, which has begun restricting its export.

But nodules found on the deep seabed—well outside even extended continental shelves—have "economically significant" amounts of rare-earth metals, and Lockheed Martin and other companies would like to begin exploration to determine the viability of tapping this source. Access to these areas that are beyond any national claim of jurisdiction will have to be regulated by an international body—in this case, the ISA—which explains Lockheed Martin's support for U.S. ratification of the Law of the Sea.

The United States has a clear choice: Agree to limited revenue sharing under the treaty and bankroll more than 93 percent of total revenue from extended continental shelf and high seas activities, or get nothing at all and lose the ability to challenge claims made by other nations.

Michael Conathan. "***Conservatives Disregard Traditional Allies to Oppose the Law of the Sea*** ." **Think Progress**. (June 13, 2012) [**More**]

U.S. manufacturers dependent on foreign sources for rare earth metals because of its inability to mine deep seabed

"Until a decade ago, the United States was 100 percent self-reliant for rare earth production, with domestic companies producing enough to supply U.S. manufacturers. Over time, however, U.S. production was halted as it became economically and environmentally cost prohibitive.

Companies in various countries – including the United States – are looking at reopening closed mines and developing new deposits, but these efforts could take a number of years to fully come on line.

The deep seabed offers a new opportunity for the United States to gain steady access to these vital rare earth minerals. Polymetallic nodules are located on the deep ocean floor. These nodules typically contain manganese, nickel, copper, cobalt and rare earth minerals. However, U.S. companies cannot actively pursue claims in the areas where these nodules are dense unless the U.S. ratifies the Law of the Sea Treaty.

[*Page 3*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)*** ." Testimony before the Senate Foreign Relations

Committee, June 28, 2012. [**More** (5 quotes)]

U.S. companies unable to proceed with deep seabed mining claims while U.S. remains non-party to UNCLOS

"The Law of the Sea Convention provides the only internationally recognized legal regime for extracting mineral resources from the ocean floor in the deep seabed, an area over which no country has sovereign rights. The International Seabed Authority (ISA) develops the rules, regulations and procedures relating to the deep seabed. The Convention guarantees the United States, and only the United States, a permanent seat on the decision-making Council of the ISA – with an effective veto over decisions impacting U.S. interests.

The development of deep seabed claims is incredibly expensive. Companies in the U.S. are reluctant to invest heavily in deep seabed mining because of the risk that their activities would not withstand a legal challenge since the U.S. is not a party to the Convention. Conversely, foreign companies, because their governments have joined the Convention, have access to the international bodies that grant the legal claims to operate in the deep seabed area. The U.S. cannot represent the interests of its companies in those bodies.

Lockheed Martin, for example, has two deep seabed claims that pre-date the Law of the Sea Convention. It has continued to extend its licenses through the National Oceanic and Atmospheric Administration (NOAA). These claims will be instantly recognized by the International Seabed Authority (ISA) if the U.S. joins the Convention. However, without the U.S. becoming a party to the Convention, Lockheed Martin is unable to secure U.S. sponsorship of these claims at the ISA.

[*Page 4*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

U.S. needs to ratify UNCLOS now to secure rights to deep seabed and the vast deposits of rare earth metals

"At the same time, the Chinese are accelerating their own deep seabed mining efforts. They have increased government funding for seabed mining, and the government announced a $75 million national deep sea technology base in 2010. China is also expanding its engagement with the ISA, where it secured one of the four ISA exploration licenses issued in 2011. The Chinese can boast more than 20 years of sustained technical and political efforts to develop the deep seabed, funded by the government.

A close look at the map of claims in the Clarion Clipperton Zone (CCZ), a location in the Pacific Ocean that is rich with rare earths, shows active claims by China, Japan and Russia “planting their flags,” so to speak. Recently published reports have indicated that the Chinese are actively surveying other claim areas in the CCZ, including those of the U.S. Russia, Tonga and Nauru were also granted deep seabed mining licenses by the ISA last year. At last count, the ISA has 17 pending or completed applications for exploration – up from just eight in 2010.

Only ratification of the Law of the Sea Convention and engagement with the ISA will provide a sufficient mechanism to secure international recognition of U.S.-based claims and rights. Manufacturers and consumers will benefit from a more diverse and competitive market for rare earths, and deep seabed mining is an opportunity for the U.S. to quickly diversify its rare earth sources.

[*Page 5*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

U.S. multinationals forced to work through other countries to pursue seabed mining claims because of U.S. non-party status

“As it stands in the seabed resource market, there are approximately 12 mining claims involving 14 countries under the International Seabed Authority, an intergovernmental body established by the Law of the Sea Convention to have oversight of mineral-related activities in the international seabed. Lockheed Martin for years has had claims to explore and extract rare earth elements, which produce valuable metals used the world over in flat-screen televisions, electric hybrid batteries, tank armor, night-vision goggles and every mobile communications device.

“When you see an international, huge company like Lockheed who has got these claims, who has for years been trying to get access to them, that now may end up going to Lockheed Martin U.K. to get a site and operate through their U.K. operating unit, you have to ask why are American companies having to go to foreign governments to access deep seabed minerals when we as a country desperately need [this business]?”Pike said.

[*Page 13*]

Daisy R. Khalifa. "***A Seat at the Table: Arguments intensify for U.S. to join U.N. Law of the Sea Convention***." **Seapower**. (May 1, 2012) [**More**]

Only U.S. firm with claim rights for deep seabed mining unable to secure investment as long as U.S. remains outside of UNCLOS

Jennifer Warren, vice president, technology policy and regulation at Lockheed Martin, discussed the com- pany's history and interest in deep seabed exploration, which dates back more than 40 years. She said it has generated more than 80 patents and invested more than $500 million in exploration largely in the Clarion-Clipperton Zone that extends from Baja California to Hawaii.

"Recent developments in deep seabed resources have really sharpened our interest in seeing Law of the Sea ratified as soon as possible," Warren said.

Lockheed, she said, has maintained its licenses to to explore and extract rare earth minerals, even as the market for minerals lagged. However, today, the demand has risen sharply for "rare earths," as they are known, which produce valuable metals for flat-screen televisions, electric hybrid batteries, tank armor, night-vision goggles and cell phones.

Furthermore, Warren said, Lockheed's claims now are the only current active U.S.-based claims. Last July, the first four licenses for deep seabed exploration were granted by the International Seabed Authority (ISA), the organization created by the Convention to recognize mining claims beyond the continental margin, and two of them are held by China and Russia, she said.

"The importance of these resources is well understood internationally," Warren said, describing the need to be a party to the Law of the Sea Convention in order to be an active participant and have authorities in, for example, the rule-making process within the ISA. "Other countries are moving forward quickly and aggressively to access them. As the only U.S.-based claimant, our view is pretty straightforward. Business initiatives to exploit deep seabed mineral resources will only be able to secure the necessary financial investments if done pursuant to the existing international framework."

[*Page 18*]

Daisy R. Khalifa. "***Law of the Sea Goes Public*** ." **Seapower**. (June 1, 2012) [**More**]

Rejection of UNCLOS is crippling U.S. seabed mining and oil and gas industry efforts to develop seabed

"With respect to our oil and gas and deep seabed mining industries, however, there are especially compelling reasons why the United States needs to promptly adhere to the Convention. Our oil and gas industry is simply unlikely to move forward in development of the continental margin of the United States in areas beyond 200 nautical miles until United States adherence solidifies the legal regime for them in such areas. And our deep seabed mining industry is now moribund, and will remain so, absent United States adherence to the Convention. The United States led the world toward development of the technology for the recovery of deep seabed minerals. Our industry collectively expended more than $200 million to identify and obtain international recognition for five prime mine sites. At present three of those sites lie abandoned and the other two are on hold with zero chance of activity absent United States adherence. The Congress should clearly understand that accepting the arguments of the critics and opposing moving forward with the Convention is to permanently put the innovative United States deep seabed mining industry out of business, and to

accept a reality that only the firms of other nations will be able to mine the deep seabed.

[*Page 11-12*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Rest of the world has moved on in the seabed mining debate and is unlikely to tolerate unilateral US action

"The work of formal international organizations, as well as interstate treaty negotiating conferences, may shape U.S. attitudes and actions. This is true not only of organizations in which the United States actively participates as a member, but also of organizations in which the United States is not a member. For example, the International Seabed Authority, headquartered in Kingston, Jamaica, is fully operational. It has received plans of work for deep seabed exploration from registered investors, has developed deep-seabed-mining regulations, and is currently considering an application for mining operations.64 These develop- ments, as well as the negotiating histories and texts of the Convention and the Part XI Agreement, limit the United States' ability credibly to assert that seabed mining beyond the limits of national jurisdiction is a high seas freedom, akin to the freedom of navigation. Legally and practically, opponents of the post- 1994 international seabed mining regime have simply lost the debate. The rest of the world-developed and developing states, market-oriented and non-market-oriented states-has accepted the revised mining regime. Any unilateral effort by a U.S. company to mine the seabed beyond the limits of national jurisdiction would almost certainly face opposition from the rest of the world, and the U.S. company's mining claims would be insecure.

[*Page 17-18*]

Noyes, John. "*The United States, the Law of the Sea Convention, and Freedom of Navigation*." **Suffolk Transnational Law Review**. Vol. 29. (2005-2006): 1-24. [**More** (5 quotes)]

U.S. non-party status to UNCLOS has crippled the nascent domestic seabed mining industry

"Reclaiming United States deep seabed mineral sites now virtually abandoned. United States firms pioneered the technology for deep seabed mining and spent approximately $200 million in claiming four first-generation sites in the deep seabed for the mining of manganese nodules. These nodules contain attractive quantities of copper, nickel, cobalt and manganese and would be a major source of supply for the United States in these minerals. Paradoxically, 'protecting' our deep seabed industry has sometimes been a mantra for non-adherence to the Convention. Yet because of uncertainties resulting from U.S. non- adherence these sites have been virtually abandoned and most

of our nascent deep seabed mining industry has disappeared. Moreover, it is clear that without U.S. adherence to the Convention our industry has absolutely no chance of being revived. I believe that as soon as the United States adheres to the Convention the Secretary of Commerce should set up a working group to assist the industry in reclaiming these sites. This working group might then recommend legislation that would deal with the industry problems in reducing costs associated with reacquiring and holding these sites until deep seabed mining becomes economically feasible;

[*Page 11*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention: Urgent Unfisinshed Business***." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (5 quotes)]

U.S. companies unlikely to invest in deep seabed mining without protections afforded by UNCLOS

"First, without the protection now guaranteed by UNCLOS, U.S. companies are not likely to invest in deep seabed mining.[109] At a hearing before the Senate Foreign Relations Committee, Jay Timmons, President and CEO of the National Association of Manufacturers, spoke on manufacturers' behalf and expressed the hesitancy to invest: "[t]he development of deep seabed claims is incredibly expensive. Companies in the U.S. are reluctant to invest heavily in deep seabed mining because of the risk that their activities would not withstand a legal challenge since the U.S. is not a party to the Convention."[110] For instance, the Pacific Ocean contains a large supply of nodules, rock-like substances that contain minerals such as nickel, copper, and cobalt.[111] There is currently no cost-effective way to remove these nodules from the ocean floor.[112] It is possible that developing a procedure to extract the metal from the nodules will be the most expensive part of the process."[113] Further, methane hydrates[114] are another potentially enormous alternative energy source found in the ocean with extraction technology in its infancy.[115] Unless the United States accedes to UNCLOS, U.S. companies will be less likely to invest in deep seabed mining of the nodules and exploitation of methane hydrates, leaving untouched great resources that would add much revenue to the U.S. Treasury.

[*Page 12-13*]

Gallagher, Marjorie Ellen. "*The Time is Now: The United States Needs to Accede to the United Nations Convention on the Law of the Sea to Exert Influence over the Competing Claims in the South China Sea*." **Temple International and Comparative Law Journal**. Vol. 28. (2014): 1-26. [**More** (5 quotes)]

U.S. has significant economic interests in emerging deep seabed mining industry

If the U.S. does not ratify UNCLOS, it risks losing the remaining three possible seabed mining sites, with billions in the strategic minerals manganese, copper, cobalt and nickel at stake. A single seabed mining operation would spur the economy with total capital purchases of close to one and a half billion dollars and would stimulate robust job creation. Further, for our nation to lose this new industry would cost millions in consumer losses and foregone tax revenues and billions in our balance of trade as the United States was forced to import rather than produce these strategic minerals.

Race for seabed mineral wealth taking off worldwide

"The following examples demonstrate that the race has begun. The Toronto-based Nautilus Minerals Inc.8 received its first production license for the Solwara 1 project from Papua New Guinea in January 2011 and has pending applications for the EEZ of Fiji and other places. Sydney-based Neptune Minerals is exploring the seabed off New Zealand. De Beers of South Africa, an offshore diamond miner, is adapting its technology for similar projects in the Coral Sea.9 The Dutch firm "OceanflORE" is elaborating a project study for the exploitation of phosphorites off the coast of New Zealand while the US Geological Service is working on an inventory of the seabed riches of Pacific territories and associated states in the area. A poor Pacific island may become a bonanza. A tiny island or a reef and a rock may become the trigger of a maritime clash, ending up in an incident or a military occupation.

[*Page 172*]

Jenisch, Uwe K. "*Old laws for new risks at sea: mineral resources, climate change, sea lanes, and cables*." **WMU Journal of Maritime Affairs**. Vol. 11. (2012): 169-185. [**More** (4 quotes)]

U.S. stake in emerging deep seabed mining industry could be worth as much as $1 trillion annually

"Now what was at stake for the United States in this? At stake was access to these mineral resources, these huge mine sites that are equivalent to the largest in the world today. The aggregate value of the minerals in the mine sites we are going to lose if we do not move forward on this treaty, may be—hold on to your hats—one trillion dollars.[19] Now just to put that into perspective, the total cost so far of the Iraq War is debated as being somewhere between a quarter of a trillion and three-quarters of a trillion dollars.[20] This large amount, a trillion dollars may be at stake in access to critical

minerals for the United States of America in going forward with this treaty.

[*Page 463*]

Moore, John Norton. "*UNCLOS Key to Increasing Navigational Freedom*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 459-467. [**More** (4 quotes)]

US missing out on tremendous economic gain from exploiting oil, gas, and mineral resources outside EEZ

"Likewise, with $100-a-barrel oil prices and nearly one-third of all the world's hydrocarbons being produced off-shore, it would be folly for the U.S. to ignore the need for access to extended outer continental shelf (OCS) oil and gas resources. The great irony of the U.S. debates over the Law of the Sea Convention is that for years (since the Reagan Administration rejected the treaty in the early 1980s) we have been focusing on the wrong seabed resources. Although the original UNCLOS was rightly rejected because of its absurdly drafted provisions on the mining of manganese nodules (including the creation of an international mining consortium, known grandiloquently as "The Enterprise"), UNCLOS has relatively fewer provisions on such ocean resource activities as lifting oil and gas reserves beyond 200 nautical miles, mining polymetallic sulfides and other exotic substances found at mid-ocean ridges, bio-prospecting the unique flora and fauna of the ocean abyss, and salvaging historic shipwrecks.[13] That the United States might extend its Arctic continental shelf off Alaska as far out as 350 nautical miles has the oil industry – and Alaska's Senate delegation – salivating at the possibilities. But that extension would only be possible if the U.S. accedes to UNCLOS and files a claim before the U.N. Commission on the Limits of the Continental Shelf.[14]

[*Page 24-25*]

Bederman, David J. "***The Old Isolationism and the New Law of the Sea: Reflections on Advice and Consent for UNCLOS*** ." **Harvard International Law Journal Online**. Vol. 49. (2008): 21-47. [**More** (3 quotes)]

U.S. non-party status to UNCLOS is harming U.S. economy by constraining resource mining and underseas cables industries

"Our economy is hurt when delimitation of our extended continental shelf is delayed and when legal uncertainties from non-membership prevent our oil and gas industry from exploiting the rich continental margin, especially in the Arctic. Development of resources in the Chukchi and Beaufort Seas off Alaska's coast would create approximately 54,700 jobs per year nationwide with a $145 billion payroll and would generate $193 billion in federal, state and local revenue according to a study done by the University of Alaska's Institute of Social and Economic Research.

The delay in ratifying this treaty has already cost the loss of one of our four seabed mine sites, the

richest in the world, and if we do not soon adhere the United States risks losing the remaining three, with billions in the strategic minerals manganese, copper, cobalt and nickel at stake. A single seabed mining operation would spur the economy with total capital purchases of close to one and a half billion dollars and would stimulate robust job creation. Further, for our nation to lose this new industry would cost millions in consumer losses and foregone tax revenues and billions in our balance of trade as the United States was forced to import rather than produce these strategic minerals.

Undersea cables carry more than 95% of international Internet and telephonic transmissions. These crucial cables also transmit financial data and transactions worth trillions every day. The Convention establishes the legal underpinning for protecting and managing these cables. At a National Press Club event a spokesman for AT&T warned that not being a party places America's crucial communication links at risk.

Moore, John Norton. "***Restoring America's Oceans Leadership*** ." **Huffington Post**. (July 27, 2012) [**More**]

Potential mineral wealth in seabed exceeds existing land deposits

"Coral reefs, mangroves, and estuaries are now considered "among the most highly diverse, integrated and productive of the earth's ecosystems."[19] An estimated 175 billion dry metric tons of minable manganese nodules, containing as many as 30 elements, including manganese, nickel, copper, and cobalt, cover about 15 percent of the deep seabed.[20] If correct, these reserves far exceed known land deposits.[21] Yet initial estimates tended to overestimate not the mineral wealth, nor necessarily the ability of technology to mine it, but the economic feasibility of such endeavors. Mining engineer John Mero predicted in 1965 that by 1985 operations would be processing 50 million tons of nodules annually.[22] However, those corporations that had seabed mining technology also had substantial invested interest in the continuing profitability of land-based minerals. Thus, mining of the seabed has not yet become a growth industry. Nevertheless, this vast potential wealth, located on the 70 percent of the earth's surface covered by the oceans,[23] is the impetus for both the attempt to privatize the ocean and the resistance to such an enclosure.

[*Page 845-846*]

Thompson, Carol B. "*International Law of the Sea/Seed: Public Domain versus Private Commodity*." **Natural Resources Journal**. Vol. 44, No. 3 (Summer 2004): 841-866. [**More** (7 quotes)]

Deep seabed mining has potential to be significant source of strategically valuable rare earth elements

U.S. companies increasingly seek to engage in seabed mining for minerals such as rare earth elements and cobalt that are critical to the broad U.S. economy and used in producing defense assets. The deep seabed contains two potential sources for rare earth elements: polymetallic nodules which typically contain manganese, nickel, copper, cobalt and rare earth minerals; and sea-floor hydrothermal vents which pump out rare-earth elements dissolved in their hot fluids.

Seabed mineral deposits could hold more than 110 million tons of rare earth minerals

"It has long been known that the ocean might provide a wealth of rare earths. Sea-floor hydrothermal vents pump out rare-earth elements dissolved in their hot fluids. And these elements and others accumulate in potato-sized lumps, called manganese nodules, on the sea floor. The elements also build up in sea-floor mud; but only a few spot measures of this source of rare-earth elements have previously been made.

Kato and his colleagues set out to perform a widespread assessment of this possible resource. They looked at 2,000 samples of sediments taken from 78 sites around the Pacific, and found rare-earth concentrations as high as 0.2% of the mud in the eastern South Pacific, and 0.1% near Hawaii. That might not sound like much, but those concentrations are as high as or higher than those at one clay mine currently in operation in China, they point out. And the deposits are particularly rich in heavy rare-earth elements — the rarer and more expensive metals.

Some of the deposits are more than 70 metres thick. The authors estimate that an area of 1 square kilometre around a hotspot near Hawaii could hold 25,000 tonnes of rare earths. Overall, they say, the ocean floor might hold more than the 110 million tonnes of rare earths estimated to be buried on land.

Nicola Jones. "***Sea holds treasure trove of rare-earth elements*** ." **Nature**. (July 3, 2011) [**More**]

Demands for rare earth metals and instability in current producer states are driving deep seabed exploration

"The world economy, still suffering from the financial crisis, is currently experiencing increasing commodity prices. Industrial associations and governments are monitoring patterns of supply and demand, not only for standard minerals like iron, but also for high-value metals (e.g., nickel, copper,

titanium, gold) and rare earth elements (REE) like yttrium, indium, gallium, neodymium, and germanium (Kato et al. 2011) which are important for semi-conductors, photovoltaics, lasers, liquid crystal displays, fiber- optic cables, and other high-tech products used in both civilian and military applica- tions. The demand for raw materials is expected to double in the next 25 years. The EU has identified a list of 14 out of 41 critical raw materials2 which are irreplaceable in key industries. The supply risk is due to the fact that a high share of production comes from China,3 Russia, South Africa, the Democratic Republic of Congo, and Brazil. This production concentration cannot easily be substituted for or augmented by other sources. The political–economic stability of some of the producing states is questionable and, in the case of Congo, nearing collapse. The list of failing states will grow where humanitarian and environmental risks may get completely out of control. The risks for the supply chains are self-evident: old and newly industrialized states are competing over prices and access rights to the remaining raw materials, while the low-hanging fruits have been picked. As a consequence, interest in marine mineral resources is growing again. With only 29% of the world's surface being land and 71% being sea, there is every reason to believe that terrestrial minerals occur in deposits on and in the seabed, as well. The Pacific Ocean alone is larger than all land masses on earth.

[*Page 170-171*]

Jenisch, Uwe K. "*Old laws for new risks at sea: mineral resources, climate change, sea lanes, and cables*." **WMU Journal of Maritime Affairs**. Vol. 11. (2012): 169-185. [**More** (4 quotes)]

U.S. losing out on race for rare earth minerals from deep seabed

"The second economic benefit I would like to highlight relates to mining in the deep seabed areas beyond any country's jurisdiction. Only as a Party to the Convention could the United States sponsor U.S. companies like Lockheed Martin to mine the deep seabed for valuable metals and rare earth elements. These rare earth elements – essential for cell phones, flat-screen televisions, electric car batteries, and other high-tech products – are currently in tight supply and produced almost exclusively by China. While we challenge China's export restrictions, we must also make it possible for U.S. companies to develop other sources of these critical materials. They can only do this if they can obtain secure rights to deep seabed mine sites and indisputable title to minerals recovered. While we sit on the sidelines, companies in China, India, Russia, and elsewhere are securing their rights, moving ahead with deep seabed resource exploration, and taking the lead in this emerging market.

Clinton, Hillary. "***Statement from Hillary Clinton: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)***." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More** (3 quotes)]

India is working to mine rare earth elements from seabed to counter China's monopoly

"India has joined the race to explore and develop deep-sea mining for rare earth elements — further complicating the geopolitics surrounding untapped sources of valuable minerals beneath the oceans.

The country is building a rare-earth mineral processing plant in the east coast state of Orissa and it is spending around US$135 million to buy a new exploration ship and to retool another for sophisticated deep-water exploration off its coast.

The Central Indian Basin, for example, is rich in nickel, copper, cobalt and potentially rare-earth minerals, which are highly lucrative and used widely in manufacturing electronics such as mobile phone batteries. They are found in potato-shaped nodules on the deep-sea floor.

"These nodules offer a good solution to meeting the nation's demand for metals," C. R. Deepak, head of the deep-sea mining division at the National Institute of Ocean Technology (NIOT), Chennai, told SciDev.Net.

Paula Park and T.V. Padma. "***India joins deep sea mining race*** ." **The Guardian**. (August 30, 2012) [**More**]

U.S. ratification of UNCLOS would reduce U.S. dependency on on foreign supplies of rare earth elements

"Seabed mining, in the Arctic and elsewhere, is also becoming an important strategic interest for the United States. U.S. companies increasingly seek to engage in seabed mining for minerals such as rare earth elements and cobalt that are critical to the broad U.S. economy and used in producing defense assets. However, as long as the United States remains outside the international legal protections afforded by LOSC, the private sector remains hesitant to invest in seabed mining – investments that would reduce U.S. vulnerabilities to external pressure and supply disruption. Indeed, since few suppliers provide such minerals and they are prone to intentional or unintentional disruptions and price spikes, increasing U.S. production will help prevent suppliers from exerting political and economic leverage over the United States and its allies.[22]

[*Page 6*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. manufacturers dependent on foreign sources for rare earth metals because of its inability to mine deep seabed

Until a decade ago, the United States was 100 percent self-reliant for rare earth production, with

domestic companies producing enough to supply U.S. manufacturers. Over time, however, U.S. production was halted as it became economically and environmentally cost prohibitive.

Companies in various countries – including the United States – are looking at reopening closed mines and developing new deposits, but these efforts could take a number of years to fully come on line.

The deep seabed offers a new opportunity for the United States to gain steady access to these vital rare earth minerals. Polymetallic nodules are located on the deep ocean floor. These nodules typically contain manganese, nickel, copper, cobalt and rare earth minerals. However, U.S. companies cannot actively pursue claims in the areas where these nodules are dense unless the U.S. ratifies the Law of the Sea Treaty.

[*Page 3*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

U.S. military's increasing reliance on weapons made from rare earth metals is another justification for ratifying UNCLOS

"The United States needs to invest in off-shore drilling for its national defense: "The U.S. requires an incredible number of military products for which rare earth minerals [which are found in abundance in the seabed] are essential."[116] In the past, military products were manufactured in the United States.[117] Today, a "tremendous number of our bullets are manufactured in China ... meaning that if we find ourselves cross-wise with the Chinese, they can cut off our supply of bullets.[118] It is a matter of national security that the United States be self-reliant on ammunition for its weapons."[119] The United States needs to accede to UNCLOS to give companies the security to invest in offshore drilling, in order to be able to manufacture bullets independently from its own supply of rare minerals.[120]

[*Page 13-14*]

Gallagher, Marjorie Ellen. "*The Time is Now: The United States Needs to Accede to the United Nations Convention on the Law of the Sea to Exert Influence over the Competing Claims in the South China Sea*." **Temple International and Comparative Law Journal**. Vol. 28. (2014): 1-26. [**More** (5 quotes)]

New sources of rare earth minerals are critical to U.S. national security

U.S. next-generation military technology has become so dependent on a steady supply of rare earth metals that it could become a strategic disadvantage in any coming war with China. In addition, these metals have become valuable for advanced electronics and energy efficient "green" technologies.

China maintains near monopoly on mining and production of rare earth elements and is controlling their production

"Today, a single country – China – holds a virtual monopoly on the mining and production of rare earth elements. China produces more than 90 percent of the world's supply and also consumes roughly 60 percent of that supply. Brazil, India, Malaysia and Canada are the other sources of the remaining paltry supply of rare earths.

China recently imposed significant export restrictions on its rare earth production. In 2010, it announced it would cut exports of rare earth minerals by 40 percent by 2012. Just last week, Chinese officials released a white paper defending the country's export control restrictions on rare earths. Earlier this year, the U.S. joined with Japan and the European Union to file complaints with the World Trade Organization (WTO) over China's export policies on rare earths. Experts believe China may eventually consume 100 percent of the rare earth minerals that it produces, jeopardizing U.S. manufacturers' access to these materials and, at the very least, significantly driving up costs for companies that use these minerals. These increased costs would impose significant and detrimental costs on the many millions of consumers who use these products and could have a profound negative impact on U.S. national security.

[*Page 4-5*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

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production was halted as it became economically and environmentally cost prohibitive.

Companies in various countries – including the United States – are looking at reopening closed mines and developing new deposits, but these efforts could take a number of years to fully come on line.

The deep seabed offers a new opportunity for the United States to gain steady access to these vital rare earth minerals. Polymetallic nodules are located on the deep ocean floor. These nodules typically contain manganese, nickel, copper, cobalt and rare earth minerals. However, U.S. companies cannot actively pursue claims in the areas where these nodules are dense unless the U.S. ratifies the Law of the Sea Treaty.

[*Page 3*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

Rare earth metals are critical to development of new energy efficient technologies

"Many rare earth products and technologies possess dual-use attributes, meaning they are used for both commercial and military purposes. In the commercial sector, for example, today's hybrid vehicles employ rare earths permanent magnets in their electric traction drives,[27] which either replace or supplement internal combustion engines in hybrid automobiles, increasing energy efficiency.[28] Additionally, the Toyota Prius has a nickel metal hydride (Ni-MH) battery for energy storage, which increases overall fuel economy.[29] Wind turbines also integrate permanent magnets in gear- less generators for better reliability and online performance.[30] The new fluorescent light bulbs on the market utilize rare earth phosphors. These light bulbs consume 70 percent less energy than the older incandescent bulbs.[31] Finally, rare earths are found in automobile catalytic convertors to reduce dangerous emissions of CO2 and ozone, contributing to a cleaner environment.[32]

[*Page 27*]

Butler, Charles J. "***Rare Earth Elements: China's Monopoly and Implications for U.S. National Security*** ." **Fletcher Forum of World Affairs**. Vol. 38, No. 1 (Winter 2014): 23-39. [**More** (4 quotes)]

U.S. next-generation military technology is dependent on steady supply of rare-earth metals

Furthermore, dual-use components made from rare earths play a vital role in U.S. national security through defense sector applications. Permanent magnets are incorporated in critical guidance and

control mechanisms of U.S.-built weapons, enabling kinetic weapons to impact their target.[33]

"Today's advanced jet engines are coated with rare earth elements for increased thermal stress resistance.[34] The performance requirements for the engines on the F-22A Raptor and F-35 Joint Strike Fighter (JSF) are extremely stringent based on the environment in which these aircraft routinely operate. Without the added thermal protection rare earths provide, engine performance may be degraded with catastrophic results.

Rare earths technology used in electronics also has numerous defense applications. The same technology used in manufacturing commercial Ni-MH batteries is also found in both electronic warfare systems and directed energy weapons.[35] Examples of their use include smart jammers on advanced U.S. fighter aircraft, area denial weapons systems, and the electromagnetic railgun.[36] All of these weapons require high efficiency battery technology to function properly. Additionally, computer drives manufactured with critical rare earths enable precision weapons systems to reach their targets, while laser technology depends on the amplification properties of rare earths for targeting.[37] Without these critical components, accuracy would deteriorate, potentially resulting in increased collateral damage and weapons expenditure.

[*Page 27-28*]

Butler, Charles J. "***Rare Earth Elements: China's Monopoly and Implications for U.S. National Security*** ." **Fletcher Forum of World Affairs**. Vol. 38, No. 1 (Winter 2014): 23-39. [**More** (4 quotes)]

China currently holds a monopoly on the production of rare earth metals

"The demand for rare earths continues to rise. In 2010, the worldwide demand for rare earth oxides was 127,500 metric tons.[45] China produced over 130,000 metric tons of rare earths in 2010 and 2011, eclipsing world demand.[46] The next largest producer was India with a paltry 3,000 metric tons, followed by Brazil at 550 metric tons, and Malaysia at thirty metric tons.[47] These production rates exemplify the disparity between China and its closest competitors in the industry.

By 2014, it is estimated that total demand for rare earth oxides will reach 177,200 metric tons.[48] This increase equates to a 75 percent growth in demand for battery alloy production and a 57 percent growth in demand for permanent magnets.[49] Capacity for meeting the increased demand is uncertain. Of the world's estimated 110,000,000 metric tons of reserves, China controls half.[50] The Commonwealth of Independent States is second, controlling approximately 19,000,000 metric tons, with the U.S. in third at 13,000,000 metric tons.51 Despite the large number of reserves deposited across the planet, very few countries possess the capacity to mine the ores and process them into rare earth oxides. However, with increasing demand on the horizon accompanied by increasing value, more nations as well as private corporations may be willing to enter the market

[*Page 29*]

Butler, Charles J. "***Rare Earth Elements: China's Monopoly and Implications for U.S. National Security*** ." **Fletcher Forum of World Affairs**. Vol. 38, No. 1 (Winter 2014): 23-39. [**More** (4 quotes)]

China's control over global rare earth metal supply could prove to be decisive in future conflict with U.S.

"As demonstrated in the hypothetical scenario at the beginning of this paper, China's hold on rare earths may be a decisive factor in a future confrontation with the United States. The numerous weapons systems that rely on rare earths technology place the United States at a strategic disadvantage with regards to China. If a prolonged, large-scale conflict between the two nations broke out over a Taiwan Strait or South China Sea dispute, the United States may find itself squeezed to obtain sufficient supplies of rare earths to manufacture replacement parts or systems to remain engaged in the fight. Much as the lack of secure access to oil was crippling to the Germans at the end of World War II, rare earths could play a similar, pivotal role in a future conflict with China. In the air-to-air arena alone, the requirement to replace expended stockpiles of advanced air-to-air missiles could become a factor very quickly based on the number of aircraft China would be capable of employing.

[*Page 32*]

Butler, Charles J. "***Rare Earth Elements: China's Monopoly and Implications for U.S. National Security*** ." **Fletcher Forum of World Affairs**. Vol. 38, No. 1 (Winter 2014): 23-39. [**More** (4 quotes)]

Deep seabed mining is technologically feasible

The technology for deep-sea mining is already widely available, consisting of mining support platform or vessel; a launch and recovery system; a crawler with a mining head, centrifugal pump and vertical transport system; and electrical, control, instrumentation and visualization systems. Companies such as Lockheed Martin, Soil Machine Dynamics, IHC Mining and Bauer or Nautilus Minerals are developing vehicles for deep-sea mining, pledging they are in the position to readily develop techniques to operate down to 5,000 metre depth.

No technical or financial barriers remain for deep seabed mining -- gold rush imminent

"Indeed, at a summit on Deep-Sea Mining in London two months ago Mark Brown, Minister of Minerals and Natural Resources of the Cook Islands, announced that the Cook Islands is embracing deep-sea mining as a pathway to multiply the country's gross domestic product by up to 100 fold, as they assessed that the Cook Islands' 2 million Km2 exclusive economic zone contains 10 billion tons of manganese nodules, which contain manganese, nickel, copper, cobalt and rare earth minerals used in electronics. Negotiations are under way between the Cook Islands and companies in the UK, China, Korea, Japan and Norway, towards granting the first tenders within a year.

These facts suggest that we may soon face and underwater gold rush, but in most citizen's minds deep-sea mining is still something for sci-fic movies. Much to the contrary, the technology for deep-sea mining is not something of the future but it is largely existing. A deep-sea mining operation consists of a mining support platform or vessel; a launch and recovery system; a crawler with a mining head, centrifugal pump and vertical transport system; and electrical, control, instrumentation and visualization systems. Companies such as Lockheed Martin, Soil Machine Dynamics, IHC Mining and Bauer or Nautilus Minerals are developing vehicles for deep-sea mining, pledging they are in the position to readily develop techniques to operate down to 5,000 metre depth. Indeed, the submarine vehicles required are already in existence and their operations are described in compelling animations.

Carlos Duarte. "***Deep sea mining: coming soon to an ocean near you*** ." **The Conversation**. (September 24, 2013) [**More**]

Technology to mine deep seabed similar enough to offshore oil development to not present technical barrier

One reason massive-sulphide formations beguile miners is that the metals they contain—notably

copper, gold, zinc and silver—are highly concentrated. Another is that they are often big, 200 metres wide and long, tens of metres thick, and may contain several million tonnes of ore. All lie on the surface of the seabed, and many are only 1-2km below water level.

At that depth technology developed for the offshore oil industry can nowadays be employed for mining. In particular, the deep-water pumps and suction pipes developed to bring subsea oil up to the surface can be used in the riser pipes needed to bring minerals (mixed with water) up from a massive-sulphide mine. The oil industry has also developed remotely-operated vehicles to make trenches for seabed pipelines, which can be adapted for cutting ore, even though it may lie much deeper, at, say, 1.5km down. In general the technology in the machines needed to carry out deep-water mining is no longer exotic. Woods Hole Oceanographic Institution has a vehicle that can reach depths of 11km.

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0 "***Seabed Mining: The unplumbed riches of the deep*** ." **The Economist**. (May 14, 2009) [**More**]

Success of offshore wind power industry depends on U.S. ratification of UNCLOS

US ratification of UNCLOS necessary to secure US interests in the development of offshore wind power

"Wind power is a rapidly growing source of alternative energy that is likely to be a fundamental feature in the United States' energy future.[8] The success of traditional terrestrial wind turbines combined with an increasing demand for alternative energy has led to increased proposals for developing offshore wind resources.[9] Because oceans and seas are governed by a wide body of treaties, the construction of offshore wind installations will raise questions of international law.[10] Ratification of the United Nations Convention on the Law of the Sea ("UNCLOS")[11] by the United States would clarify the issues of international law for U.S. development of offshore wind power.[12]

UNCLOS is a multinational treaty defining and codifying the law of the sea. On May 15, 2007, President Bush submitted UNCLOS to the Senate for its advice and consent.[13] The Senate's ratification of UNCLOS will secure U.S. interests in the development of offshore wind power by providing a uniform body of law for offshore development. Most importantly, it will define jurisdiction, and provide for dispute resolution.

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Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

US can only take advantage of offshore wind possibilities if it ratifies UNCLOS

"UNCLOS contains provisions that provide rights necessary or advantageous to the development of offshore wind power. The treaty contains requirements that pose hurdles to offshore wind as well. The advantages, however, far outweigh the hurdles. Any downsides the treaty might create can be accommodated and will not block development, while the benefits of the treaty are necessary for the development of wind power, especially outside the territorial waters. Because UNCLOS has significant benefits and only limited burdens, the United States should ratify UNCLOS to secure offshore wind interests.

The future of offshore wind will likely depend on ratification of UNCLOS. Offshore wind is in its

infancy in the United States, but has great potential to supply a large portion of the nation's energy needs.[66] To accomplish this development, the United States will need to expand farther offshore.[67] While expansion would require new advances in offshore wind technology, such expansion is economically viable.[68] The incentives to pursue such expansion will likely increase as the pressure to combat global warming increases and fossil fuel prices continue to rise.[69] By ratifying UNCLOS now, the United States can secure its future in offshore wind energy.

[*Page 275*]

Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

US companies cannot secure rights to build offshore wind platforms until US ratifies UNCLOS

"Currently, proposed offshore wind projects are located within the territorial waters. But as technology improves and the incentives for wind power increase, installations will be pushed further offshore into what would be the EEZ. But before such development can be contemplated, UNCLOS must be implemented to secure the rights to develop wind power and provide clarity in the law that governs such sites. The rights currently enjoyed by the United States to its continental shelf are not sufficient to adequately protect the exclusive and positive right to develop offshore wind projects in those waters. But ratification of UNCLOS will guarantee U.S. rights to develop the EEZ.

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Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

Even within EEZ, uncertainty over rights provided by customary international law as opposed to UNCLOS is stymieing offshore wind power development

"If the US fails to ratify UNCLOS, it can still build offshore turbines within the EEZ. The problem is that there would be no internationally recognized governing law. Unsettled law leads to poor economic efficiency. The lack of a governing law in the EEZ limits the incentive to develop offshore wind projects. Current offshore projects within the territorial waters already face uncertainty in U.S. law, which has been a significant obstacle to their success. Uncertainty in the international law applicable to the EEZ may be too great a risk for developers. Developers have no reason to believe the United States would protect their interests over diplomatic relations or shipping concerns. UNCLOS provides, at the very least, a suggestion for how those disputes should be resolved and an indication for how they can be avoided, so constructing a coherent approach to developing offshore

wind in the EEZ is possible.

[*Page 280*]

Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

US should ratify UNCLOS to enable the offshore wind energy industry to flourish

"The benefits UNCLOS could provide to securing offshore wind energy interests is a reason to favor U.S. ratification. UNCLOS would protect the United States' alternative energy interests within the EEZ and continental shelf.148 Wind energy is a resource that is explicitly recognized as enjoying exclusive protection within the EEZ.149 UNCLOS also provides protections for wind turbine installations within the EEZ and continental shelf.150 Furthermore, should there be a dispute between the United States and another country involving wind energy and the law of the sea, there is an established tribunal that will have jurisdiction to hear the dispute.151 Additionally, part XI of UNCLOS is no longer an obstacle to the United States.152 In light of the benefits it would provide to the development of offshore wind power by securing U.S. interests, the United States should ratify UNCLOS.153

[*Page 289-290*]

Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

Marine biotechnology industry would benefit from UNCLOS legal regime

There is considerable debate currently on how UNCLOS can govern marine genetic resources and without consensus, patent holders cannot enjoy the protections necessary in the global marketplace to spur continued investment in genetic resources. The U.S., as a non-party to UNCLOS, lacks standings to contribute to or lead these debates and puts its own marine biotechnology industry at a disadvantage as a result.

Resolution of marine biotechnology issues requires US engagement with existing UNCLOS framework

"The European Union has tried to bridge the gap between developed and developing countries by proposing that a new Implementing Agreement be developed to address the marine environment more broadly. The EU would like to see such an agreement treat the issue within a broader context of the sustainable use of all marine resources and alongside ventures such as carbon sequestration, ocean fertilization, and the mitigation of ocean noise and pollution. The EU proposal is pragmatic in that it seeks to avoid the ideological question related to the legal status ofmarine genetic resources, namely, whether they are part of the "common heritage," and instead focuses on the governance questions of how they can be used sustainably and how their benefits can be shared equitably. The United States continues to sit on the sidelines of these negotiations with the untenable view that patenting deep sea organisms is simply part of the customary freedom of the high seas. The United States will not be successful in imposing a unilateral view and will likely have to accommodate the concerns of developing countries and approach the issue within the broader context of sustainable use that the European Union has identified. It must either re-engage on this issue, or else be left behind.

[*Page 25*]

Briscoe, John and Peter Prows. "***The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Not in Sight - Still*** ." **The Publicist**. Vol. 1. (2009): 18-26. [**More** (3 quotes)]

US biotechnology industry won't be able to secure international patents on marine genetic resources without UNCLOS protections

"The deep seas are also opening up as a new frontier for genetic research. Research institutions, as well as the pharmaceutical, health care, cosmetics, and agricultural industries, are increasingly

interested in the biodiversity associated with mineral-rich, deep sea, warm hydrothermal vents, and cold-seeps, which were only discovered as the Conference drew to a close. At least several hundred patents have now been issued by the United States, the European Union, Japan, and other developed countries for organisms, products, and processes originating in the deep. Many developing countries, however, object to the patentability of deep sea materials, on the basis that it runs afoul of the spirit of the "common heritage of mankind" and of the provisions of UNCLOS prohibiting using marine scientific research to appropriate marine resources or "any part" of the seabed.[17] The Convention recognizes the fundamental truth that "the problems of ocean space are closely interrelated and must be addressed as a whole." Without consensus on the legal structure governing these genetic resources, patent holders cannot enjoy the protections necessary in the global marketplace to spur continued investment in genetic resources.

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Briscoe, John and Peter Prows. "***The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Not in Sight - Still*** ." **The Publicist**. Vol. 1. (2009): 18-26. [**More** (3 quotes)]

U.S. underseas cable industry needs UNCLOS protection

Currently the vital U.S. underseas cable industry has to rely on the outdated 1884 telegraph treaty for its legal basis when defending its rights to lay, maintain, and repair underseas cables. U.S. ratification of UNCLOS would better protect U.S. companies' existing cable systems and foster additional investments by giving telecommunications the legal certainty to their claims that they need.

Telecommunications industry supports the treaty because of its valuable support for underseas cables

"And the Treaty is also about Telecommunications. The treaty provides a legal framework to lay and protect submarine cables. I don't need to tell most people about how critical the Internet is to our economy and national security. We need to put ourselves on the best footing possible to protect those cables through which the Internet flows, and the treaty does that.

That's why AT&T, Verizon, Level 3, and others, support this Treaty. Again, don't take my word for it. In a recent letter, AT&T explained that:

> "[S]ubmarine cables provide backbone international transmission facilities for the global internet, electronic commerce and other international voice and data communications services that are major drivers of the 21st Century global information-based economy…. [I]t has never been more important to our U.S. economic infrastructure, and our participation in the global economy, to strengthen the protection and reliability of international submarine cables. The Law of the Sea Convention, particularly as assisted by the enforcement mechanisms available to parties under Article 297, is a critical element of this protection."

Kerry, John. "***Statement from John Kerry: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)***." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More**]

As a non-party to UNCLOS, U.S. can only use 1884 convention rules on telegraph cables to protect its underseas cables

"The 2010 ROGUCCI report highlighted an important item regarding UNCLOS in that some coastal nations do not comply or have failed to enact legislation that enforces the protection of undersea cables.[62] Notwithstanding concerns raised about UNCLOS, the U.S. Congress has not

ratified UNCLOS, even after a strong showing before the Senate Committee on Foreign Relations (SCFR) in 2007 pertaining to the 1994 UNCLOS Ratification Agreement. The **testimony of Douglas Burnett** before the SCFR speaks to the conclusion: "It would be in the best interest of the U.S. to ratify this treaty because the U.S. telecom and power companies, the U.S. Navy and scientists, can seek the assistance of the U.S. government to enforce the rights of cable owners to lay, repair, and maintain cables outside of territorial seas and to prevent these rights from being diminished without U.S. involvement.[63]" Currently, a vote of the entire U.S. Senate has yet to be scheduled. Without passing this legislation, the U.S. can only resort to the 1884 Convention rules on telegraph cables in the event it seeks to enforce cable protection.[64]

[*Page 15*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

Protections for underseas cables upgraded in UNCLOS

"Currently, undersea cables are protected by the following international treaties: the International Convention for Protection of Submarine Cables of 1884, the Geneva Convention of the Continental Shelf, and the Geneva Convention on the High Seas are separate but, both ratified in 1958, and the U.N. Convention on the Law of the Sea (UNCLOS) of 1982. The 1958 Geneva Convention incorporates earlier treaties regarding the laying and repair of cables on the high seas. The U.S. has signed, but not ratified UNCLOS, which entered into force in 1994 and currently has 153 nations as parties.[57]

[*Page 14*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

US telecom companies are disadvantaged in disputes over underseas cable rights by the US being a non-party to the convention

"Accession to the Law of the Sea Convention would better protect U.S. companies' existing cable systems and foster additional investments. Companies would benefit from the legal certainty provided by treaty-based rights to lay, maintain, and repair cables, and conduct surveys incident to laying cables. Like shipping companies, telecom interests emphasize that they cannot merely rely on customary international law because of the threat of encroachments by coastal states. Russia's attempt to delineate cable routes on its continental margin in the Arctic proves that fears of encroachment are not theoretical. As a non-party, the U.S. loses more than just credibility to lodge

diplomatic protests to such actions because, with respect to its submarine cable provisions, the Convention permits parties to invoke its meaningful dispute resolution procedures. U.S. telecom companies have repeatedly emphasized that they are comfortable with, and want to rely on, the compulsory dispute resolution provisions in the Convention.

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Donohue, Thomas J. "***Statement of Thomas J. Donohue: The Law of the Sea Convention: Perspectives from Business and Industry*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (7 quotes)]

Law of the sea convention offers best and most comprehensive protection for underseas cables

"States and private owners may assert claims or jurisdiction over undersea infrastructure on various grounds. States may assert claims on behalf of injured parties incorporated or present within their jurisdiction. Pipeline and cable owners, meanwhile, have direct recourse to traditional admiralty remedies in national courts that retain jurisdiction over the vessels and persons responsible for undersea depredations.[82] However, under international law, a corporate person whose property has been damaged possesses rights that are merely derivative of the rights of its state of nationality. As a broad based source of international maritime rights and obligations, the 1982 Convention on the Law of the Sea (LOSC, or colloquially, the "Constitution of the Oceans") [84] currently contains the most robust provisions for claims asserted by either affected states or subsea proprietors.

The legal status of pipelines in waters beyond national urisdiction has been associated with the status of submarine cables. Without the LOSC, two operative treaties for international cables exist: the 1884 International Convention for Protection of Submarine Telegraph Cables (Cable Convention), and the 1958 Geneva Convention on the High Seas.[87] These treaties deal with laying and repairing cables on the high seas-not in Exclusive Economic Zones (EEZ) and upon the continental shelf8.8 Moreover, they do not afford commercial owners significant deterrence against depredations.

[*Page 239-240*]

Reza, Laurence Wrathall. "*The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward*." **San Diego Journal International Law Journal**. Vol. 12. (2010-2011): 223-262. [**More** (5 quotes)]

U.S. ratification of UNCLOS necessary to protect underseas cables and secure further rights for the industry

Even if the LOSC fails to classify subsea attack as piracy with full recourse to the convention's robust remedies, it does proscribe depredations against cables and pipelines under the high seas and the

EEZ. As discussed above, the traditional rights of U.S. cable owners outside of territorial waters have

“ been victimized by a dearth of enforcing legislation. By delaying the ratification of the LOSC, this lack of effective prosecution persists.[157]

World telecom companies rightly believe that the LOSC facilitates more confident investments than simply operating under the bare aegis of customary international law.[158] Simply defending against customary law encroachments does not deter underwater attack, but with U.S. ratification, U.S. telecom and energy companies as well as the U.S. Navy could seek greater government assistance in enforcing propert rights and undersea infrastructure security outside of territorial seas.[159] Moreover, all U.S. stakeholders would have a firmer basis in holding other states responsible for their loss.[160]

As a condition for ratifying LOSC, the United States could take the helm in updating the convention to meet new military and commercial paradigms since it was first drafted three decades ago. Such revisions may include one or more of the following proposals.

[*Page 248-249*]

Reza, Laurence Wrathall. "*The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward*." **San Diego Journal International Law Journal**. Vol. 12. (2010-2011): 223-262. [**More** (5 quotes)]

U.S. should drive development of UNCLOS to treat attacks on underseas cables the same as piracy

“ Finally, there is temporal ripeness to treat undersea pirates as hostes humani generis. Critical infrastructure below the waterline is often beyond national jurisdiction and remote from the state of affiliation. Therefore, it should be unambiguously incorporated into the LOSC definition of piracy along with ocean platforms. The two-vessel requirement and the private ends limitation should be eliminated to deter signatory states and their inhabitants from looting and possibly inciting economic and environmental shock at the margins of antiquated definitions.

As in several recommendations above, the United States can take the lead in updating the LOSC to account for technology trends and the changing dynamics of modem threats and defenses. The United States can drive this discourse by ratifying the LOSC. Further, it can condition ratification on the incorporation of security amendments, including an updated definition ofpiracy.

The modification of this one definition may not assist in attributing a surreptitious attack to its culprits, but could be the foundation for a more coordinated and enforceable response in the global commons. As in declaring safety zones around pipeline and cable routes, the aim would not be to thwart the possibility of attacks as much as to deter attacks through the specter of tough international sanctions. And if international responses are still deemed too tepid and ginger in punishing pirates, then a revised definition could at least provide affected flag states with a recognized prerogative to prosecute offenders akin to a coastal state's sovereignty within its territorial waters.

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Reza, Laurence Wrathall. "*The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward*." **San Diego Journal International Law Journal**. Vol. 12. (2010-2011): 223-262. [**More** (5 quotes)]

U.S. non-party status to UNCLOS is harming U.S. economy by constraining resource mining and underseas cables industries

"Our economy is hurt when delimitation of our extended continental shelf is delayed and when legal uncertainties from non-membership prevent our oil and gas industry from exploiting the rich continental margin, especially in the Arctic. Development of resources in the Chukchi and Beaufort Seas off Alaska's coast would create approximately 54,700 jobs per year nationwide with a $145 billion payroll and would generate $193 billion in federal, state and local revenue according to a study done by the University of Alaska's Institute of Social and Economic Research.

The delay in ratifying this treaty has already cost the loss of one of our four seabed mine sites, the richest in the world, and if we do not soon adhere the United States risks losing the remaining three, with billions in the strategic minerals manganese, copper, cobalt and nickel at stake. A single seabed mining operation would spur the economy with total capital purchases of close to one and a half billion dollars and would stimulate robust job creation. Further, for our nation to lose this new industry would cost millions in consumer losses and foregone tax revenues and billions in our balance of trade as the United States was forced to import rather than produce these strategic minerals.

Undersea cables carry more than 95% of international Internet and telephonic transmissions. These crucial cables also transmit financial data and transactions worth trillions every day. The Convention establishes the legal underpinning for protecting and managing these cables. At a National Press Club event a spokesman for AT&T warned that not being a party places America's crucial communication links at risk.

Moore, John Norton. "***Restoring America's Oceans Leadership*** ." **Huffington Post**. (July 27, 2012) [**More**]

UNCLOS has numerous new provisions specifically for protection of underseas cables that are only available to parties to the treaty

"The 1982 Convention provides this modern legal compass. In ten specific articles[6], the Convention provides a comprehensive international legal regime for submarine cables and pipelines in territorial seas, archipelagic waters, the Exclusive Economic Zones ("EEZ"), upon the continental shelves, and on the high seas.

Critics of the 1982 Convention argue that existing customary international law should suffice. For cables this is simply not the case for several reasons. Foremost among these reasons is that the Convention explicitly goes beyond preexisting international law in crucial areas of submarine cable installation, maintenance, and operations and provides binding dispute resolution to ensure proper enforcement of these new obligations, but only for countries that are parties to the Convention.

[*Page 2*]

Burnett, Douglas R. "***Statement of Douglas R. Burnett: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

Only by being party to UNCLOS can the U.S. protect its rights to deploy and maintain underseas cables

"This express language in the 1982 Convention reflects the effort of dedicated visionaries in the telecommunication industry who urged Ambassador Richardson and the U.S. Delegation negotiating the Convention to include language that would (1) include within the freedom to lay and repair cables the operational requirements for modern fiber optic systems, including marine route surveys[7], burial[8], and maintenance, and (2) at the same time prevent coastal nations in their EEZ or upon their continental shelf from restricting these vital activities9.

Directly stated, U.S. telecom companies are hurt and their leadership in this vital sector is diminished without the Convention. The Convention is the key to the global international telecommunication policy and legal system; it unlocks the door for the fullest participation and makes leadership possible by U.S. telecom companies; it protects existing investments and fosters additional investments.

But if the United States is not a party these valuable, carefully negotiated rights can be diluted or even removed through amendments or encroachment by nations that wish to expand their jurisdiction over cables in the EEZ and upon the continental shelf. Having the United States a party allows it to fully protect the existing rights from nations seeking to restrict these vital freedoms of the sea.

[*Page 3*]

Burnett, Douglas R. "***Statement of Douglas R. Burnett: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

Bilateral treaties are insufficient to address issues with underseas

cables occurring on the high seas

“As previously stated,[61] [bilateral investment treaties] BITs can only partially solve the problems currently arising in the regime applicable to submarine cables. That is the reason why BITs have been referred to in this article as a “complementary” regime rather than a “substitutive” one. In fact, there are certain areas in which BITs cannot represent a solution. Reference is made in particular to the problem of intentional acts by terrorists aimed at damaging the cables, and issues related to cables laid down outside the sovereign areas of States (i.e. the High Seas). With regard to the former, the matter would be better addressed by international criminal law. BITs can establish the liability of the host State in case due diligence is not exercised in the protection of the cables. However, international terrorism is something beyond the control of States, and definitely something that can hardly be faced just by applying the ‘due diligence’ required by the standards of protection of investment law. With regard to the lay of submarine cables outside the sovereignty of States, it is evident that the lay of submarine cables in these areas cannot be regulated by BITs. Host States cannot be subject to obligations on areas on which they lack sovereignty.

[*Page 33*]

Borgia, Fiammetta and Paolo Vargiu. **When Investment Law Takes Over: Towards a New Legal Regime to Regulate Asia Pacific’s Submarine Cables Boom** . University of Leicester School of Law: United Kingdom, 2013 (38p). [**More** (5 quotes)]

Continuing failure to ratify UNCLOS puts U.S. underseas cable companies at a competitive disadvantage

“Once the U.S. is a party to the Convention, Verizon and other U.S. telecommunications companies can work with the appropriate U.S. agencies to enforce, when necessary, the freedoms to lay and repair cables on the continental shelf and the EEZ – saving millions of dollars over the life of a cable system, improving the reliability of our critical infrastructure, and putting U.S. companies on a level playing field for operating international cable systems.

If the Congress fails to act to ratify the Convention, U.S. companies will continue to operate at a disadvantage vis-a-vis our global counterparts, indeed having to work through our international providers and their respective governments to seek protection of their submarine cable infrastructure under the Convention.

[*Page 5*]

McAdam, Lowell C. "***Testimony of Lowell C. McAdam: On the Law of the Sea Conventions: Benefits for Submarine Cable Systems*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

Ratification of UNCLOS gives telecommunication companies more tools to combat regulations on underseas cables

"Third, the Convention will also help the United States government and international companies respond when countries attempt to unlawfully require licenses or permits before submarine cables can be laid or repaired. As an example, Verizon is one of the co-owners of the Europe India Gateway submarine cable system, which passes over the continental shelf claimed by Malta but never enters Malta's territorial seas. Even though the Convention allows for such transit without interference by coastal nations, Malta's Resources Authority has threatened legal action if the submarine cable operators do not obtain a license and pay a fee. Not only do these fees add unforeseeable costs on existing undersea cable systems, they raise the specter of coastal nations imposing similar requirements for the sole purpose of raising revenue at the expense of the cable owners. By signing on to the Convention, the U.S. will have the discretion to add its diplomatic efforts in the ongoing dispute with Malta and enforce the treaty's expressly stated freedom to lay and maintain submarine cables in international waters without tolls, taxation or fees levied by coastal States.

[*Page 4*]

McAdam, Lowell C. "***Testimony of Lowell C. McAdam: On the Law of the Sea Conventions: Benefits for Submarine Cable Systems***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

Framework of UNCLOS better for helping telecommunication companies handle disruptions to underseas cables

"Second, ratification of the Convention will also help U.S. companies better contend with disruptions to undersea cable service. For example, in March 2007, large sections of two active international cable systems in Southeast Asia were heavily damaged by commercial vessels from Vietnam and taken out of service for about three months. More than 106 miles of cable were removed from the seabed and repaired, at a cost of more than $7 million. It would have been very helpful if the United States, Verizon and other affected U.S. companies had been able to use the Convention to compensate cable owners, arbitrate disputes over service disruptions, and deter future violations.

[*Page 3*]

McAdam, Lowell C. "***Testimony of Lowell C. McAdam: On the Law of the Sea Conventions: Benefits for Submarine Cable Systems***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

U.S. should ratify UNCLOS to be able to better protect underseas cables industry from encroachment

“Given their importance to global networks and the world economy, there must be an appropriate legal framework based upon global cooperation and the rule of law to protect submarine cables. The Convention provides this necessary framework in 10 provisions applicable to submarine cables, going beyond existing international law to provide a comprehensive international legal regime for submarine cables wherever they are – whether in territorial seas, in Exclusive Economic Zones (or “EEZ”), on continental shelves, or on the high seas. Once the Convention is ratified, the United States government will be able to insist on compliance by other nations with these protections. Several recent events underscore the urgent need for a clear and unambiguous framework for protecting this vital communications infrastructure.

First, some nations have attempted to encroach on the ability of U.S. operators to participate effectively in the deployment, maintenance and repair of undersea cables. To oppose these types of foreign encroachments or restrictions effectively, the U.S. must have a seat at the table where it can enforce the Convention’s freedoms to lay, maintain, and repair undersea cables.

[*Page 3*]

McAdam, Lowell C. "***Testimony of Lowell C. McAdam: On the Law of the Sea Conventions: Benefits for Submarine Cable Systems*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

UNCLOS essential to protect critical infrastructure of underseas cables

“What you may not realize is that 70% of all of the country's international telecom traffic, which includes data transfer and video, is carried on these cables. If you eliminate Canada, 90% of the country's international traffic is carried on these cables. The disproportionate importance of these cables to the nation's communication infrastructure can be seen by the fact that if all of the cables were suddenly cut, using every single communications satellite in the sky, only 7% of the United States traffic could be restored. This underscores the incredible capacity of modern fiber optic submarine cables. By any standard, they constitute critical infrastructure to the United States, and indeed the world.

This critical infrastructure, by its very nature, depends upon international cooperation and law. The promise of continued advances in international communications hinges on an international standard providing a compass whereby nations and private companies may steer a course which efficiently allows international communications networks to be seamlessly planned, built, and operated.

UNCLOS provides this modern legal compass. Simply stated, without UNCLOS, US telecom companies are hurt in the planning, development, maintenance, and protection of the world's undersea cable networks. UNCLOS is the key to the world's international telecommunication system; it unlocks the door for the fullest participation and leadership possible by US telecom companies.

[*Page 22*]

Burnett, Douglas R. "***The Importance of the United Nations Law of the Sea Convention to the Cable Industry*** ." **Submarine Telecoms Forum**. No. 26. (May 2006): 22-24. [**More** (4 quotes)]

Without being a party to UNCLOS, U.S. underseas cables only protected by 1884 telegraph treaty

"At present for the United States, the operative international treaty for international cables is the 1884 International Convention for Protection of Submarine Cables. This venerable treaty was designed for old international telegraph cables. While most of its features are included in UNCLOS, UNCLOS provides real improvements required by the steady progress made in international communications in the past 122 years since the 1884 treaty entered into force. UNLCOS is essential for modern telecom business.

For example, under the 1884 treaty, nations are required to provide criminal and civil sanctions for negligent or intentional actions which cause injury to a submarine telegraph cable. Unfortunately, under this treaty, the cable owner must wait until the damage is done before sanctions are triggered. Under UNCLOS, conduct which is likely to result in injury can also be sanctioned. Under UNCLOS, a cable owner has a remedy to prevent the injury to critical infrastructure in the first place. When one considers the average $1M plus cost of a cable repair and the potential disruption a cable break can cause to vital economic and strategic interests, it is easy to see why cable owners want UNCLOS now.

The 1884 treaty is limited to telegraph cables. UNCLOS provides and expands the protections accorded telegraph cables to all international cables regardless of use.

[*Page 23*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

Customary international law is entirely inadequate for protecting underseas cables

"Critics of UNCLOS raise the argument that since many of the rights spelled out in UNCLOS can be considered customary international law to which the US adheres, there is not need to formally ratify the convention.

From first hand experience, I can say this academic argument fails in the real world. Customary international law requires a court decision to determine state practice, before it can be said to be binding law. Last year I involved in a non-cable major marine pollution case pending in a US court

where the issue was the rights of a European coastal nation to refuse entry to a leaking supertanker after the crew had been rescued. I think the issue is well addressed in UNCLOS, but both sides presented expert witnesses and detailed memorandums arguing for different interpretations of what the applicable state practice and customary international law is. Ultimately, we won't know the answer until the Judge decides the issue. The point is that telecom companies can not make business investments on such an illusive basis as customary international law. They need reliable and discernable international law which UNCLOS expressly provides.

[*Page 24*]

Burnett, Douglas R. "***The Importance of the United Nations Law of the Sea Convention to the Cable Industry*** ." **Submarine Telecoms Forum**. No. 26. (May 2006): 22-24. [**More** (4 quotes)]

U.S. ratification of UNCLOS would also address domestic legal issues with underseas cables

"UNCLOS is needed as well close to home. UNCLOS provides clear boundaries between seabed users and coastal nations with universal norms. These same norms are needed with respect to federal and state government policy.

In the last eight years, the traditional rights of cable owners outside of territorial waters have been the victim of steady encroachment by certain state agencies and certain federal agencies which seek to expand their regulatory reach over international cables- in California or Oregon out to 200 nautical miles, in New Jersey out to 110 nautical miles off their coasts. Compare these with state jurisdictions over international cables of 3 nautical miles claimed by Florida or New York, and the quandary of cable owners can start to be appreciated. These jurisdictional differences translate into added delays of 1-2 years and millions of additional dollars for installing new cable systems. This jurisdictional confusion would be harmonized by UNCLOS.

The current uncertainty and conflicts over the limits of the United States continental shelf and margin and the rights and obligations of international cables laid on it will be largely resolved by UNCLOS.

[*Page 24*]

Burnett, Douglas R. "***The Importance of the United Nations Law of the Sea Convention to the Cable Industry*** ." **Submarine Telecoms Forum**. No. 26. (May 2006): 22-24. [**More** (4 quotes)]

Multiple examples of encroachment on U.S. underseas cable rights that ratifying UNCLOS would help address

About two years ago, French fishing vessels unreasonably obstructed a British repair vessel in carrying out cable maintenance off the coast of France by blocking its path. UNCLOS provides

remedies which would protect the cable owner's rights in these situations. Judge Wolfrum, the President of the International Law of the Sea Tribunal, is in the audience and could certainly expand on this point. For those who may feel that was only a British and French problem, you would be wrong. The cable involved carried US traffic.

Since 1998 China6 is requiring permits for cables not landing in the country, but which transit its EEZ. The Russian Federation since 1995 is claiming the right to delineate cable routes on its continental shelf in the Arctic as far north as the North Pole. Both of actions are violations of Article 79 of UNCLOS which does not allow a coastal nation to delineate or permit the routes of transiting international cables on the continental shelf.

Last February, in response to a proposal by the province of Nova Scotia to possibly mandate cable routes and require payments to bottom fishermen for use of the seabed in international waters, North American cable owners based their strong jurisdictional arguments against the plan on the straight forward provisions of UNCLOS, which since Canada is a party to UNCLOS, are binding.

UNCLOS is a powerful tool to overcome these encroachments on the freedom to lay cables, but US companies suffer, because the United States has not become a party. If the United States is a party to UNCLOS, then US telecom companies, the Navy, and scientists can enlist the U.S. government to enforce the rights of cable owners to lay, repair and maintain cables in international waters. Without the status of a party to UNCLOS, the United States has no access to the important remedies under UNCLOS to enforce treaty obligations on behalf of US companies or government agencies.

[*Page 23*]

Burnett, Douglas R. "***The Importance of the United Nations Law of the Sea Convention to the Cable Industry*** ." **Submarine Telecoms Forum**. No. 26. (May 2006): 22-24. [**More** (4 quotes)]

Increasing global reliance on internet telecommunications underscores need for protections for underseas cables provided by UNCLOS

"In economic terms, Pike stressed that advances in technology have dramatically impacted the impor- tance of acceding to the Convention, particularly in terms of the nation's economic security. Furthermore, he believes the treaty under consideration today is perceived far differently than it was when amended in 1994, just as the Internet was being introduced to the world.

"Now, we've got 95 percent of all of our Internet traffic, whether it's orders for widgets, whether it's science or military, all of this information travels on undersea cables, and we basically have no protection over those," he said, illustrating why telecommunications giants like AT&T and Verizon, as well as the North American Submarine Cable Association, are among vocal advocates on Capitol Hill pushing for ratification. "These organizations strongly support the treaty because it affords us unfettered ability to lay and maintain these undersea cables, but undersea cables were sort of an

afterthought in 1982.

[*Page 12*]

Daisy R. Khalifa. "***A Seat at the Table: Arguments intensify for U.S. to join U.N. Law of the Sea Convention*** ." **Seapower**. (May 1, 2012) [**More**]

U.S. freedom to lay underseas cables are under increasing assault every year

"The urgency with which U.S. telecommunication companies need the Convention's specific protections for cables increases with each passing year. The Russian Federation since 1995 is claiming the right to delineate cable routes on its continental shelf in the Artie. These actions are violations of the Convention which does not allow a coastal nation to delineate or require permits for the routes of international cables or cable repairs outside territorial seas within the EEZ or upon the continental shelf. Without the United States being a party, U.S. telecommunication companies are on weaker grounds to question these actions, because the United States itself is held back from being able to enforce the Convention's freedoms to lay, maintain, and repair cables in the EEZ and upon the continental shelf.

[*Page 4*]

Burnett, Douglas R. "***Statement of Douglas R. Burnett: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

Accession to UNCLOS would allow telecommunication companies to prevent damage to underseas cables before it occurs

"Under the 1884 treaty, nations are required to provide criminal and civil sanctions for negligent or intentional actions by third parties which damage a cable. But under the 1884 treaty, the cable owner must wait until the damage is done before these sanctions are triggered. In welcome contrast, under the 1982 Convention, third party conduct which is likely to result in damage is sanctioned in addition to actual damage cases. So the cable owner has a remedy to prevent the injury to critical infrastructure in the first place10. When one considers the average $1M plus cost repair a single cable and the disruption a cable break can cause to essential economic and strategic interests, it is easy to see why U.S. telecommunications companies need the United States to accede to the Convention.

[*Page 4*]

Burnett, Douglas R. "***Statement of Douglas R. Burnett: On Accession to the United Nations***

Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

UNCLOS would specifically allow U.S. telecommunication companies to protect underseas cables from emerging threats of piracy and terrorism

"Another more recent event underscores how U.S. telecommunication companies suffer because the United States is not a party. On March 27, 2007, two active international cable systems were heavily damaged on the high seas and taken out of service for about three months as a result of piratical depredations for private ends by commercial vessels from Vietnam; they stole a total of over 106 miles of cable, including optical amplifiers from these active systems11. Repair costs are estimated in excess of $7.2M with the national economic costs of the disruptions still being ascertained. The cable systems are owned by consortiums,common in the industry12, and the ownership and landing points involve eleven countries. United States co-owners who sustained losses and had their networks disrupted were AT&T, Verizon, and Sprint. With the exception of the United States, all of the nations impacted have tangible preventative and compensatory options as well as obligations to protect their nationals under the 1982 Convention. The Convention expressly proscribes depredations against property on the high seas and the EEZ's and classifies them as piracy with recourse to all of the Convention's robust remedies to put pirates out of action13. Expressly classifying depredations against property such as cables is an example of how the Convention protects cables from new emerging threats.

[*Page 4-5*]

Burnett, Douglas R. "*Statement of Douglas R. Burnett: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention* ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

UNCLOS contains new provisions to protect new uses for underseas cables not anticipated by earlier treaties

"Besides telecommunication cables, power cables are protected under the Convention. The Juan de Fuca cable, an international electrical cable that will bring power from Canada to Washington State in 2007, is an example of this international submarine cable use[14], and there are plans for a power cable from Canada to Boston and New York[15].

The scientific Neptune cable system, funded by the National Science Foundation, is another example

of a cable use recognized by the Convention. When completed in 2011, along with a joint system now being laid by Canada, this scientific research cable system will form the world's most advanced undersea network of scientific observatories with hundreds of 24/7 monitoring sites off the west coasts of Canada and the United States. These cables will bring the global Internet to the ocean depths and yield new insights into the environment ranging from forecasting volcanic and seismic events to maximizing living marine resource benefits and environmental protection.

Military cables with sensors vital to national defense and homeland security depend on the Convention to allow their placement. Coastalnationencroachmentoramendmentstorestrict this cable use can be best opposed when the United States is an active party.

The BP Gulf of Mexico system, a domestic submarine cable system, will connect in 2008 seven of that company's off-shore production platforms, and possibly others in the future, and will enable energy companies to monitor and operate these platforms continuously from remote control centers ashore, impervious to hurricanes. This cable provides greater energy reliability and environmental safeguards.

Cables for all of these uses benefit from the Convention. Fundamentally, the ability to carry out marine surveys, to lay, maintain, and repair cables outside of territorial seas on an international basis rests on the Convention's protections, hi a world where the competition for use of the oceans is accelerating, disputes by competing coastal nations and seabed users will occur with increasing frequency. By providing express protections to cables over other non- specified uses in the EEZ, the Convention assures that the critical importance of international cable infrastructure is given the priority protection it requires to serve our country[16].

[*Page 5-6*]

Burnett, Douglas R. "***Statement of Douglas R. Burnett: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

US underseas cable industry dependent on stability provided by UNCLOS framework

“John Ryan, chief legal officer at Level 3, underscored the company’s support for the U.S. accession to the Convention. Level 3 operates one of the largest Internet Protocol networks in the world, comprising fiber-optic cables entwined across the ocean floor to 45 countries — from North America, around Latin America, Europe, the Middle East, Africa and the Asia Pacific — or roughly 35,000 miles of sub-sea cable. To that end, he noted that the Internet continues to expand exponentially.

“The next 100 years are going to be about expanding our eyeballs around the world, and in order to do that, more subsea capacity needs to be deployed,” Ryan said.

He said Level 3 strongly supports U.S. accession for reasons that include the protection of international submarine cables; to expand the right to lay and maintain subsea cables; and to guarantee a meaningful dispute resolution process that relates to the operation and implementation of subsea cables.

“Any uncertainty in protecting the infrastructure puts the U.S. and U.S.-based companies at a competitive disadvantage relative to our competitors who are members of the Convention,” Ryan said. “And that uncertainty inhibits economic growth and investment.”

[*Page 19*]

Daisy R. Khalifa. "***Law of the Sea Goes Public*** ." **Seapower**. (June 1, 2012) [**More**]

Underseas cables will increasingly become a target for terrorists

“International treaties require states to enact laws providing for criminal sanctions against wrongdoers and vessels that injure international cables willfully or by culpable negligence.[2] But compliance is poor.

Australia and New Zealand have modern and extremely effective deterrent laws that generally comply with the U.N. Convention on the Law of the Sea (UNCLOS). In both nations proactive monitoring of cables and effec- tive enforcement of domestic laws has essentially reduced cable faults to zero. But other countries, such as the United States and the United Kingdom, have telegraph-era stat- utes dating to the 1880s that are historical relics having virtually no practical utility.

In the United States, for example, the intentional destruction of an international submarine cable is subject to a ridiculously lenient maximum fine of $5,000 and a prison term of six months.[3] The only known attempt to use the archaic law came in 1997, when the U.S. Coast Guard recommended to the U.S. attorney in Florida thathe skipper of a fishing vessel be prosecuted for willfully damaging the U.S.-Cuba cable. The attorney declined to prosecute, deeming the pursuit of a conviction carrying such a paltry penalty to be an inefficient use of his re- sources. Additionally, that sort of handicap for U.S. telecommunications companies is significantly compounded because the United States has not joined the 162 nations that are parties to UNCLOS. Thus there is no UNCLOS protection for their cables outside U.S. territorial seas.

While the United States justifiably can be criticized for allowing its domestic law protecting cables to sink into obsolescence, many nations have no laws whatsoever addressing damage to international cables—even though their economies depend on the critical global infrastructure.

[*Page 68-69*]

Burnett, Douglas R. "***Cable Vision*** ." **U.S. Naval Institute Proceedings**. (August 1, 2011) [**More**]

U.S. should ratify UNCLOS to help convince other states to implement necessary protections for underseas cables

"That security gap should be of international concern for a number of reasons. The first successful hostile ac- tions by pirates and terrorists against active international cables already have occurred. In March 2007 Vietnamese pirates in multiple vessels carried out high-seas depredations on two active submarine cable systems, including the theft of optical amplifiers that rendered the systems inoperative for 79 days until re- placements could be manufactured.[4] At the time, cable owners urgently pleaded with at least four nations for help in preventing ad- ditional attacks, only to learn that none of those governments had contingency plans for such action. Similar damage was inflicted on a newly laid cable in Indonesian archipelagic waters in 2010.

Submarine cables are legitimate targets of belligerents in war.[5] The United States cut cables linking Spain to its colonies during the Spanish-American War.[6] The first offensive action of Britain's Royal Navy in World War I was cutting Germany's international links to the rest of the world by severing its cables.[7]

But attacks on cables by terrorists are new. On 11 June 2010, terrorists in the Philippines successfully struck an international cable.8 It is naïve to assume that submarine- cable landing stations, cables, the cable ships, and the marine depots that maintain the systems will escape asym- metric terrorist acts.

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Burnett, Douglas R. "***Cable Vision*** ." **U.S. Naval Institute Proceedings**. (August 1, 2011) [**More**]

Underseas cables are vital to global economy

Undersea cables are a valuable commodity in the 21st century global communication environment. The undersea consortium is owned by various international companies such as ATT, and these companies provide high-speed broadband connectivity and capacity for large geographic areas that are important entities of trade and communications around the globe. If undersea cables were cut or disrupted outside of the U.S. territorial waters, even for a few hours, the capability of modern U.S warfare that encompasses battle space communications and awareness, protection, and the stability of the financial networks would be at risk.

Empirically, disruption of undersea cables cost millions of dollars an hour in lost revenue

"Destruction of submarine cables can cripple the world economy to include the global financial market and/or Department of Defense (DoD). An example which reflects the importance of this strategic communication capability took place on December 26, 2006, when a powerful earthquake off Southern Taiwan cut 9 cables and took 11 repair ships 49 days to restore. The earthquake affected Internet links, financial markets, banking, airline bookings and general communications in China, Hong Kong, India, Singapore, Taiwan, Japan and the Philippines.[7] When a cable loses service, it has a definite, but difficult impact to the global financial sector. The International Cable Protection Committee (ICPC) legal advisor estimates that interruptions of underwater fiber optics communications systems have a financial impact excess of $1.5 million per hour.[8] These estimates target operators that utilize cable bandwidth for day-to-day operations and companies or government entities that own bandwidth on the disrupted cable.[9]

[*Page 2-3*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

Underseas cables handle trillions of dollars of transactions a day and help sustain global banking industry

"Douglas Burnett, a legal expert on undersea cables notes that international banking institutions process over $ 1 trillion dollars per day via undersea cables. Any disruptions of these cables would severely impact global banking. Indeed, Stephen Malphrus, Chief of Staff to Federal Reserve Chairman Ben Bernanke, recently noted, "When communication networks go down, the financial services sector does not grind to a halt, rather it snaps to a halt.[6] Even though there are hundreds of

cables crossing the global seabed, there are just not enough undersea communication network redundancies available to handle the vast amount of bandwidth needed to keep global banking transactions in check.

[*Page 1-2*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

U.S. banking and military command systems rely on underseas cables

"Undersea cables are a valuable commodity in the 21st century global communication environment. The undersea consortium is owned by various international companies such as ATT, and these companies provide high-speed broadband connectivity and capacity for large geographic areas that are important entities of trade and communications around the globe.[41] For example, the U.S. Clearing House Interbank Payment System processes in excess of $1 trillion a day for investment companies, securities and commodities exchange organizations, banks, and other financial institutions from more than 22 countries.[42] The majority of their transactions are transmitted via undersea cables. In addition, the Department of Defense's (DoD's) net-centric warfare and Global Information Grid rely on the same undersea cables that service the information and economic spheres.[43] If undersea cables were cut or disrupted outside of the U.S. territorial waters, even for a few hours, the capability of modern U.S warfare that encompasses battle space communications and awareness, protection, and the stability of the financial networks would be at risk. As one analyst has noted, "the increase demand is being driven primarily from data traffic that is becoming an integral part of the everyday telecommunications infrastructure and has no boundaries.[44]

[*Page 10*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

Recent underseas cable attacks show the impact of their disruption

"Ambiguity, coupled with our extreme reliance on undersea infrastructure, was on display in late January and early February 2008. Four undersea telecommunication cables were mysteriously cut within the course of two days, crippling Internet access across wide swaths of the Middle East and India.[59] Two cable breaks were in the Mediterranean--one near Alexandria, Egypt, and the other in the waters off Marseille, France.[60] The third break was thirty-five miles off the coast of Dubai and the fourth was along a cable linking the United Arab Emirates to Qatar.[61] Most telecommunication experts and operators deemed sabotage unlikely, believing instead that ship anchors had severed the

cables when heavy storms swept through the region.[62] Nevertheless, the Egyptian Ministry of Communications refuted the presence of any ships near the Mediterranean cable cuts.[63] Moreover, the improbable incidence of four cuts in 48 hours fueled speculation about military involvement.[64] Sabotage theorists seized on reports of stifled Internet traffic through Iran,[65] while traffic to Israel, Lebanon and Iraq was apparently immune from chaos.[66] At the very least, this episode highlights how relatively small damage to undersea cables can instantly affect millions of people, and how a stealthy underwater attack- ambiguous and non-attributive in nature-could deal such a crippling blow.

[*Page 236*]

Reza, Laurence Wrathall. "*The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward*." **San Diego Journal International Law Journal**. Vol. 12. (2010-2011): 223-262. [**More** (5 quotes)]

Underseas cables are the lifeline for the global Internet economy and depend on legal protection

"Submarine cables and pipelines are vulnerable assets in the global commons.[182] Their protection from undersea attack is a real prescriptive and enforcement challenge because of our extreme reliance on this critical infrastructure; its multi-jurisdictional span beyond territorial seas; the availability of precise locational coordinates; the opaque environment below the waterline; and the accessibility to commercial-grade vehicles that can exploit this environment and inflict disproportionate harm.

The opaque environment and the accessibility to UUVs set this challenge apart from challenges above the water's surface to flagged vessels and platforms. As with cyber threats, this necessitates an effective deterrence policy to compensate for an inability to pinpoint suspected culprits. Not only do legal shortcomings in jurisdiction and security enforcement float above the surface, but arguably more sinister shortcomings lurk below. These threats also require an even more delicate balance between disclosure and secrecy, and between freedom ofnavigation and reasonable restraints for collective security.

In the end, whatever vigor is applied towards cyber security, and whatever balance is struck for internet freedoms should be matched by securing the very cables that transport this life-blood of commerce. Likewise, investment in energy independence should correspond to the security of the very arteries that enable and spur offshore energy exploration.

[*Page 257*]

Reza, Laurence Wrathall. "*The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward*." **San Diego Journal International Law Journal**. Vol. 12. (2010-2011): 223-262. [**More** (5 quotes)]

Protection of global underseas cable infrastructure is critical to global economy and security

“Canals, tunnels, and bridges over straits, submarine pipelines for oil and gas,[28] as well as cables serve communication and transport purposes in the widest sense. These types of marine infrastructure can easily suffer from natural disasters or become targets of terrorism.29 It may be recalled that millions of telephone, telex, TV, and data links are made across the world at every moment. They may travel on radio waves or via satellites, but the majority are transmitted by submarine cables,[30] which form a network over the world's seabeds. Cables are special because they provide the privacy and security that radio and satellite lack. They are reliable and long lasting and have an excellent capacity and transmission quality. Cables are vitally important to the global economy, to national security, and to the safety of life.[31] The modern version of these arteries of data flow is fiber-optic cables running through oceans, straits, and across land bridges. For example, the bulk of data flow between Europe and the Far East goes by fiber-optic cables that run from the Mediterranean through Egyptian territory into the Red Sea and the Gulf of Aden. A high concentration of cables can be found in the South China Sea, Red Sea, and Mediterranean Sea. Likewise, a growing number of subsea cables for the transport of electricity are or under construction or in the planning process. Building up redundencies or back-up solutions will add to the picture, create additional intrusion on the environment, and offer a target for terrorists. Thus, the protection of “critical” marine infrastructure is part of the agenda.

[*Page 179*]

Jenisch, Uwe K. "*Old laws for new risks at sea: mineral resources, climate change, sea lanes, and cables*." **WMU Journal of Maritime Affairs**. Vol. 11. (2012): 169-185. [**More** (4 quotes)]

Submarine cables are critical global infrastructure that form the backbone of global information economy

“Submarine cables represent critical communications infrastructure, as they form the backbone of the Internet and global e-commerce. Such cables, typically consisting of optical fibers laid along the ocean floor in a bundle no larger than a garden hose, carry over 95 percent of transoceanic voice and data communication. U.S. telecom companies have worked rapidly to meet exploding consumer appetite for data, increasing the total circuit capacity of transoceanic cables landing in the U.S. by more than 1,000 fold since 1995.

There is no substitute for these underwater cables in case of damage. The earth’s satellites can carry no more than seven percent of U.S. international voice and data traffic. But worldwide, nearly 100 cable outages occur each year. The vast majority of cable outages are caused by bottom trawling fishing, dredging, and ship anchoring. Occasionally, cables are taken in an act of piracy, as occurred in 2007 when individuals in commercial vessels from Vietnam stole over 100 miles of cables on the high seas. Cable outages may disrupt governments, financial markets, and business operations and

require costly repairs.

[*Page 7-8*]

Donohue, Thomas J. "***Statement of Thomas J. Donohue: The Law of the Sea Convention: Perspectives from Business and Industry*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (7 quotes)]

Global information economy made possible by network of underseas cables

"Many people around the world believe that their emails and phone messages are being sent through satellites. They are mistaken because satellites account for less than 5%.[1] Global telecommunications development began about 150 years ago with the first commercial international submarine cable, laid between Dover, England and Calais, France in 1850. In 1858, the first trans-Atlantic telegraph cable linked London with the new world, via Newfoundland.[2] The 143 words transmitted in 10 hours, replaced a one-way dispatch that would have previously taken about 12 days.[3]

In the last 25 years, there has been a stunning growth in undersea cables because of the communications revolution triggered by the internet. Undersea cables account for 95% of the world's international voice and data traffic (Military, Government, Emergency Response, Air Traffic Control, Subway, Rail, and Port Traffic).[4] Financial markets utilize undersea cables to transfer trillions of dollars every day. In 2004 alone, nine million messages and approximately $7.4 trillion a day was traded on cables transmitting data between 208 countries.[5] As a result, submarine (undersea) cables are vital infrastructure to the global economy and the world's communication system.

[*Page 1*]

Matis, Michael. **The Protection of Undersea Cables: A Global Security Threat** . U.S. Army War College: Carlisle, PA, July 3, 2012 (28p). [**More** (7 quotes)]

Underseas cables constitute a critical infrastructure for global economy

"Over 70% of our country's international telecom traffic, which includes voice, data, and video, is carried on these cables, each of which is only about the diameter of a garden hose. Not counting Canada and Mexico, over 90% of the country's international voice, video, Internet, and data communications are carried on these cables. The disproportionate importance of these cables to the nation's communication infrastructure can be seen by the fact that if all of these cables were suddenly cut, only 7% of the United States traffic could be restored using every single satellite in the

sky. Modern fiber optic cables are the lifeblood of the world's economy, carrying almost 100% of global Internet communication. This underscores the revolutionary5 capacity of modern fiber optic submarine cables. By any standard, they constitute critical infrastructure to the United States, and indeed the world.

[*Page 2*]

Burnett, Douglas R. "***Statement of Douglas R. Burnett: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (7 quotes)]

Disruption of underseas cables can bring financial system to a standstill

"Fiber-optic submarine cables are the lifeblood of U.S. carriers' global business. Aside from our land-based connections with Canada and Mexico, more than 95 percent of U.S. international traffic – voice, video, Internet and data – travels over 38 submarine cables, each the diameter of a garden hose. Without these cables, current satellite capacity could carry only 7 percent of the total U.S. international traffic.

Fiber-optic submarine cables are the international digital trade routes of the 21st century. And thus, any disruptions to the submarine cable global network can have significant impact on the flow of digital information around the world, with severe consequences for the world economy. As one official from the Federal Reserve noted in referring to submarine cable networks, "When the communication networks go down, the financial sector does not grind to a halt, it snaps to a halt."[i]

[*Page 2-3*]

McAdam, Lowell C. "***Testimony of Lowell C. McAdam: On the Law of the Sea Conventions: Benefits for Submarine Cable Systems***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

U.S. ratification of UNCLOS is key to sustaining competitiveness of U.S. shipping industry

The convention promotes the freedom of navigation and overflight by which international shipping and transportation fuel and supply the global economy. By guaranteeing merchant vessels and aircraft the right to navigate on, over, and through international straights, archipelagic waters, and coastal zones, the provisions of UNCLOS promote dynamic international trade.

Ratification of UNCLOS would help protect American shipping industry from excessive coastal state regulations

"One commercial navigation voice raised during the committee hearings was that of the Chamber of Shipping of America (CSA), an association of U.S. vessel owners and op- erators of U.S. and foreign-flag ships. CSA president Joseph Cox made the case for accession based on environmental and freedom of navigation principles. Remaining outside the Convention, cautioned Cox, put U.S.-based shipping interests in jeopardy of being burdened by coastal state regulations that have been "stretching the interpretations of the law of the sea into unrecognizable forms."[69] Cox referred specifically to recent actions taken off the coast of western Europe. He derided the forcible removal of the Prestige in 2002 from the exclusive economic zone of Spain when it developed a hull fracture and sought entry into safe waters.[70] Cox also criticized a recent designation of a large expanse of ocean stretching from the "upper reaches of the English Channel to the Straits of Gilbraltar [as] a particularly sensitive sea area [(PSSA)]."[71] While coastal states may designate PSSAs pursuant to International Maritime Organization principles, acknowledged Cox, he contended the designation in this instance was unsubstantiated.

[*Page 202*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

Commercial shipping industry dependent on the uniforms rule of law that UNCLOS provides

"The Law of the Sea Convention establishes a legal framework that has direct impact on the American shipowning community and all Americans. In 1914, the maritime world was a comparatively simple one; ships flying a particular flag were manned by nationals from that nation, were insured

there and classed by the national class society. They were most likely built there and had equipment manufactured there. The traditional law of the sea was also simple to apply. Today, the situation is more complex. Ships owned by one company can fly the flags of several different nations, employ crew from various nations with mixed crews being more prevalent than single-national ships, be classed by any one of a number of societies, be insured in any number of venues and have a multiple of other international mixes involving equipment and building. This situation has evolved in response to the needs of the industry to increase efficiency. As we have increased our efficiency, we have provided a lower and lower cost service to our customers. Our customers are the shippers of the world and their customers are the consumers. Over ninety-five percent of the goods shipped into and out of the United States go by sea. On average, four hundred ships a day, from literally all flag nations of the world, arrive in U.S. ports. The people of the United States have benefited from the actions of the maritime industry and we in the industry have benefited from a uniform legal framework. One consistent comment we make to the Congress, and the various legislative bodies around the world is that we need to have a uniform set of rules to follow. If each nation develops their own rules or interprets existing regulations in a manner substantially different from others, chaos exists for the maritime community. The United States has consistently responded to creative interpretations and has taken the lead in developing rules that meet U.S. needs and the needs of other nations. The world looks to our leadership in these matters and we have responded vigorously and positively to that expectation. The credibility of the U.S. in international fora where these agreements are made depends on it.

[*Page 2-3*]

Cox, Joseph C. "***Statement of Joseph C. Cox: Hearing on the Law of the Sea Convention (October 4, 2007)***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (2 quotes)]

U.S. ratification of UNCLOS key to making U.S. manufactures more competitive by increasing reliability of shipping lanes

"It's no surprise then that ratification of the Law of the Sea Treaty is a priority for many of the NAM's members. Its adoption is critical for manufacturing competitiveness in the United States.

While my testimony will focus primarily on mineral development on the deep seabed, that is not the only reason for the urgency in adopting this treaty.

In today's global economy, exports are more important than ever. Ninety-five percent of the world's consumers live outside the United States, so reaching these potential customers is critical for manufacturing competitiveness.

This treaty will secure international lanes of commerce and ensure that manufacturers can export their products efficiently. It protects our sovereign interests and promotes international commerce.

Secure shipping lanes are a priority for NAM members. Last year, cargo ships and other ocean liners

carried $570 billion of U.S. exports. Discounting our exports to Mexico and Canada, which travel by rail and truck, this total accounts for more than 50 percent of our exports by value and more than 90 percent of our exports by weight.

[*Page 2*]

Timmons, Jay. "***Statement of Jay Timmons: The Law of the Sea Convention: Perspectives from Business and Industry (June 28, 2012)***." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (5 quotes)]

U.S. commercial shipping industry has a lot at stake in ensuring that UNCLOS is ratified

"Mr. Chairman and members of the committee, freedom of the seas and rights of innocent passage are not theoretical concepts. These are critical aspects of the Law of the Sea Convention and ones that we rely on for the effective operation of our industry. We are very concerned with protection of those rights. Both US flag ships and ships owned or operated by American companies are impacted by international events. We rely on our nation to be actively involved. The U.S. should place itself in the most effective position to be a force for adherence to treaty obligations by all. We can do this by acceding to the treaty.

My members operate in the international maritime world. We benefit from a consistent application of the rules that we have to follow. There are certainly fewer ships flying our flag than in years past although that does not mean we are less involved as a nation. The latest figures we have seen place the United States as the sixth largest shipowning nation in the world. In recent months, we have seen actions by companies that will lead to more American seafarers serving on ships that fly the flags of other nations. Clearly we have a lot at stake.

[*Page 5*]

Cox, Joseph C. "***Statement of Joseph C. Cox: Hearing on the Law of the Sea Convention (October 4, 2007)***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (2 quotes)]

Ratification of UNCLOS critical to protecting global trade and shipping industry

"The convention promotes the freedom of navigation and overflight by which international shipping and transportation fuel and supply the global economy. Some 90 percent of global trade tonnage, totaling over $6 trillion in value, including oil, iron ore, coal, grain, and other commodities, building materials, and manufactured goods, travels on and over the world's oceans and seas each year.[12] By guaranteeing merchant vessels and aircraft the right to navigate on, over, and through

international straights, archipelagic waters, and coastal zones, the provisions of UNCLOS promote dynamic international trade.

At the same time, UNCLOS encourages international cooperation to enhance the safety and security of all ocean-going ships. Whether it involves lumber and winter wheat shipped from the Pacific Northwest to Japan; high-quality, low-cost goods from Singapore to Long Beach; or oil from the Persian Gulf to Europe; free, safe, and secure commercial navigation and flights provide great economic and security benefits to all of us. That is the key reason the U.S. Chamber of Commerce, shipping industry, aviation industry, and other international trade groups have called for immediate accession to the convention.

[*Page 9*]

Oliver, John T. "***A Window of Opportunity: The U.N. Convention on the Law of the Sea.*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 66, No. 3 (Summer 2009): 6-10. [**More** (5 quotes)]

UNCLOS ratification will bolster navigational rights of commercial shipping industry that our military and economy rely on

"Being a member of the Convention will help to simplify this complex maritime environment both for our military forces as well as our commercial partners who have played a critical role in developing new routes for transporting DOD cargo and in enabling access to a vast global infrastructure for transport of DOD cargo. More than 90 percent of all military supplies and equipment are transported around the world by sea, much of it by commercial vessels. This Convention provides important legal support for our commercial partners who transport our cargo, unescorted by U.S. warships, under the legal regimes of the Law of The Sea Convention. Without codification of those rights, our commercial partners are at greater risk.

[*Page 3*]

Fraser, William M. "***Statement of General William M. Fraser III: On Law of The Sea Convention (June 14, 2012)*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (3 quotes)]

UNCLOS ratification would bolster U.S. efforts to promote and protect international trade

"Another key mission of the Coast Guard is to promote safe and secure international trade. The convention promotes freedom of navigation and overfight, by which international shipping and transportation fuel and supply the global economy. Some 90 percent of global trade tonnage, totaling more than $6 trillion in value including oil, iron ore, coal, grain, and other commodities, building

materials, and manufactured goods, are transported by sea every year.[7]

Currently, little international trade travels through the Arctic, but this is changing and will continue to increase in the decades ahead as the ice cover continues to recede and marine transportation technology advances. Moreover, there is considerable destinational shipping even now, such as to bring critical supplies to the North Slope and Alaskan coastal villages, and to remove vast amounts of minerals from the treasure trove in the Brooks Range in northwestern Alaska.

By guaranteeing merchant vessels the right to navigate through international straights, archipelagic waters, and coastal waters, the provisions of the convention promote dynamic international trade. Free navigation reduces costs and eliminates delays that would occur if coastal states were able to impose various restrictions on navigational rights.

[*Page 55*]

Oliver, Dr. John T. and Steve G. Venckus. "***The U.N. Convention on the Law of the Sea: Now is the time to join*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 70, No. 2 (Summer 2013): 53-56. [**More** (4 quotes)]

UNCLOS navigation provisions critical for protecting U.S. freedom of navigation rights in emerging Northwest passage Arctic routes

“As a nation with global maritime interests, the United States has consistently viewed the UNCLOS provisions on freedom of navigation on the high seas and in exclusive economic zones (EEZs), “transit passage” through straits used for international navigation, and “innocent passage” through territorial seas as the convention’s essential core.[12] Although UNCLOS’ navigation provisions were not designed with the Arctic in mind per se, the provisions are consistent with the United States’ interest in freedom of navigation in and through the Arctic.[13]

Although experts differ on the imminence and extent of regular Arctic transits, some scientific studies suggest that increasing temperatures will result in a seasonally ice-free Arctic as early as the 2030s.[14] As the ice recedes, many expect the opening of more expeditious travel routes,[15] with consequences for international security and commercial activities.[16] In particular, two trans-Arctic routes are expected to become increasingly critical: the Northwest Passage and the Northern Sea Route.[17]

[*Page 3*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Other states will challenge U.S. unilateral claims outside UNCLOS

States, corporate entities, and NGOs all have incentives to challenge unilateral claims by countries to resources outside the UNCLOS regime. Knowing this, U.S. corporations are reluctant to risk the liability involved in pursuing these claims, to the detriment of the U.S. economy.

Corporations reluctant to embark on development outside of UNCLOS because of the potential backlash

"The survey above suggests a variety of legal means through which the United States or a U.S.-licensed corporation might be challenged for operations on the seafloor outside the UNCLOS system. To date, such challenges are speculative; however, the variety of potential challengers and forums should lay bare the notion that the only thing corporations have to fear is fear itself.[193]

Corporate reluctance to proceed on the seafloor may also arise from the perception that a more immediate non-legal risk looms larger. The most threatening prospect for prospective seafloor operators today—other than a foreign navy or coast guard vessel arriving to forcibly eject them from an offshore site—may be the potential loss of reputation that would result from undertaking a "rogue" operation outside the UNCLOS regime.[194] Companies with global operations and markets rely on political support from foreign governments, financial support from foreign investors, and market support from foreign consumers. Companies may be loath to jeopardize success abroad by taking action that might antagonize these pillars of a favorable business climate.[195]

[*Page 21*]

Houck, James W. The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

States that are party to UNCLOS could bring legal action against U.S. entities for not following UNCLOS in foreign courts

"A second potential means to compel compliance with UNCLOS regimes would be for a foreign state, corporation, or even an NGO to bring an action against the United States, or, perhaps more likely, a U.S.-licensed corporation in a foreign domestic jurisdiction. The enforcing party would be required to bring its action in a jurisdiction with domestic law incorporating UNCLOS obligations. Enforcement of UNCLOS in a foreign domestic court would depend on the relationship between treaties and the foreign nation's domestic law.[185] Nations fall into two categories in how they

implement treaties into their domestic law. Some states convert treaties into domestic law automatically[186] and in an UNCLOS member state taking such an approach, UNCLOS would be enforceable in a foreign domestic court without any further action required by the member state. In contrast, some nations require implementing legislation before a treaty is enforceable as domestic law.[187] In such a nation, UNCLOS would either need to be made self-executing upon ratification, or be implemented through separate legislation.[188]

In either case, if a state is willing to incorporate UNCLOS provisions into its domestic law, it is foreseeable that the state might also insist that corporations conducting business within the state comply with UNCLOS. For example, state A might establish a rule that before corporation Z does business within A, Z must demonstrate that its international business is conducted consistent with UNCLOS. Further, if Z is already doing business within A and undertakes a new non-UNCLOS-compliant venture elsewhere, A might subject Z to penalties. Alternatively, A might allow private causes of action to be brought by third-party corporations or NGOs against Z as a way to compel UNCLOS compliance. Chevron, Exxon, and Coca-Cola are some of the U.S. corporations that have been forced to endure long and expensive litigation in a foreign domestic court for charges ranging from environmental pollution to human rights violations.[189]

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Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Multiple states, corporate entities, and NGOs would have cause to challenge U.S. companies claims to resources outside of UNCLOS

"Who might see fit to challenge the actions of a seafloor free rider like the United States? To begin, UNCLOS member states have obvious interests in the integrity of the continental shelf and seabed regimes in which they invest. Potentially interested states fall into at least three categories. First are states that may have an interest in conducting commercial activity of their own in an area claimed by the U.S. but not ratified through the UNCLOS process. Second are states that might have no objection, per se, to U.S. activity, but wish to ensure the United States pays its fair share under UNCLOS for the privilege of conducting commercial activity. Third are states that stand to benefit from the Article 82 "equitable sharing" payments and seek to ensure such payments are maximized.

In addition to UNCLOS member states, corporations with commercial interests in the seabed floor may have an interest in ensuring that actual and potential competitors do not obtain an unfair competitive advantage by operating outside the UNCLOS system. Although Article 82 royalties are assessed to states, it seems reasonable to assume that corporations may be assessed extended continental shelf fees by their licensing- states. Likewise, if operating in the area, corporations required to abide by rules and regulations established to govern the area would presumably demand that their competitors be bound by the same rules.

Similarly, the ISA, created by UNCLOS to "organize and control activities in the Area" and to distribute economic assistance and Article 82 royalty payments, would have an interest in preserving the integrity of the system it was created to oversee. Importantly, the ISA has been vested with international legal personality, which includes the power to bring suit to enforce its interests.[168]

Finally, enterprising NGOs might take a keen interest in whether a state and its licensees are profiting at the expense of developing and land-locked states protected by UNCLOS, or, whether states and licensees are complying with ISA regulations created to protect the marine environment in and around the common heritage of mankind. The most obvious targets for NGO disapproval and legal or political action would seem to be the states and corporations operating outside the economic assistance and environmental protection regimes created by UNCLOS.

[*Page 16-17*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

U.S. could still be bound by UNCLOS law even if it hasn't ratified the treaty

"Public international law governs the relationships between states and, on occasion, the relationships of states to international organizations. Nations commonly assume obligations to each other through treaties; however, a state may be bound by a norm of customary international law notwithstanding its failure to enter a treaty. Customary international law is created in a variety of ways, including by treaty provisions adopted and followed by sufficiently large numbers of states as a matter of legal obligation. Customary international legal obligations also give rise to an array of international remedies. Thus, the fact that the United States has not ratified UNCLOS does not necessarily mean the United States is free—as a matter of international law—to ignore particular UNCLOS legal norms or processes. If, in fact, the United States is under an obligation to comply with an UNCLOS provision that has also become customary international law, failure to comply could give rise to international liability and subject the United States to international legal remedies.

There is a strong case to be made that the United States is obligated under international law to comply with UNCLOS' seafloor regime despite the fact that the United States has never ratified the convention. The most fundamental and compelling reason the United States is bound by UNCLOS' regime for the extended continental shelf is because, quite simply, the United States says it is bound.[170] Moreover, even though the United States has not ratified the convention, as a signatory to the revised deep seabed mining provisions, the United States has incurred an international legal obligation to not act contrary to the "object and purpose" of the treaty.[171] In light of the prominent role given the deep seabed mining regime in the convention and its necessary and practically inseparable relationship to the extended continental shelf regime, the United States is arguably not permitted to act in any way that would undermine these central provisions.

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** .
Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

UNCLOS necessary to protect rights of marine researchers

UNCLOS protects the rights of marine researchers to conduct operations in foreign EEZs

"The essential role of marine scientific research in understanding and managing the oceans is also secured. The Convention affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. It confirms the right of coastal States to require consent for such research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that coastal States exercise the consent authority in a predictable and reasonable fashion to promote maximum access for research activities. More U.S. scientists conduct marine scientific research in foreign waters than scientists from almost all other countries combined.

[*Page 4*]

Taft, William H. "***Statement of William H. Taft IV: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention (October 21, 2003)***." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (4 quotes)]

U.S. oceanographic research would benefit from accession to UNCLOS

"There are many other examples of benefits that would be derived from U.S. accession to the LOS Convention. For example, the U.S. research fleet frequently suffers costly delays in ship scheduling when other nations fail to respond in a timely manner to our research requests. Currently, we are not in a position to rely on articles in the Convention that address this issue, such as the "Implied Consent" article (Article 252) that allows research to proceed within 6 months if no reply to the request has been received, and other provisions that outline acceptable reasons for refusal of a research request. Also, as a party to the Convention, the U.S. could participate in the member selection process, including nominating our own representatives, for the International Law of the Sea Tribunal, as well as the Continental Shelf Commission and the various organs of the International Seabed Authority.

Kelly, Paul L. "***Statement of Paul L. Kelly: Oversight hearing to examine the "United Nations Convention on the Law of the Sea". (March 24, 2004)***." Testimony before the Senate Committee on Environment & Public Works, March 24, 2004. [**More** (2 quotes)]

U.S. lead in marine research imperiled by its inability to use UNCLOS to secure marine researchers access

"Enhancing access rights for United States marine scientists. Access for United States marine scientists to engage in fundamental oceanographic research is a continuing struggle. The United States will have a stronger hand in negotiating access rights as a party to the Convention. As one example of a continuing problem, Russia has not honored a single request for United States research access to its exclusive economic zone in the Arctic Ocean from at least 1998, and the numbers of turn-downs for American ocean scientists around the world is substantial. This problem could become even more acute as the United States begins a new initiative to lead the world in an innovative new program of oceans exploration;

[*Page 20*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

UNCLOS protections necessary to preserve U.S. research rights in Arctic waters

"As most of the Arctic Ocean has not been explored, one of the U.S. policy goals in the Arctic is to increase understanding through scientific research.[60] Currently, the foremost scientific research interest for the United States is to obtain data regarding the geologic composition of the continental margin. In addition, the United States is pursuing research in climate variability, Arctic marine ecosystems, oil spill effects, and unconventional energy and mineral resources.[61] Marine Scientific Research (MSR) in Russian arctic waters, where Russia has the longest Arctic coastline, is hampered by Russian reluctance to permit U.S. researchers access to Russian waters.

The United States has long accepted the UNCLOS regime for marine scientific research. UNCLOS gives coastal states exclusive control over scientific research in the territorial sea.[62] Coastal states also have extensive rights in the EEZ, including the right to reject a request by a foreign nation or company for access to its EEZ or continental shelf if the project is of direct significance for the exploration and exploitation of natural resources[63] or involves drilling into the continental shelf, the use of explosives, or the introduction of harmful substances into the marine environment.[64] The convention provides all states the right to conduct marine scientific research in the high seas.[65] A state's ability to perform scientific research in the area is subject to the provisions of Part XI, the deep seabed mining regime.[66] Article 143 states that all member states can conduct marine scientific research in the area, but they must provide the results of their research and analysis to the international community through the International Seabed Authority.[67]

[*Page 6-7*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** .
Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Ratification of UNCLOS is in U.S. national security interests

Ratification of UNCLOS would bolster U.S. national security in numerous ways, including: protecting all six core freedom of navigation rights, protect maritime interdiction rights, and supporting efforts to combat piracy.

UNCLOS supports all six core competencies of the U.S. Navy

"Why are the provisions and protections of the convention vital to implementing U.S. national defense and maritime strategies? Why now? All six core capabilities of U.S. maritime forces are predicated upon legally certain freedom of navigation and overflight, as defined by the United States and codified in the convention. Joining the convention supports the strategic and operational mobility of American air, surface, and submarine forces. It provides legal guarantees for those forces to transit the high seas, exclusive economic zones, international straits, and archipelagic sea routes during times of crisis. It supports the freedom of those forces to legally conduct military survey, reconnaissance, and intelligence gathering under the terms and conditions the United States prefers. It allows the high-seas interdiction of stateless vessels and illegal activities under frameworks such as the Proliferation Security Initiative, using the protocols the United States carefully crafted to conform to the convention. Most recently, this year articles 100 and 105 of the convention have been applied as the basis of an agreement with Kenya to prosecute Somali pirates apprehended in the Indian Ocean.

[*Page 25-26*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

UNCLOS provisions directly support and improve ability of Coast Guard to complete its law enforcement and homeland security missions

"Other Coast Guard missions that the Convention would promote include port and maritime security, law-enforcement, and environmental protection. While guaranteeing rights of innocent passage and the right to seek safe haven in the event of life-threatening storms and other conditions (which the law refers to asforce majeure),UNCLOS reemphasizes the jurisdictional rights of coastal states within their inland waters, such as harbors and rivers, and within the twelve nm territorial sea. As a result, the Convention would enhance the Coast Guard's ability to protect our nation's coastal security interests. The United States could use the provisions of UNCLOS effectively to combat excessive maritime claims, which can interfere with narcotics interdiction and other law-enforcement

efforts. Several critical coastal states continue to claim territorial seas of 200 nautical miles, in violation of the Convention's twelve nm limit. These countries see our law-enforcement operations in their claimed territorial seas as violations of their sovereignty and are either reluctant or refuse to cooperate with proposed actions against vessels engaged in drug-smuggling interdicted in these disputed areas. Since we are not now party to UNCLOS, it is very difficult for us to argue credibly that they must give up these excessive claims. The result is that counter-drug bilateral agreements with these nations are difficult, interdiction efforts in their claimed territorial seas are hampered, and our negotiating ability to change the situation is compromised. The Convention also promotes our authority to protect our ocean waters, seashores, and ports from a wide variety of environmental threats. Admiral Thad Allen, the Commandant of the Coast Guard, and the four previous Commandants have strongly advocated becoming party to UNCLOS as soon as possible, largely because it would promote the ability of the Coast Guard to accomplish its homeland security and law-enforcement missions.[2]

[*Page 582-583*]

Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

Ratification of UNCLOS would further US national security interests in multiple ways

“Nonetheless, recognizing national security as important, it should be remembered that some clauses within the UNCLOS 1982 framework can assist in these goals for every state party including the US. We think, for example, that national security must surely encompass resource and energy security, environmental security, and maritime and navigational security, each addressed in UNCLOS 1982. We ask also, perhaps not rhetorically, when has the world not been dangerous? Each age and each state defines its own dangers and looks for cooperative ways to meet them. There is almost nothing in UNCLOS 1982 that is not of some favourable relevance to state sovereignty, state security, or many other matters of vital importance for every state. This must perforce include the US and its government’s current but historically deviate fixation on self-defined and perceived rather than objectively real threats. The UNCLOS 1982 basis of global ocean manage- ment encompasses five guiding principles that provide a comprehensive international system for ocean governance and rules for access to maritime resources; the protection and preservation of the marine environment; marine scientific research; the development and transfer of marine technology; and the settlement of disputes. Those principles would only assist the US or any other state in its proper national security goals. Ignoring them, by any mechanism, including excessively focusing on improper ones or choosing not to accept them as an organising principle along with most other states to help the world understand national security in similar terms, harms any state doing so. Hence, the US is harming itself by not ratifying.

[*Page 54-55*]

Cartner, John A. C. and Edgar Gold, Q.C. "*Commentary in Reply to "Is it Time for the United States to Join the Law of the Sea Convention"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 1 (January 2011): 49-70. [**More** (7 quotes)]

UNCLOS supports U.S. national security objectives by ensuring freedom of navigation rights and supporting maritime interdiction operations

"From a security perspective, the LOS Convention provides a balance of interests that protect freedom of navigation and overflight in support of United States' national security objectives. The provisions were carefully crafted during negotiations of the LOS Convention, and reflect the substantial input that the United States had in their development. In particular, the Convention provides core navigational rights through foreign territorial seas, international straits and archipelagic waters, and preserves critical high seas freedoms of navigation and overflight seaward of the territorial sea, including in the EEZ. The navigational freedoms guaranteed by the Convention allow timely movement by sea of U.S. forces throughout the world, and provide recognized navigational routes which can be used to expeditiously transport U.S. military cargo – 95 percent of which moves by ship. The Convention's law enforcement provisions establish a regime that has proven to be effective in furthering international efforts to combat the flow of illegal drugs and aliens by vessel – efforts which directly impact our nation's security. The Convention establishes the rights and obligations of flag states, port states, and coastal states with respect to oversight of vessel activities, and provides an enforcement framework to expeditiously address emerging maritime security threats.

Kelly, Paul L. "***Statement of Paul L. Kelly: Oversight hearing to examine the "United Nations Convention on the Law of the Sea". (March 24, 2004)*** ." Testimony before the Senate Committee on Environment & Public Works, March 24, 2004. [**More** (2 quotes)]

UNCLOS is in U.S. strategic interests because it protects freedom of mobility necessary to meet future operational challenges

"Future threats will likely emerge in places and in ways that are not yet fully clear. For these and other undefined future operational challenges, we must be able to take maximum advantage of the established and widely accepted navigational rights the Law of the Sea Convention codifies to get us to the fight rapidly.

Strategic mobility is more important than ever. The oceans are fundamental to that maneuverability; joining the Convention supports the freedom to get to the fight, twenty-four hours a day and seven days a week, without a permission slip.

The Convention provides a stable and predictable legal regime within which to conduct our

operations today, and realize our vision for the future. It will allow us to take a leading role in future developments in the law to ensure they are compatible with our vision.

[*Page 5-6*]

Clark, Vern. "***Statement of Admiral Vern Clark: On the Law of the Sea Convention (April 8, 2004)***." Testimony before the Senate Armed Service Committee, April 8, 2004. [**More** (2 quotes)]

On balance, UNCLOS is net positive for U.S. national security

"From a national security standpoint, arguments against the United States becoming a party to UNCLOS are simply not compelling in the face of overwhelming military support for ratification.[88] Becoming a party to UNCLOS will help build coalition partnerships in the Global War on Terrorism and the Proliferation Security Initiative.[89] Moreover, the United States Navy's ability to respond to potential crises is critically linked to the freedom of navigation rights guaranteed by UNCLOS.[90] Finally, neither large-scale military operations nor a single warship's inherent right to self- defense will be significantly impacted by becoming a party to UNCLOS.[91] Indeed, the United States has declared that nothing in the UNCLOS impairs the inherent right to self-defense or rights during armed conflict, including any Convention provisions referring to "peaceful conflict" or "peaceful purposes."

[*Page 128*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

US ratification of UNCLOS would help secure the already favorable terms the US negotiated

"Most importantly, from a national security perspective, UNCLOS' terms are overwhelmingly favorable to the U.S. Were this not the case, additional arguments for accession would be irrelevant. To the contrary, the Convention codifies principals the U.S. national security community helped negotiate and continues to support. The Convention's express terms give the U.S. military a comprehensive and eminently favorable basis for conducting maritime operations around the world.[96]

UNCLOS, as a treaty with favorable terms, is superior to customary law (and the 1958 Geneva Conventions on the Law of the Sea to which the U.S. has long been a party) as means for preserving U.S. interests in global mobility. Treaty membership would help the U.S. better preserve the favorable terms it helped negotiate, both through formal access to the amendment processes described above, as well as through UNCLOS constituent bodies such as the International Tribunal of the Law of the Sea, the International Seabed Authority, and the Commission on the Limits of the Continental Shelf.

[*Page 19*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

Bush administration carefully weighed risks of acceding to UNCLOS and ruled that it was on balance in U.S. National security interests to ratify

"When the Bush Administration came into office in January 2001, we began a careful review of all of the treaties that had been submitted to the Senate by the Clinton Administration to determine which treaties the Bush Administration would support and would not support. The Bush Administration did not support all of the treaties that had been supported by the prior Administration. For example, the Bush Administration did not support the Comprehensive Nuclear Test Ban Treaty, which had been strongly supported by the Clinton Administration. We did not support the Kyoto Protocol, which had been signed by the Clinton Administration. Many Bush Administration officials were similarly skeptical of the Law of the Sea Convention because it was a multilateral treaty, and President Reagan had refused to sign it. However, after a year-long interagency review, the Bush Administration concluded that the Convention was in the U.S. national interest and decided strongly to endorse the treaty. In February 2002, the Administration submitted its first Treaty Priority List to this Committee and listed the Law of the Sea Convention as a treaty for which there was an "urgent need for Senate approval."

Let me emphasize that the Bush Administration did not decide to support the Law of the Sea Convention out of a blind commitment to multilateral treaties or international organizations. No one has ever accused the Bush Administration of an over-abundance of enthusiasm for the United Nations or multilateralism. Indeed, the Bush Administration was especially skeptical of the United Nations and many U.N. bodies, such as the Human Rights Council. And the Bush Administration was especially committed to defending U.S. sovereignty and international freedom of action, particularly after September 11.

The Bush Administration decided to support the Law of the Sea Convention and to provide senior Administration officials to testify in favor of the Convention only after weighing the Convention's benefits against its risks. We ultimately concluded that, on balance, the treaty was clearly in the U.S. national security, economic, and environmental interests.

[*Page 2-3*]

Bellinger, John B. "***Testimony of John B. Bellinger III: On Law of The Sea Convention (June 14, 2012)*** ." Testimony before the June 14, 2012, June 14, 2012. [**More** (5 quotes)]

US ratification of UNCLOS would strengthen and preserve our authority for conducting maritime interdiction operations

“Will accession hamper our ability to conduct maritime interdiction operations, outside the piracy realm? The answer here is no, as well. The U.S. conducts a wide range of maritime interdiction and related operations with our allies and partners, virtually all of whom are parties to the Convention. We rely on a broad range of legal authorities to conduct such operations, including the Convention, U.N. Security Council Resolutions, other treaties, port state control measures, flag state authorities, and if necessary, the inherent right of self-defense. Accession would strengthen our ability to conduct such operations by eliminating any question of our right to avail ourselves of the legal authorities contained in the Convention and by ensuring that we share the same international legal authorities as our partners and allies.

[*Page 6-7*]

Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

Multiple national security rationales for ratifying UNCLOS

“For starters, our entire naval strategy is predicated on the global reach of American sea power and ensuring unencumbered maritime trade upon which 90 percent of all commerce depends. The Law of the Sea enshrines the concept of the freedom of navigation upon which our maritime forces rely and it ensures the rights of innocent passage for our ships and submarines on the high seas and through the territorial seas of foreign nations without prior notification or permission. It also protects unimpeded transit through international straits such as Hormuz or the waters between Taiwan and China as well as archipelagoes like Indonesia. And, while enjoying these freedoms, our warships enjoy complete immunity. The United States is the world’s preeminent naval power and its combatant vessels and merchant marine benefit from open navigation.

In terms of strategic doctrine, as long as it remains outside the convention, the United States is restricted from fully implementing the first-ever national Cooperative Strategy for 21st Century Seapower, jointly published by the chief of naval operations and the commandants of the Coast Guard and the Marine Corps. This announced policy seeks to build maritime partnerships for combating critical emerging threats such as piracy, nuclear proliferation and drug smuggling based on the principles we helped establish in the convention.

We face real pushback from our allies in these efforts who rightly question why we refuse to legally sign on to the rules we helped write. The United States puts its sailors in unneeded jeopardy when carrying out the Freedom of Navigation program to contest Law of the Sea abuses such as China’s “creeping sovereignty” in the Pacific. Further, we undermine our moral authority as a nation that benefits from an organized international system and makes establishing the rule of law a central tenet

of our foreign policy.

Scott Borgerson, Vern Clark, Bill Cohen and Jim Loy and John Negroponte. "***The U.S. will be lost without LOST*** ." **Washington Times**. (July 16, 2012) [**More**]

U.S. ratification of UNCLOS would bolster homeland security and counterterrorism efforts

U.S. ratification of UNCLOS would bolster homeland security efforts in two significant ways. First, it would provide a stable legal basis for U.S. freedom of navigation rights, preserving the right of the U.S. military to use the world's oceans to meet national security requirements. Secondly, it would provide stronger legal basis for the U.S. to conduct necessary counter-terrorism interdiction operations and challenge excessive claims.

Ratification of UNCLOS key to supporting U.S. efforts in current counterterrorism efforts

"[MYTH]: *The Convention was drafted before—and without regard to—the war on terror and what the United States must do to wage it successfully.*[16] This is an irrelevant canard. It is true that the Convention was drafted before the war on terror. However, it enhances rather than undermines our ability to wage the war on terror. The robust maritime naval and air mobility assured by the Convention is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for U.S. forces, weapons, and materiel to get to the fight without hindrance—and ensures that they will not be hindered in the future.

Thus, the Convention supports the war on terror by providing important stability for navigational freedoms and overflight. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements. It is essential that key sea and air lanes remain open as an international legal right and not as a matter of approval from nations along the routes. A stable legal regime for the world's oceans will support global mobility for our armed forces.

[*Page 120-121*]

Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

U.S. ratification of UNCLOS will facilitate U.S. efforts in war on terrorism

"Mr. Chairman, becoming party to the Convention will facilitate the prosecution of the war on terrorism in general, and the implementation of the President's proliferation security initiative in particular. President Bush has emphasized that we cannot wait for the terrorists and their weapons to reach us. What is, or should be, clear from this is that we must exercise our global navigation and

overflight rights and freedoms at sea anywhere in the world in order to reach our operational destinations. Not every government of the numerous countries past whose coasts our forces must travel to reach their destinations would necessarily wish to associate itself with every one of our operations. When we become party to the Convention, those governments will have an easier time explaining their acquiescence in our activities to domestic or foreign critics on the grounds of their treaty obligations to the United States, and we will have an easier time persuading them to do so without the need to expend our political or economic capital. Those who have expressed concerns in this respect seem to overlook the fact that the rules of high seas law set forth in the Law of the Sea Convention are copied from the 1958 High Seas Convention. Similarly, they overlook the fact that the rules of the Law of the Sea Convention regarding navigation and overflight and other high seas freedoms were expressly embraced by President Reagan in his 1983 statement on oceans policy, and constitute the bedrock of the legal foundation for our operations at sea around the world. The Administration has made it clear that it is able to and intends to carry out the proliferation security initiative in a manner consistent with high seas law as set forth in the Law of the Sea Convention, and that doing so is in our interests.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

U.S. accession to UNCLOS would greatly enhance capacity of US coast guard to safeguard borders and ocean resources

"The Coast Guard needs a comprehensive legal framework that addresses activities on, over, and under the world's oceans to further its statutory missions. We also need a solid legal framework that customary international law cannot provide as it remains subject to change based on state practice—whether at the local, regional or global level. The Convention is this certain framework. The Convention was, and still is, a resounding success for U.S. diplomacy. Acceding to the Convention will strengthen the Coast Guard's ability to protect U.S. maritime interests. The Convention is widely accepted; there are currently 162 parties. Of the eight Arctic nations, only the U.S. is not a party to the Convention.

I can see no downside to the Coast Guard in the United States acceding to the Law of the Sea Convention. To the contrary, joining the Law of the Sea Convention will immensely enhance the Coast Guard's ability to address emerging threats that challenge our Nation and safeguard the American people, our environment, and ocean resources that benefit all Americans.

[*Page 5*]

Papp, Robert. "***Statement of Admiral Robert Papp: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (4 quotes)]

Navigational freedoms in UNCLOS critical in current global war on terrorism

"The navigation principles contained in UNCLOS would allow United States and allied forces to use the world's oceans to meet challenging national security requirements, including those necessary to fight the Global War on Terrorism and to project military power overseas. Stephen J. Hadley, President Bush's National Security Advisor, wrote the Senate in February 2007 to request that it take positive action on UNCLOS as soon as possible, arguing, among other things, that "the Convention protects navigational rights critical to military operations and essential to the formulation and implementation of the President's National Security Strategy, as well as the National Strategy for Maritime Security."'[17] The Convention provides the most effective means to exercise U.S. leadership in the management and development of the law of the sea. UNCLOS facilitates combined operations with our coalition partners-all the rest of whom are parties to the Convention-through a commitment to a common set of rules, such as those governing the Proliferation Security Initiative (PSI).[18]

[*Page 577*]

Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

UNCLOS would bolster U.S. war on terror by ensuring our naval forces have the freedom of navigation rights they need

"*Myth: The Convention was drafted before – and without regard to – the war on terror and what the United States must do to wage it successfully.*

Reality: The Convention enhances, rather than undermines, our ability to wage the war on terror. Maximum maritime naval and air mobility is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for our forces, weapons, and materiel to get to the fight without hindrance. It is essential that key sea and air lanes remain open as a matter of international legal right and not be contingent upon approval from nations along those routes. The senior U.S. military leadership – the Joint Chiefs of Staff – has recently confirmed the continuing importance of U.S. accession to the Convention in a letter to the Committee.

[*Page 17*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

U.S. Homeland security officials favor UNCLOS ratification because it furthers rule of law and facilitates coastal law enforcement

"From the homeland security perspective, "public order of the oceans is best established and maintained by a stable, universally accepted law of the sea treaty reflective of U.S. national interest."[62] This testimony also alluded to the importance of being part of a global law-of-the-sea rule-making process. The Convention's navigation freedoms and protections, noted the Department of Homeland Security's representative, "allow the use of the world's oceans to meet changing national security requirements," suggesting that a non–state party would be at a disadvantage in fashioning what might be considered new ocean-borne security efforts.[63]

Another significant benefit in becoming a state party to the Treaty, noted the Homeland Security Department, would be the enhanced "ability to conduct interdiction operations and to refute excessive maritime claims."[64] Some U.S. efforts in the past had been questioned by states contending that certain treaty-based rights were not reflections of customary law. The Department also cited Convention Article 108 (requiring interna- tional cooperation in the suppression of illegal drugs) as a means by which the United States could hasten the implementation of the United Nations Convention against Illicit Traffic In Narcotic Drugs and Psychotic Substances.[65] Finally, the Department support for accession highlighted the wide-ranging responsibilities charged to one of its core functional components, the United States Coast Guard. Accession, noted the statement, would augment the Coast Guard's ability to prevent, reduce, and control maritime pollution; purge U.S. waters of substandard ships; and preserve high seas fisheries.[66]

[*Page 201-202*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

Ratifying UNCLOS would boost U.S. efforts in the war on terror by ensuring navigational freedoms

"*[MYTH] The Convention was drafted before – and without regard to – the war on terror and what the United States must do to wage it successfully.*

- It is true that the Convention was drafted before the war on terror. However, the Convention does not prevent the United States from waging a successful war on terror.

- On the contrary, maximum maritime naval and air mobility that is currently assured by the Convention is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for our forces, weapons, and materiel to get to the fight without hindrance – and is the best guarantee that our forces will not be hindered in the future.

- Thus, the Convention supports our war on terrorism by providing important stability for navigational freedoms and overflight. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements. It is essential that key sea and air lanes remain open as an international legal right and not be contingent upon approval from nations along the routes. A stable legal regime for the world's oceans will help guarantee global mobility for our Armed Forces.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

UNCLOS supports U.S. efforts in the global war on terrorism by preserving navigational freedom

"The Convention was drafted before – and without regard to – the war on terror and what the United States must do to wage it successfully.

- It is true that the Convention was drafted before the war on terror. However, the Convention enhances, rather than undermines, our ability to successfully wage the war on terror.
- Maximum maritime naval and air mobility that is assured by the Convention is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for our forces, weapons, and materiel to get to the fight without hindrance – and ensures that our forces will not be hindered in the future.
- Thus, the Convention supports our war on terrorism by providing important stability for navigational freedoms and overflight. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements. It is essential that key sea and air lanes remain open as an international legal right and not be contingent upon approval from nations along the routes. A stable legal regime for the world's oceans will support global mobility for our Armed Forces.

[*Page 9*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

U.S. ratification of UNCLOS best way to preserve freedom of navigation rights

The Law of the Sea Convention is the bedrock legal instrument for public order in the world's oceans. It codifies, in a manner that only binding treaty law can, the navigation and overflight rights, and high seas freedoms that are essential for the global strategic mobility of U.S. Armed Forces, including:

- *The Right of Innocent Passage*, which allows ships to transit through foreign territorial seas without providing the coastal State prior notification or gaining the coastal State's prior permission.
- *The Right of Transit Passage*, which allows ships, aircraft, and submarines to transit through, over, and under straits used for international navigation and the approaches to those straits.
- *The Right of Archipelagic Sealanes Passage*, which, like transit passage, allows transit by ships and aircraft through, over, and under normal passage routes in archipelagic states, such as Indonesia.
- *The right of high seas freedoms*, including overflight and transit within the Exclusive Economic Zone.

UNCLOS promotes U.S. freedom of navigation in three ways

"UNCLOS promotes the United States' freedom of navigation rights in at least three ways.[39] First, the Convention limits coastal States' territorial seas to twelve nautical miles.[40] Second, UNCLOS affords innocent passage of ships and aircraft through other countries' territorial seas and archipelagoes, as well as through straits used for international navigation.[41] Finally, the Convention sets forth maximum navigational rights and freedoms for ships and aircraft in exclusive economic zones.[42] In regards to the United States' non-party status, proponents of UNCLOS argue that while these rights may exist in customary law, joining the Convention would put these provisions on firmer legal footing, as rights embodied in a treaty are more fixed than those in customary law.[43]

[*Page 122-123*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

On balance, gains from freedom of navigation rights outweigh costs of UNCLOS

"Freedom of navigation is the main reason why the George W. Bush administration announced its support for U.S. accession shortly after the 9/11 attacks in 2001.[30] The administration likely finds that the Convention's navigational and national security benefits far outweigh any costs to the U.S. joining the Convention. Military security relates to self-defense, which the Convention pre- serves,[31] and to port security, which the Convention facilitates by incorporating security requirements developed through the Inter- national Maritime Organization.[32] The Convention also assures rights of navigation and overflight, including transit passage through strategic straits and archipelagic sea lanes passage,[33] as well as the immunity of warships.[34] The U.S. insisted on strengthening rights of navigation and overflight during the Third United Nations Conference on the Law of the Sea Conference (UNCLOS III), and in making them more objective with what appears in the 1958 Territorial Sea Convention.

[*Page 628-629*]

Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Defense department has endorsed passage of UNCLOS because it secures global access to the oceans

"In a 1996 report, the Department of Defense and the Joint Chiefs of Staff set forth the major national security benefits of the Law of the Sea Convention.[54] The foremost benefit is global access to the oceans throughout the world, including areas adjacent to coastal states, which include the contiguous zone and the EEZ.[55] These interests extend to U.S. security and economic interests in global high seas freedoms, including freedom of navigation, overflight, and telecommunications.[56] Benefits also include a stable, comprehensive, and nearly universally-accepted Convention, modified by the 1994 Agreement, to promote public order and free access to the oceans and the airspace above it.[57]

[*Page 552*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. should join UNCLOS to protect four critical rights that ensure freedom of navigation

To date, U.S. military forces have successfully protected American shipping and the homeland from

sea-based attack without the benefits of the convention. Why is it imperative to join the convention now? What does the convention provide that distinguishes it from existing treaties and the customary international law upon which the United States has depended for the past five decades?

In short, the convention provides the protection of binding international law in four categories of essential navigation and overflight rights. Together, these rights ensure the strategic and operational mobility of U.S. military forces and the free flow of international commerce at sea. Joining the convention guarantees that 156 states recognize the following basic rights of U.S. military forces, commercial ships, civilian aircraft, and the foreign-flagged vessels that carry commerce vital to U.S. economic security:

- Right of Innocent Passage. The surface transit of any ship or submarine through the territorial seas of foreign nations without prior notification or permission.
- Right of Transit Passage. The unimpeded transit of ships, aircraft, and submerged submarines in their normal modes through and over straits used for international navigation, and the approaches to those straits.
- Right of Archipelagic Sealanes Passage. The unimpeded transit of ships, aircraft, and submerged submarines in their normal modes through and over all normal passage routes used for international navigation of "archipelagic waters," such as those claimed by the Philippines and Indonesia.
- Freedom of the High Seas. The freedoms of navigation, overflight, and use of the seabed for laying undersea cables or pipes on the high seas and within the exclusive economic zone of a coastal state.

[*Page 22-23*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Ratifying convention would significantly reduce costs U.S. military incurs to protect navigation rights

"Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.[36] This resurgence threatens Convention-based navigational rights, which are at least as important today as they were during the Cold War. Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.[37] Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law. As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Commit- tee, "some coastal states contend that the navigational and over- flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming

parties to it."[38] if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program[39] or negotiating new bilateral agreements.[40] The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive-in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts-than continuing to stand outside it.

[*Page 630*]

Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Protection of freedom of navigation rights is key to laundry list of national security objectives

"The National Strategy for Maritime Security (NSMS) identifies freedom of the seas as a "top national priority."[26] Naval forces depend upon global strategic mobility and tactical maneuverability to conduct the spectrum of sea-air-land operations in pursuit of the national interest, and these operations include:

- operating the most survivable component of nuclear deterrence, ballistic missile submarines (SSBNs);[27]
- conventional global strike;[28]
- air and missile defense;[29]
- information operations;[30]
- sea and land direct attack with missiles, naval gunfire and aircraft;
- crisis and disaster response, such as tsunami relief;[31]
- maritime homeland security;[32]
- amphibious and expeditionary operations in littoral areas;[33]
- insertion of special operations forces (SOF) for missions such as counterinsurgency and counterterrorism;[34]
- constabulary functions and maritime security operations (MSOs) such as counterdrug operations[35] and piracy repression;"[36]
- counter proliferation operations such as the Proliferation Security Initiative (PSI) and the Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA);[37]
- exercise of the right of approach, approach and visit, maritime interception operations (MIO) and visit, board, search and seizure (VBSS);
- naval control and protection of shipping (NCAPS);[38] exercise of sea lines of communication (SLOCs) through the global supply chain and strategic supply;
- sea control;[39] anti-access and sea denial strategies such as mining; civil-military affairs;[40]

- security cooperation and peacekeeping;[41] and forward presence.[42]

In addition to securing the homeland, the exercise of these military activities ensures and relies on U.S. command of the global commons, which means the United States is readily able to insert power anywhere throughout the globe.[43] The Chief of Naval Oper- ations has said assuring access to the oceans and preserving the freedom to conduct naval operations is directly related to deterring war, or, if necessary, winning it.[44]

[*Page 549-50*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Ratification of UNCLOS key to preserving four critical navigation rights U.S. military needs for national security

"Our Navy can better protect the United States and the American people if we join the Law of the Sea Convention.

The Law of the Sea Convention is the bedrock legal instrument for public order in the world's oceans. It codifies, in a manner that only binding treaty law can, the navigation and overflight rights, and high seas freedoms that are essential for the global strategic mobility of our Armed Forces, including:

- The Right of Innocent Passage, which allows ships to transit through foreign territorial seas without providing the coastal State prior notification or gaining the coastal State's prior permission.
- The Right of Transit Passage, which allows ships, aircraft, and submarines to transit through, over, and under straits used for international navigation and the approaches to those straits.
- The Right of Archipelagic Sealanes Passage, which, like transit passage, allows transit by ships and aircraft through, over, and under normal passage routes in archipelagic states, such as Indonesia.
- The right of high seas freedoms, including overflight and transit within the Exclusive Economic Zone.

Innocent Passage, Transit Passage, and Archipelagic Sealanes Passage are the crown jewels of navigation and overflight. These rights are vital not just to our Navy, but also to our Army, Air Force, Marine Corps, and Coast Guard. They make it possible to move vast quantities of war materiel through the Straits of Gibraltar, Singapore, Malacca, and Hormuz and into the Arabian Gulf to Soldiers, Sailors, Airmen, and Marines in Iraq. These rights permit us to move our submarine fleet through choke points to conduct all missions. They permit the United States Air Force to conduct global missions without requirement to overfly foreign national airspace. And they ensure the uninterrupted flow of commerce to and from our shores.

[*Page 3-4*]

Walsh, Patrick M. "*Statement of Admiral Patrick M. Walsh: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention* ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (4 quotes)]

On balance, ratifying UNCLOS is best alternative for protecting US freedom of navigation rights

"The United States might react to these coastal state navigational restrictions in four possible ways.[32] First, it could acquiesce in them, a reaction that would significantly restrict navigational freedoms important to the United States. Second, the United States could continue to assert, via diplomatic channels, a customary international law right to navigation, backing up its assertions with naval exercises. Although the United States has been following this practice since 1979 under its Freedom of Navigation Program, this option is expensive. It is expensive in terms of dollars, potential confrontations, and prejudice to other U.S. interests in the coastal state.[33] Furthermore, this option may not contribute to a stable legal regime, since some U.S. claims under customary international law could compete with coastal state assertions of different emerging rules of customary international law. Third, the United States could negotiate bilateral treaties to preserve U.S. navigational rights in other states' coastal zones. This option is also expensive. Small states, not interested in sailing their vessels or conducting military exercises in U.S. waters, would expect other new military, economic, or political concessions in exchange for allowing the United States to conduct military exercises or navigate in their coastal zones. Finally, the United States could accept the multilateral Law of the Sea Convention. With respect to navigation rights, this treaty provides a stable legal base from which to promote freedom of navigation rules. Its written and hard-to- change rules, though not always highly determinate, at least narrow the range of disputes over permissible and impermissible restrictions on navigation. Convention proponents have strong consequentialist arguments to support the position that the Con- vention's freedom of navigation provisions benefit the United States.

[*Page 7-8*]

Noyes, John. "*The United States, the Law of the Sea Convention, and Freedom of Navigation*." **Suffolk Transnational Law Review**. Vol. 29. (2005-2006): 1-24. [**More** (5 quotes)]

Key advantage of U.S. ratification of UNCLOS is in reinforcing foreign perspectives on our naval rights

"One of our most important objectives in seeking a universally ratified Law of the Sea Convention is to put a stop to the erosion of high seas freedoms in coastal areas that characterized the development of customary international law in the twentieth century. There is no reason to believe this erosion will not continue in the absence of a treaty restraint. In my opinion, the most plausible way to block the gradual erosion of high seas freedoms in the exclusive economic zone, and its

eventual transformation into something much more like a territorial sea, is a widely ratified Law of the Sea Convention to which the United States is party, and with respect to which the voice and practice of the United States are prominent authoritative evidence of what the Convention means.

For operational planners, the essential question is not what we think our rights are, but what foreign governments think. We need the greatest possible influence over the perception of foreign governments regarding the source, legitimacy, and content of their obligations to respect our high seas freedoms, especially in their exclusive economic zones. We achieve that best by becoming party to the Convention. The alternatives are likely to be both less effective and more costly.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

UNCLOS supports military flexibility and U.S. is free to leave if it doesn't

"Critics of ratification argue that U.S. military flexibility under the Convention is compromised because it will need to bend to the will of Convention guidelines.[162] As discussed above, however, Convention provisions enhance flexibility by allowing access to a vast array of territorial seas.[163] Additionally, the U.S. military enthusiastically supports the Convention, giving it perhaps the strongest endorsement in the interest of national security.[164] **Admiral Vern Clark, Chief of Naval Operations, in 2004 stated**, "I fully support the Convention because it preserves our navigational freedoms, provides the operational maneuver space for combat and other operations for our warships and aircraft, and enhances our own maritime interests."[165] Furthermore, the Vienna Convention, which governs international treaties, provides that where a state's national security is threatened (or circumstances fundamentally change) it may suspend its obligations under a treaty.[166] In the unlikely event that the Convention inhibits the United States from ensuring national security, the U.S. would be no worse off since it would not be bound by the Convention in those instances.

[*Page 385-386*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Accession to UNCLOS would help safeguard navigational rights from steady erosion by excessive claims

Joining this Convention would codify several important recognized rights of navigation into a binding

legal foundation. It supports our national security interests by defining the rights of U.S. military and civilian vessels as they meet our mission requirements, reaffirms the sovereign immunity of our warships and other vessels owned by the United States and used for government noncommercial service, and preserves our right to conduct military activities and operations in exclusive economic zones. As the defense strategy places greater demands on our ability to mobilize forces, guaranteed access to shipping and overflight lanes becomes increasingly important to support our forces overseas.

Currently, the United States relies upon customary international law as the primary legal basis to secure global freedom of access. However, as emerging powers around the world grow and modernize, states may seek to redefine or reinterpret customary international law in ways that directly conflict with our interests, including freedom of navigation and overflight, potentially challenging our global mobility needs. This Convention represents the best guarantee against erosion of essential navigation and overflight freedoms that we take for granted through reliance on customary international law. Accession will give the United States leverage to counter efforts by other nations seeking to reshape current internationally accepted rules we depend on for transporting cargo and passengers.

[*Page 2*]

Fraser, William M. "***Statement of General William M. Fraser III: On Law of The Sea Convention (June 14, 2012)***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (3 quotes)]

Ratification of UNCLOS would bolster U.S. freedom of navigation rights in four ways

"Security. As the world's foremost maritime power, our security interests are intrinsically linked to freedom of navigation. We have more to gain from legal certainty and public order in the world's oceans than any other country. Our forces are deployed throughout the world, and we are engaged in combat operations in Central and Southwest Asia. The U.S. Armed Forces rely on the navigational rights and freedoms reflected in the Convention for worldwide access to get to the fight, sustain our forces during the fight, and return home safely, without permission from other countries.

In this regard, the Convention secures the rights we need for U.S. military ships and the commercial ships that support our forces to meet national security requirements in four ways:

- by limiting coastal States' territorial seas -- within which they exercise the most sovereignty -- to 12 nautical miles;
- by affording our military and commercial vessels and aircraft necessary passage rights through other countries' territorial seas and archipelagoes, as well as through straits used for international navigation (such as the critical right of submarines to transit submerged through such straits);
- by setting forth maximum navigational rights and freedoms for our vessels and aircraft in the

exclusive economic zones of other countries and in the high seas; and

- by affirming the authority of U.S. warships and government ships to board stateless vessels on the high seas, which is a critically important element of maritime security operations, counter-narcotic operations, and anti-proliferation efforts, including the Proliferation Security Initiative.

[*Page 5*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Joining UNCLOS will advance US interests by preserving key military rights

“Joining the Convention will advance the interests of the U.S. military. As the world’s leading maritime power, the United States benefits more than any other nation from the navigational provisions of the Convention. Those provisions, which establish international consensus on the extent of jurisdiction that States may exercise off their coasts, preserve and elaborate the rights of the U.S. military to use the world’s oceans to meet national security requirements. They achieve this, among other things, by stabilizing the outer limit of the territorial sea at 12 nautical miles; by setting forth the navigation regime of innocent passage for all ships in the territorial sea; by protecting the right of passage for all ships and aircraft through, under, and over straits used for international navigation, as well as archipelagoes; by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond; and by providing for the laying and maintenance of submarine cables and pipelines. U.S. Armed Forces rely on these navigation and overflight rights daily, and their protection is of paramount importance to U.S. national security.

[*Page 3*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

UNCLOS codifies essential rights and freedoms U.S. forces need to operate -- our non-party status is putting them at risk

“The Convention codifies navigation rights and freedoms essential for the global mobility of our armed forces and the sustainment of our combat troops. Benefits include:

- a 12 nautical mile limit to territorial seas

- innocent passage through territorial seas
- archipelagic sea lanes passage though island nations like Indonesia
- laying and maintaining submarine cables for communication warship right of approach and visit
- sovereign immunity of warships and public vessels
- transit passage in international straits (and their approaches)
- high seas freedoms in exclusive economic zones (EEZs)

The last two are the most important. Transit passage gives us freedom of movement above, on, and below the surface in critical chokepoints such as the Straits of Singapore and Malacca, Hormuz, and Gibraltar, and the Bab el Mandeb. Exercising high seas freedoms in foreign EEZs includes conducting military activities.

Our non-party status is hurting us. It denies us a seat at the table when the 155 parties to the Convention interpret (or try to amend) those rights and freedoms; it denies us use of an important enforcement tool against coastal state encroachment (binding dispute resolution); it hinders us in our efforts to recruit more countries to the Proliferation Security Initiative (PSI); it creates a seam between us and our coalition partners; it prevents us from gaining legal certainty for our extended continental shelf in the Arctic (and elsewhere); and it denies U.S. companies access to deep seabed mining sites.

Relying on customary international law as the basis for those rights and freedoms is an unwise and unnecessary risk. Our Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen put their lives on the line, every day, to preserve the rights and freedoms codified in the Convention; they deserve to be on the firmest legal ground possible as they go into harm's way; they deserve the legal certainty that accrues from treaty based rights.

[*Page 1*]

U.S. Navy Judge Advocate General's Corps. **Eight National Security Myths: United Nations Convention on the Law of the Sea** . Office of the Judge Advocate General: Washington Navy Yard, DC, Undated [**More** (5 quotes)]

Ratification of UNCLOS would preserve three critical military rights U.S. Navy needs to operate

"The Convention **preserves key rights of navigation and overflight**. According to Deputy Secretary of Defense John D. Negroponte, the Convention provides for a "legal framework . . . [which] is essential to the mission of the Department of Defense, and the Department of Homeland Security . . . ."[147] The Convention grants American ships the right of innocent passage, allowing ships transit through the territorial seas of foreign countries without having to provide advance notice or request permission.

Moreover, the Convention **establishes the right of transit passage** through international straits such as the Straits of Singapore and Malacca or the Strait of Gibraltar. This right, which is absolutely critical to U.S. national security, may not be suspended, hampered, or infringed upon by coastal

States.[148] Also, the Convention creates the Archipelagic sea lanes passage that allows transit through routes in archipelagic states, such as Indonesia.[149] Additionally, the provisions creating EEZ give the American military "the ability to position, patrol, and operate forces freely in, below, and above those littoral waters."[150]

Finally, the **Convention secures the right of American warships to operate on the high seas**, "which is a critically important element of maritime security operations, counter-narcotic operations, and anti- proliferation efforts."[151] The Convention's navigational rights led to its support by all branches of the military: Secretary Gates, the Joint Chiefs of Staff, the Military Department Secretaries, all of the Combatant Commanders, and the Commandant of the Coast Guard.[152]

[*Page 171*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Current UNCLOS treaty represents a victory for the U.S. in preserving critical navigational freedoms

"The critics show no understanding of the United States' continuing role as a global protector of navigational freedom. Yet a core issue at stake is the control of unilateral coastal state claims against U.S. shipping, both military and commercial. In this respect, the convention is the most important and historic achievement in the safeguarding of these interests. For example, the new provisions for the protection of straits transit and archipelagic sea lanes passage, as well as the improved provisions for innocent passage in territorial seas, are of utmost importance to U.S. naval mobility. The progressive advancements that the U.S. negotiating team achieved to this end are completely missed by the critics; by second guessing U.S. naval experts, it seems they would rather snatch defeat from the jaws of victory. Paradoxically, by opposing the convention, the critics reinforce the views of Third World nations that the United States defeated in negotiations. We must also never forget that thousands of U.S. servicemen and servicewomen, who volunteer to go in harm's way, depend on the navigation and over-flight provisions guaranteed in the convention. As General Richard B. Myers, the chairman of the Joint Chiefs of Staff, recently stated, "The Convention remains a top national security priority." (4)

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

U.S. carefully negotiated and won key concessions in framing of UNCLOS to maximally protect freedom of navigation rights

“National security interests were paramount in crafting the final text of the Convention, so it is unsurprising the treaty framework promotes regional stability, optimizes maritime strategic mobility, and yields other national security benefits. At home, the Convention supports strong flag and port state security measures and ensures the exercise of sovereignty in the territorial sea. The Convention also provides the most effective means to exercise U.S. leadership to shape the management and development of law of the sea. Abroad, the Convention facilitates combined operations with coalition partners through subscription to a common rule set, such as the Proliferation Security Initiative (PSI). The suggestion by some critics that the Convention represents a progressive confrontation of U.S. national security interests has turned historical analysis on its head, as the Convention in fact secured the essential oceans interests of the maritime powers. Senator Richard Lugar called the criticism of these “amateur admirals”[15] factually and historically incorrect, and focusing on spurious concerns over vague losses of U.S. sovereignty.[16] During the negotiations, the United States closely coordinated with the other major maritime powers— the Soviet Union, Japan, the United Kingdom and France—to accommodate high seas freedoms.[17] These states, and particularly the superpowers, demonstrated a repeated willingness to go against their usual clients and allies in favor of positions supported by the maritime powers. The politics of the negotiations reflected national interest as a function of geography, rather than superpower politics or North-South differences. The cornerstone of this coordination was achievement of the provisions protecting freedom of navigation. In the end, essentially all of the maritime security benefits of the Convention are rooted in preserving maximum freedom of the seas.

[*Page 547*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. could more effectively advocate for and defend freedom of navigation rights as a party to UNCLOS

“Another very important step for the U.S. Government, to better ensure the freedom of navigation rights it now exercises, is to formally ratify the UNCLOS treaty. This step is not just to return to equal footing with other members on moral, diplomatic, and legal grounds in order to better support the rules-based- order that the United States government espouses, but also to be able to directly guide and protect U.S. interests in international fora and on the seas.[437] The United States signed UNCLOS in 1994 after successfully negotiating an amendment to the document to correct earlier concerns by the industrialized states, but has not formally ratified it through the Senate. The most important UNCLOS provisions, like mari- time jurisdictions and right-of-passage, are in accord with U.S. policy so that U.S. domestic law generally adheres to UNCLOS statutes, as it also does with customary international law.[438] The Department of State and DoD both support ratification to give the United States “greater credibility in invoking the convention’s rules and a greater ability to enforce them.”[439] This treaty has come before the Senate several times, as recently as 2012, only to be tabled despite

bipartisan support, mainly due to economic concerns with Part XI stipulations that cover the deep seabed.[440] A direct American voice in the Law of the Sea Treaty debates could advocate for freedom of navigation and other U.S. interests as international law inevitably evolves, in order to counter the historic trend to circumscribe rights on the high seas by reducing its openness and limiting areas of operations. Foreign military navigation rights through an EEZ are a prime example of such restrictions with 26 countries supporting China's and Vietnam's restrictive positions, including major maritime states like India and Brazil.[441] The Senate needs to ratify this treaty to allow the United States to defend actively its existing maritime legal interests and rights.

[*Page 88-89*]

Bouchat, Clarence J. **The Paracel Islands and U.S. Interests and Approaches in the South China Sea** . Strategic Studies Institute, U.S. Army War College: Carlisle, PA, June 2014 (201p). [**More** (5 quotes)]

U.S. failure to join UNCLOS puts freedom of navigation rights at risk in two ways

"First, there is a risk that important provisions could be weakened by amendment, beginning in November 2004, when the treaty is open for amendment for the first time. Currently, for example, the Convention prohibits coastal states from denying transit rights to a vessel based upon its means of propulsion. Some states, however, may propose to amend this provision to allow exclusion of nuclear-powered vessels. Under the Convention, no amendment may be adopted unless the parties agree by consensus (or, if every effort to reach consensus failed, more than two-thirds of the parties present agree both on certain procedural matters and on the proposed amendment). As a party, the United States would have a much greater ability to defeat amendments that are not in the U.S. interest, by blocking consensus or voting against such amendments.

Second, by staying outside the Convention, the United States increases the risk of backsliding by nations that have put aside excessive maritime claims from years past. Pressures from coastal states to expand their maritime jurisdiction will not disappear in the years ahead—indeed such pressures will likely grow. Incremental unraveling of many gains under the Convention is more likely if the world's leading maritime power remains a non-party.

[*Page 3*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

U.S. Navy's freedom of navigation is continually challenged by excessive claims

Coastal states are increasingly challenging US freedom of navigation rights as it remains outside of the UNCLOS framework

"Moreover, numerous states question the United States' very right to enforce navigational freedoms conferred by the Convention when it is not party to it. It is likely that U.S. accession would decrease the number of state claims inconsistent with international law and also decrease the number of freedom of navigation challenges the Navy would have to conduct.

The global demands on the Navy and Coast Guard come at a time when the size of the nation's Fleets has shrunk to unprecedented low levels. As fewer and fewer U.S. ships are available to support U.S. and coalition interests worldwide, it is more imperative than ever that these ships be able to exercise the rights of innocent passage, transit passage, and archipelagic sea lanes passage without asking prior permission or providing prior notification to coastal states. Equally important is the right of warships to operate freely and conduct military activities in the exclusive economic zones of all nations. These are rights that are being increasingly challenged by coastal nations.

[*Page 55*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

U.S. dealing with over 100 threats to our navigational freedoms that could be resolved under UNCLOS

"[MYTH]: *U.S. adherence to the Convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy).*[15]

But our navigational freedoms are indeed threatened. There are currently more than a hundred illegal, excessive claims affecting vital navigational and overflight rights and freedoms. The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights as reflected in the Convention. But these operations entail a certain amount of risk—for example, the Black Sea bumping incident with the former Soviet Union in 1988. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert its rights and affording additional methods of resolving conflict.

[*Page 120*]

Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

Currently, over 100 excessive and illegal claims threaten U.S. FON

"Myth: U.S. adherence to the convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy). Wrong--it is not true that our navigational freedoms are not threatened. There are more than 100 illegal, excessive claims around the globe that adversely affect vital navigational and over-flight rights and freedoms. The United States has utilized diplomatic and operational challenges to resist excessive maritime claims by other countries that interfere with U.S. navigational rights as reflected in the convention. On occasion, these operations have entailed a certain amount of risk (e.g., the Black Sea bumping incident with the former Soviet Union in 1988). Being a party to the convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert its rights, thus affording additional methods of resolving conflict and aligning expectations of behavior at sea.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Over a hundred excessive claims currently, some of which are directly complicating counter narcotics operations

"We will stabilize the outer permissible limit of the territorial sea of other nations at 12 nautical miles." We will gain the leverage to combat effectively excessive territorial sea claims and other excessive claims. At present, there are over a hundred excessive claims throughout the world.' These are notjust rogue states making these claims. Many, including those pertaining to the continental shelf, are from friendly nations or nations with whom we need principled, cooperative relationships. Our status as a nonparty to the Law of the Sea Convention hobbles our efforts to address these claims in an effective manner.

Specifically, I point out the counternarcotics area. There are excessive territorial sea claims that cause significant operational impediments for us on a daily basis. Our status as a nonparty makes it difficult for us to achieve effective operational agreements with those nations that have claims of territorial seas of up to two hundred nautical miles.

[*Page 447*]

Baumgartner, William D. "*UNCLOS Needed for America's Security*." **Texas Review of Law &**

Politics. Vol. 12, No. 2 (April 2008): 445-451. [**More** (3 quotes)]

U.S. freedom of navigation rights are under constant threat from "creeping jurisdiction"

"*Myth: Freedom of navigation is only challenged from "[t]he Russian navy [that] is rusting in port [and] China has yet to develop a blue water capability...."* ***(14)***

The implication here is that the principal challenge to navigational freedom emanates from a major power and that we do not have any particular national concerns about freedom of navigation. But the 1982 convention deals with the law of peace, not war or self-defense. Thus, this argument misses altogether the serious and insidious challenge, which, again, is what the convention is designed to deal with; these repeated efforts by coastal nations to control navigation, including those from U.S. allies and trading partners, have through time added up to death by a thousand pin-pricks. This is the so-called problem of "creeping jurisdiction" which remains the central struggle in preserving navigational freedom for a global maritime power. After years of effort, we have won in the convention a legal regime that supports our efforts to control this "creeping jurisdiction." To unilaterally disarm the United States from asserting what was won against illegal claimants is folly and undermines our national security.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong..*" **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

US non-party status to UNCLOS undermines is global leadership and complicates efforts to challenge excessive claims through its FON program

"The US is, of course, the world's sole superpower and its pre-eminent maritime power. Accordingly, the US clearly plays a leading role in global affairs. The US also perceives itself to be a world leader and is keen to project and promote this image and reality. The fact that the US is not a party to the Convention undermines that leadership role in the maritime sphere. Critically, when the United States comments on maritime issues of concern to it, such as regarding excessive maritime claims through the FON program or on the South China Sea disputes for instance, a frequently raised objection to Washington's interventions is that the US has not signed up to UNCLOS. This serves to compromise the credibility and authority of the US in global ocean affairs. US accession would therefore remove a somewhat irrelevant, but far from unimportant barrier to the United States playing a strong leadership role as the contemporary law of the sea. The counterpoint here is that by choosing not to participate the US is abdicating or at least undermining its credential to a leadership role in international ocean affairs. The rationale for ratification on this front alone is therefore, it is

submitted, persuasive.

[*Page 3*]

Schofield, Clive and Ian Townsend-Gault. "*Time for the United States to Join the Party? Prospects for US Ratification of the United Nations Convention on the Law of the Sea*." **International Zeitschrift**. Vol. 8, No. 3 (December 2012): 1-6. [**More** (4 quotes)]

Multiple examples where US freedom of navigation rights are threatened by its non-party status to UNCLOS

"U.S. navigation on the high seas is affected by its non-ratification of UNCLOS III. For example, if a U.S. naval task force had to rush from the Persian Gulf to a crisis along the North Korean peninsula, it could be forced to detour 3,000 miles around Indonesia.[234] Another example is the barring of U.S. tankers from the Strait of Hormuz-the strait in which most American foreign oil is shipped-by Iran.[235] Finally, Russia could institute fishing trawlers off the coast of Alaska that would take millions of tons of salmon found in American waters.[236] None of these things would be possible if the United States ratifies UNCLOS III. UNCLOS III may aid the United States in ensuring that the naval ships and submarines can navigate freely along the high seas, that cargo ships and tankers may navigate along the world's sea lanes, and that the United States retains control over the resources found in the deep sea.[237] As long as the United States remains a nonparty, it will not be able to rely on the protections provided by UNCLOS III.

[*Page 775*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

Coast guard operations impaired by U.S. non-party status to UNCLOS

"Next, Rear Admiral Frederick J. Kenney presented the importance of UNCLOS to the U.S. Coast Guard. He emphasized that on a daily basis the Coast Guard's operational officers rely on the freedom of navigation that UNCLOS attempts to preserve. The Coast Guard is the only U.S. surface presence in many parts of the world, and this widespread presence allows the Coast Guard to respond quickly to international incidents. For example, a Coast Guard cutter was the first U.S. presence in Georgia after Russian troops entered the country in 2008.

Because the United States is not a party to the Convention, however, Rear Admiral Kenney explained that the United States cannot use its dispute resolution mechanisms for resolving conflicting claims

to ocean territory. In one important dispute, the United States and Canada disagree about whether Passamaquoddy Bay is part of Canada's internal waters and thus whether Canada can block passage of commercial shipping through the bay to East Port, Maine. If plans for a liquid natural gas (LNG) terminal in East Port move forward, Rear Admiral Kenney predicts this dispute will intensify without any clear means of resolution.

Rear Admiral Kenney drew on his personal experience as a negotiator to discuss the difficulties the United States faces in negotiating other treaties because it is not a party to UNCLOS. As the primary regulator of U.S. shipping, the Coast Guard participates in treaty negotiations with the International Maritime Organization (IMO). However, the IMO's primary treaties are inextricably linked to UNCLOS, and Rear Admiral Kenney opined that the United States loses credibility in IMO negotiations because it is not a party to UNCLOS. Further, Rear Admiral Kenney suggested that bilateral agreements regarding drug enforcement would be easier to negotiate if the United States were a member of UNCLOS because they would be able to incorporate UNCLOS' enforcement mechanisms.

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0 "***National Security, Economic Well-Being, and the Law of the Sea*** ." **Environmental Law Institute**. (June 6, 2011) [**More**]

Coastal states are becoming increasingly assertive in controlling activities of other states in their EEZ

"Coastal states can also be expected to want more control of their off-shore waters and airspace for domestic security reasons.[67] As technology advances, coastal states can reasonably be expected to seek a legal regime that makes it more difficult for foreign militaries to exploit advancements in the range and accuracy of weapons and intelligence-gathering inherent in manned and unmanned aerial, surface, and underwater vehicles, as well as over-the-horizon weaponry and specialized littoral platforms.

Moreover, the nature of threats such as terrorism; weapons of mass destruction; and arms, drugs, and human-trafficking encourage coastal states to extend surveillance and control beyond their territorial seas and in some cases even into others' EEZs.[68] In the aftermath of September 11, many nations, including the U.S., have increased surveillance of their coastal areas.[69]

To varying degrees and through various methods, coastal states have objected to military activities in their respective EEZs through the years. Whatever their historical weaknesses and current political rivalries, coastal states continue to share important interests and continue to face what Professor Bernard Oxman calls the "territorial temptation" to expand control over their off-shore waters.[70]

[*Page 14*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

U.S. inability to protect naval freedoms through UNCLOS has already cost American lives

"The Law of the Sea Convention is a key weapon in this struggle for our oceans' freedom. The United States won through the negotiations the core elements of that freedom. To abandon that win is the legal equivalent of unilateral disarmament for the United States in the struggle for freedom of the seas. The price we will pay through time for any such error in judgment will be high. In essence the critics who would have us abandon a rule of law in the world's oceans may effectively be asking American servicemen and women someday to pay with their lives for the absence of such a rule of law. This is not mere hyperbole; already disputes about the oceans regime have cost American lives. Thus, an American aircraft in lawful overflight of the high seas was forced down by Peru in asserting an illegal claim over an extended area of the seas. More recently, harassment by Chinese fighters brought down a United States aircraft engaged in lawful activities under the 1982 Convention. And, at minimum, the economic cost of new naval configurations designed to get around a creeping loss of freedom – possibly with required pay-offs to coastal states – could be considerable.

[*Page 7*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004)*** ." Testimony before the Senate Committee on Armed Services, April 8, 2004. [**More** (6 quotes)]

China one of an estimated 26 other countries that are challenging U.S navigation rights with excessive claims

"In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The position of the United States and most countries is that while the United Nations Convention on the Law of the Sea (UNCLOS), which established EEZs as a feature of international law, gives coastal states the right to regulate economic activities (such as fishing and oil exploration) within their EEZs, it does not give coastal states the right to regulate foreign military activities in the parts of their EEZs beyond their 12-nautical-mile territorial waters.6 The position of China and 26 other countries (i.e., a minority group among the world's nations) is that UNCLOS gives coastal states the right to regulate not only economic activities, but also foreign military activities, in their EEZs. In response to a request from CRS to identify the countries taking this latter position, the U.S. Navy states that countries with restrictions inconsistent with the Law of the Sea Convention [i.e., UNCLOS] that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast are [the following 27]: Bangladesh, Brazil, Burma, Cambodia, Cape Verde, China, Egypt, Haiti, India, Iran, Kenya, Malaysia, Maldives, Mauritius, North Korea, Pakistan, Portugal, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, Uruguay, Venezuela, and Vietnam.[7]

Other observers provide different counts of the number of countries that take the position that UNCLOS gives coastal states the right to regulate not only economic activities but also foreign military activities in their EEZs. For example, one set of observers, in an August 2013 briefing, stated that 18 countries seek to regulate foreign military activities in their EEZs, and that three of these countries—China, North Korea, and Peru—have directly interfered with foreign military activities in their EEZs.[8]

[*Page 4*]

O'Rourke, Ronald. **Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress** . Congressional Research Service: Washington, D.C., April 11, 2014 (59p). [**More** (4 quotes)]

Freedom of Navigation program is not a long-term viable solution to address excessive claims

The United States can assert its navigational rights at any point on the globe, but it cannot be assured of a local superiority of forces simultaneously at every location of potential maritime dispute. Moreover, obvious practicality compels restraint—against both allies and potential adversaries—over maritime disputes. Even the peaceful and non-confrontational Freedom of Navigation (FON) program may present diplomatic costs and pose risks inherent in physical challenges,

Attempting to enforce navigational rights outside of UNCLOS framework would be an expensive undertaking and waste of resources

"I also believe, Mr. Chairman, that it is short-sighted to argue that, if the customary law system somehow breaks down, the United States, as the world's pre-eminent naval power, wouldn't have any trouble enforcing it. Clearly, our Navy could engage in such an effort. However, enforcing our navigational rights against every coastal nation in the event the Convention and customary law systems collapse would be very costly, both politically and economically. Moreover, it would divert our forces from their primary missions, including the long-term global war on terrorism. Excessive coastal nation claims are the primary threat to our navigational freedoms. Those claims can spread like a contagious virus, as they did in the 20th Century. The added legal security we get from a binding treaty permits us to use our military forces and diminishing resources more efficiently and effectively by concentrating on their primary missions.

[*Page 19*]

Schachte, William L. "***Statement of Rear Admiral William L. Schachte: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Armed Services Committee, April 8, 2004. [**More** (4 quotes)]

U.S. efforts to address excessive claims outside of UNCLOS framework are unsustainable

"*U.S. adherence to the Convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy).*

- It is not true that our navigational freedoms are not threatened. There are more than one hundred illegal, excessive claims affecting vital navigational and overflight rights and freedoms.
- The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights under customary international law as reflected in the Convention. But these operations entail a certain amount of risk – e.g., the Black Sea bumping incident with the former Soviet Union in 1988.
- Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert our rights and affording us additional methods of resolving conflict.

[*Page 9*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Dangerous precedent to assume U.S. can continue to assert its navigational rights

"The critics also show little understanding of the realities of asserting the rule of law in the world's oceans. They seemingly contend that the United States can protect its interests by shooting its way around the oceans rather than developing a stable and favorable legal regime, defensible with force if necessary, that provides a legal basis for naval and air operations. The United States simply cannot shoot its way to acceptable resolutions of oceans disputes with Canada, Chile, Brazil, India, Italy and other democracies. Nor is it realistic to ignore the effects of law and international agreements in our interactions with others. It is hubris to believe that the United States can disregard the law without consequences, as it creates scenarios where other nations follow suit, thus compromising interests on both sides. Ironically, at a time when the president of the United States is urging others toward the rule of law as a foreign policy interest, the critics voice only disdain for that principle.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Ratifying convention would significantly reduce costs U.S. military incurs to protect navigation rights

"Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.[36] This resurgence threatens Convention-based navigational rights, which are at least as important today as they were during the Cold War.

Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.[37] Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law. As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Commit- tee, "some coastal states contend that the navigational and over- flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it."[38] if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program[39] or negotiating new bilateral agreements.[40] The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive-in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts-than continuing to stand outside it.

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Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Freedom of navigation program is no longer sufficient for US to secure its naval rights

“One method the United States has adopted to deal with state claims inconsistent with international law as reflected in the Convention is the Freedom of Navigation (FON) Program. Initiated in 1979 and continued by every administration since then, this program combines diplomatic action and operational assertion of our navigation rights to discourage state claims inconsistent with international law as reflected in the Convention. But the political, economic, and military costs of this program are not trivial, and for a Navy stretched thin to meet its urgent operational commitments, every freedom of naviga- tion challenge comes with an opportunity cost somewhere else—to say nothing of the risks to the Sailors on those ships. This was put forcefully by then-CNO Vern Clark in a letter to the Senate Armed Services Committee:

> For the many years we’ve remained outside the Convention, we’ve asked our young men and women to conduct operations, sometimes at great risk, to challenge the exces- sive maritime claims of other states. Joining the Law of the Sea Convention will let our people know that, when they’re operating in defense of this nation, far from our shores, they have the backing and the authority of widely recognized law to look to, rather than depending only upon the threat or use of force.

The tense showdown between the United States People’s Republic of China over the collision between a Chinese fighter and a Navy EP-3 aircraft—an event that occurred in China’s exclusive economic zone—is but one indication of the risks described by Admiral Clark. sufficient for US to secure its naval rights The tense showdown between the United States and the

[*Page 55*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

Use of Freedom of Navigation missions to secure rights costs the U.S. politically and financially and detracts from other naval missions

"The costs of conducting frequent naval Freedom of Navigation missions may be significant—in political, economic, and military terms. Beyond the incidental financial costs of conducting such exercises, they sometimes require deploying naval vessels to regions they would not normally patrol. While some Freedom of Navigation missions would still be conducted, regardless of the U.S. position on the 1982 Convention, we believe that, from an operational standpoint, our dwindling naval forces would be able to shed some Freedom of Navigation commitments and that we would face fewer contentious issues if the United States were a signatory to the Treaty. As one observer put it, "If freedom of the seas has to be bought by vigilance and violence, then it will be, and the U.S. Navy will bear the brunt."[11] While there have been no flagrant incidents of a Treaty signatory denying navigational rights to the United States as a nonsignatory, a climate of periodic discord and confusion has developed surrounding some maritime controversies.[12] This climate has the potential to be particularly acute for the United States. Without a Treaty, the United States has but two instruments to safeguard these freedoms should one or more nations fail to abide customary law: freedom of navigation assertions and diplomatic actions. This method is politically costly and detracts from other Navy missions.[13]

[*Page 233-234*]

George, Cpt. V. Galdorisi USN and Cdr. James G. Stavridis USN. "*United States Convention on the Law of the Sea: Time for a U.S. Reevaluation?*." **Naval Law Review**. Vol. 40. (1992): 229-239. [**More** (2 quotes)]

Freedom of navigation program has been overwhelmed by excessive claims

"“Egregious Excessive Claims.” A ninth reason that led the United States toward accession to the Convention was the growing political and military cost of the Freedom of Navigation (FON) Program. This effort, initiated by the Carter administration in 1979 and continued under presidents Reagan, Bush, and Clinton, combined diplomatic and operational (not solely naval) means to discourage claims violating the navigational freedoms asserted by the 1982 Convention—freedoms that the US.

supported even though, for other reasons, it had not signed the treaty.[49] The FON program involved (and at this writing still does) naval exercises and consultations, bilateral and multilateral, with other governments to promote maritime stability, conformance with international law, and adherence by all nations to the customary rules and international law reflected in the Convention.

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Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

U.S. Navy has concluded that costs of unilateral enforcement of naval freedoms through Freedom of Navigation program no longer worth it

“This is just a sampling of excessive maritime claims and their sequels, but it represents the financial and diplomatic costs, as well of the risks, associated with the FON program. The case became compelling that such costs and risks would be substantially less under a specific, binding treaty.55 Two noted experts on the law of the sea, 1. Ashley Roach and Robert W. Smith, presented the position of the State Department in 1994: “Unilateral U.S. demonstrations of resolve—especially operational assertions—are sometimes viewed as antagonistic. They risk the possibility of military confrontation and of political costs that may be deemed unacceptable, with prejudice to other US. interests, including worldwide leadership in ocean affairs and support for use of cooperative, international solutions to mutual problems?“

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Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

Political costs of relying on Freedom of Navigation program no longer worth the risks

“In fact, many of the nations making claims that the U.S. considered excessive were asserting that the Convention was a legal contract, the rights and benefits of which were not necessarily available to non-parties—such as the United States. The Continual counter-assertion that these rights and benefits were already embodied in customary international law was appearing more and more difficult to sustain. In testimony before the Senate Foreign Relations Committee in the summer of 1994, the chairman of the Department of Defense Task Force on the Law of the Sea Convention, John McNeill, pointed to the likelihood of “increasingly egregious excessive claims” by many coastal states as a critically important reason to seek U.S. accession to the Convention.[57] The danger of continuing to rely on the FON program was summed up by Rear Admiral William Schachte: “The

political costs and military risks of the Freedom of Navigation Program may well increase in the changing world order."[58] Conversely, accession to the Convention, by the United States would, it was hoped, convince states making excessive claims to retract them and, perhaps more importantly, keep in check their natural desire to extend sovereignty to offshore areas, when it would be inimical to navigation and overflight rights."

[*Page 36*]

Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

Attempting to assert our rights through robust naval power is no longer relevant or practical

"Suggestions that somehow our maritime interests can be asserted solely through robust naval power are not relevant to the real world. The overwhelming majority of ocean disputes do not involve enemies or issues that warrant military action. As **Admiral Patrick Walsh testified at our first hearing in 2007**: "Many of the partners that we have in the Global War on Terror who have put life, limb, and national treasure on the line are some of the same ones where we have disagreements on what they view as their economic zone or their environmental laws. It does not seem to me to be wise to now conduct Freedom of Navigation operations against those very partners that are in our headquarters trying to pursue a more difficult challenge ahead of us, a Global War on Terror." Even a mythical 1,000 ship U.S. Navy could not patrol every strait, protect every economic interest, or assert every navigational right. Attempting to do so would be prohibitively expensive and destructively confrontational.

Lugar, Richard. "***Statement from Richard Lugar: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)*** ." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More** (2 quotes)]

U.S. cannot rely on asserting claims through Freedom of Navigation program alone

"If appropriately resourced by the combatant commanders, the Freedom of Navigation program is effective, but it is not a panacea. The United States can assert its navigational rights at any point on the globe, but it cannot be assured of a local superiority of forces simultaneously at every location of potential maritime dispute. Moreover, obvious practicality compels restraint—against both allies and potential adversaries—over maritime disputes. Even the peaceful and non-confrontational FON program may present diplomatic costs and pose risks inherent in physical challenges,[148] as was displayed by the Black Sea bumping incident in February 1988. In 1996, the National Intelligence

Council concluded that in some cases the costs, disadvantages, or risks of physically challenging excessive claims might be greater than the benefits.[149] Of course, coastal states understand this calculus and will try to manipulate it to their advantage since they have an incentive to compel the inter- national community to acquiesce in their excessive maritime claims.

[*Page 570-571*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. incurs significant political and economic costs from trying to enforce its freedom of navigation rights through the military

"Customary international law tends to be hard to enforce and maintain. For exam- ple, eighteen states continue to claim territorial sea in excess of twelve nautical miles. Thirteen states claim, historic bays inconsistent with international law. More than sixty countries delimit straight baselines along portions of their coast, many of which are drawn inconsistently with international law. Also, more than twenty states attempt to over-regulate their exclusive economic zones (EEZ), contrary to the express provisions of the Convention.

Since 1979, the United States has formally contested excessive coastal state claims, both operationally and diplomatically, through the Freedom of Navigation Program. The program is based entirely on the navigation and overflight provisions of the Convention. While this program is designed to breathe life into the terms of the Convention, Parties to the Convention are likewise capable of defining or refin- ing provisions of the Convention. By remaining outside the Convention, the United States' only way of confronting attempts by Parties to the Convention to interpret or refine Convention provisions would be by the exercise of our naval and air forces in accordance with the existing terms of the Convention. However, in presenting Ad- miral Center's paper, Commander Rosen will discuss that this will be harder to do in the years to come as we downsize. Also, as a nation committed to the rule of law, the use of military force to resolve legal conflicts between Parties and non-Parties to the Convention should not be the preferred method of challenging excessive coast- al state claims.

I would note that, in the case of the ''Black Sea Bumping Incident,'' the United States and Soviet Union approached the legal issues involved as would Parties to the Treaty in relying on the Convention's rules on innocent passage to amicably re- solve the issues raised by the incident.

Schachte, William L. "*National Security: Customary international law and the Convention on the Law of the Sea*." **Georgetown International Environmental Law Review**. Vol. 8, No. 2 (Summer 1995). [**More** (6 quotes)]

US reliance on freedom of navigation program and customary law emboldens other coastal states to make excessive claims

"When the Convention on the Law of the Sea came into effect in 1982 it sought to broadly codify and balance coastal state territorial and resource rights against the need for freedom of navigation by maritime nations.54 Coastal state territorial seas were expanded, but only after acceptance of regimes for innocent and transit passage.55 The same balance was struck when creating archipelagic lanes through island nations and allowing for high seas freedoms in the newly created Exclusive Economic Zone (EEZ) where coastal states now maintained resource rights.56,57 This area of "shared rights and responsibilities," along with coastal nation propensity to "adopt excessively generous" baselines, has proven quite contentious for the United States as it seeks to maintain freedom of navigation and peacetime access around the globe.58,59 Furthermore, coastal state interpretation of the convention in a manner most beneficial to self-interest creates major difficulties for the United States.

As a non-party to UNCLOS, the U.S. lacks "a seat at the table when the [160] parties to the Convention interpret (or try to amend)" the rights and freedoms protected within the convention, and forfeits the use of binding dispute resolution to counter coastal state encroachment.60 Instead these freedoms negotiated in the convention, but either ignored or incorrectly interpreted, must be objected to through the U.S. Freedom of Navigation (FON) Program to keep customary international law from developing contrary to U.S. strategic interests.61 Unfortunately, "that approach plays directly into the hands of those foreign coastal States that want to move beyond the Convention," because "they too cite customary international law as the basis for developing claims of coastal State sovereignty in the EEZ."62

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Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

Ratification of UNCLOS would remove risks inherent in unilateral enforcement of freedom of navigation rights

"*Myth: The United States can rely on use or threat of force to protect its navigational interests fully.*

Reality: The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights. But these operations entail a certain degree of risk, as well as resources. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a stronger position to assert our rights.

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Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Reliance on customary international law and FON program should only be used as a last resort

“Some columnists and think tank analysts have argued that U.S. accession to the Convention is unnecessary because excessive maritime claims can be addressed by invoking customary international law and with “operational assertions’’ by the U.S. military. But such an approach is less certain, more risky, and more costly than taking advantage of the Convention. Customary law is by nature subject to varying interpretations and change over time. Operational assertions—sending military ship and aircraft into contested areas—involve risk to naval personnel as well as political costs. Such assertions should be conducted aggressively where needed, but avoided where possible.

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Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

U.S. ratification of UNCLOS would bolster efforts of Freedom of Navigation program

Although states making excessive claims will never publicly welcome U.S. challenges through its Freedom of Navigation program, the U.S. – as an UNCLOS party – would have greater credibility and standing to conduct challenges, reaffirming as a fellow-member the crucial tenants of an internationally accepted legal regime.

Ratification of UNCLOS would boost effectiveness and legitimacy of unilateral freedom of navigation programs

"That UNCLOS membership would promote international maritime collaboration should be obvious. Less obvious, however, is how UNCLOS membership might also facilitate unilateral action. Consider the U.S. Freedom of Navigation (FON) Program.[104] Consistent with the need to shape the law through state practice, the U.S. has historically conducted operations designed to challenge excessive maritime claims. The FON program provides a framework for conducting such operations. Although states with excessive claims will never publicly welcome U.S. challenges, the U.S. – as an UNCLOS party – would have greater credibility and standing to conduct challenges, reaffirming as a fellow-member the crucial tenants of an internationally accepted legal regime. In this context, challenges might be made more frequently and in more meaningful areas, rendering them a more potent component of U.S. strategic communication on freedom of the seas and airspace. Moreover, as an UNCLOS party, the U.S. could augment the diplomatic and operational means to challenge excessive maritime claims with the Convention's mandatory dispute procedures. The U.S. thus would have those procedures to use offensively against excessive maritime claims that are not in compliance with the Convention, including those that limit military mobility and high seas freedoms.

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Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

U.S. freedom of navigation program complemented by international agreements like UNCLOS

"To the extent the United States continues to have a need for unrestricted, legal access for its naval forces up to the territorial waters of all the countries of the world, we believe it should continue to use vehicles such as the Freedom of Navigation Program to assert these rights, but should also

supplement this with other arrangements and understandings with foreign security partners. A sufficiently dense network of such arrangements and understandings, followed by consistent practice, will ensure the vitality of customary norms. In the end, it is our view that this is an approach that will ensure the best balance among an ongoing network of lawful naval and military activities, stable international law, freedom of navigation for ocean-going commerce, and is an approach that will protect interests common to all in an internationally interdependent world.

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Galdorisi, George V. and Alan G. Kaufman. "***Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*** ." **California Western International Law Journal**. Vol. 32. (2001-2001): 253-302. [**More** (4 quotes)]

Freedom of navigation is critical to U.S. leadership and economy

Indeed, global commerce, travel, and information have greatly contributed to the growing wealth of nations and to the stability of the post-Cold War international system. The world's seas, air, space, and-more recently- cyberspace also play critical roles in states' national defense and their ability to conduct military operations worldwide. The United States relies on freedom to operate in the commons in order to protect the U.S. homeland and its vital national interests.

US freedom of navigation rights are a critical component of our global leadership

"Beyond this leadership role, vital and immediate core strategic U.S. interests hinge on accession. This has been articulated in congressional testimony by the nation's mil- itary leadership—from the Chairman of the Joint Chiefs of Staff down—and especially by successive Chiefs of Naval Operations. For example, Admiral Mike Mullen in written testimony before his confirmation hearings stated: The ability of military forces to operate freely on, over, and above the vast military maneuver space of the oceans is critical to our national security interests, the military in general and the Navy in particular. Your Navy's—and your military's—ability to operate freely across the vast domain of the world's oceans in peace and in war make possible the unfettered projection of American influence and power. The military basis for support of the Law of the Sea Convention is broad because it codifies fundamen- tal benefits important to our operating forces as they train and fight.

[*Page 53*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

Direct correlation between us economic and military power and the rights preserved by UNCLOS

"As a military superpower, the United States could heavily rely on regulations such as the UNCLOS III to provide for military defense such as navigation and overflight, military presence, and commercial advantages.372 There is a direct correlation between the economic interests of the United States and the security provided by UNCLOS III. In order for the United States to maintain its political and economic influence, it depends on the stability of the global market. The stability found in the Convention is also crucial to the exploitation of marine scientific research in drilling and fishing industries.

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Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

Freedom of operation in the global commons has been and will continue to be a key driver of US and global economic growth

"The sea provides passageway to 45,000 merchant ships worldwide and over 90 percent of global trade.' Each year, 2.2 billion passengers, 40 percent of international tourists, and 44 million tons of freight travel by air. The global economic impact of air transport in 2007 was estimated to be $3.5 trillion, or 7.5 percent of global GDP.2 Additionally, the economic worth of the communications, imagery, and positioning data gained from satellites in space was $257 billion in 2008, and each day, financial traders in New York City transfer more than $4 trillion, or approximately 25 percent of annual U.S. GDP, via the Internet.' As the 2010 U.S. Department of Defense's QuadrennialDefense Review Report states, "Global security and prosperity are contingent on the free flow of goods shipped by air or sea, as well as information transmitted under the ocean or through space."' Access to the global commons enables these flows, in turn promoting both international stability and prosperity.

Indeed, global commerce, travel, and information have greatly contributed to the growing wealth of nations and to the stability of the post-Cold War international system. The world's seas, air, space, and-more recently- cyberspace also play critical roles in states' national defense and their ability to conduct military operations worldwide. The United States relies on free- dom to operate in the commons in order to protect the U.S. homeland and its vital national interests. Yet as the global commons grows, the number of emerging trends that threaten this freedom of action also increases.

[*Page 29*]

Murphy, Tara. "*Security Challenges in the 21st Century Global Commons*." **Yale Journal of International Affairs**. Vol. 5. (Spring/Summer 2010): 28-41. [**More** (5 quotes)]

US global leadership directly tied to its leadership and dominance over the global commons

"In 2003, Barry Posen wrote a seminal piece on the defense and security benefits of unchallenged freedom of operation in the commons entitled, "Command of the Commons: The Military Foundation of U.S. Hegemony."" Posen argues that dominance in these shared domains serves as the foundation of the leadership role that the United States holds in the international system. He states, "Command of the commons is the key enabler of the U.S. global power position. It allows the United States to exploit more fully other sources of power, including its own economic

and military might as well as the economic and military might of its allies." Posen's work on this topic brought to the forefront the role that the global commons play as a key enabler of U.S. defense and national security strategies.

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Murphy, Tara. "*Security Challenges in the 21st Century Global Commons*." **Yale Journal of International Affairs**. Vol. 5. (Spring/Summer 2010): 28-41. [**More** (5 quotes)]

Freedom of navigation is key to global economic prosperity

"Freedom of navigation also underpins global economic prosperity. The oceans, wrote Professors McDougal and Burke, were a "spatial extension resource, principally useful as a domain for movement."[20] With the increasing trend in global trade, exercising the freedom to navigate on the seas is becoming even more important. This trend is accelerating in an era of globalization. "Shipping lanes are getting busier," reports the Wall Street Journal, "not just from Asia to North America and Europe, but within Asia."[21] The initial rise of the globalized economy, which began in mercantilist Europe, can be attributed in large part to unimpeded ocean transit. Four hundred years ago, the legal scholar Hugo Grotius cogently set forth the commercial doctrine that fueled international trade. "For do not the ocean," Grotius wrote, "navigable in every direction with which God has encompassed all the earth, and the regular and occasional winds which blow now from one quarter and now from another, offer sufficient proof that Nature has given to all peoples a right of access to all other peoples?"[22] The model of freedom of the seas also is regarded as the logical analogue for developing the legal regime for outer space.[23]

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. Security in new threat environment requires agile forces with high degree of mobility

"Military operations since September 11—from Operation Enduring Freedom to Operation Iraqi Freedom to the Global War on Terrorism —have dramatically increased our global military requirements. U.S. Forces are continuously forward deployed worldwide to deter threats to our national security and are in position to respond rapidly to protect U.S. interests, either as part of a coalition or, if necessary, acting independently. U.S. military strategy envisions rapid deployment and mobility of forces overseas anytime, anywhere. A leaner, more agile force with a smaller overseas footprint places a premium on mobility and independent operational maneuver. Our mobility requirements have never been greater.

Future threats will likely emerge in places and in ways that are not yet fully clear. For these and other undefined future operational challenges, U.S. naval and air forces must take maximum advantage of the customary, established navigational rights that the Law of the Sea Convention codifies. Sustaining our overseas presence, responding to complex emergencies, prosecuting the global war on terrorism, and conducting operations far from our shores are only possible if military forces and military and civilian logistic supply ships and aircraft are able to make unencumbered use of the sea and air lines of communication. This is an enduring principle that has been in place since the founding of our country.

[*Page 3*]

Mullen, Michael G. "***Statement of Admiral Michael G. Mullen: On the Law of the Sea Convention***." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

Protection of freedom of navigation rights is key to laundry list of national security objectives

"The National Strategy for Maritime Security (NSMS) identifies freedom of the seas as a "top national priority."[26] Naval forces depend upon global strategic mobility and tactical maneuverability to conduct the spectrum of sea-air-land operations in pursuit of the national interest, and these operations include:

- operating the most survivable component of nuclear deterrence, ballistic missile submarines (SSBNs);[27]
- conventional global strike;[28]
- air and missile defense;[29]
- information operations;[30]
- sea and land direct attack with missiles, naval gunfire and aircraft;
- crisis and disaster response, such as tsunami relief;[31]
- maritime homeland security;[32]
- amphibious and expeditionary operations in littoral areas;[33]
- insertion of special operations forces (SOF) for missions such as counterinsurgency and counterterrorism;[34]
- constabulary functions and maritime security operations (MSOs) such as counterdrug operations[35] and piracy repression;"[36]
- counter proliferation operations such as the Proliferation Security Initiative (PSI) and the Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA);[37]
- exercise of the right of approach, approach and visit, maritime interception operations (MIO) and visit, board, search and seizure (VBSS);
- naval control and protection of shipping (NCAPS);[38] exercise of sea lines of communication

(SLOCs) through the global supply chain and strategic supply;

- sea control;[39] anti-access and sea denial strategies such as mining; civil-military affairs;[40]
- security cooperation and peacekeeping;[41] and forward presence.[42]

In addition to securing the homeland, the exercise of these military activities ensures and relies on U.S. command of the global commons, which means the United States is readily able to insert power anywhere throughout the globe.[43] The Chief of Naval Oper- ations has said assuring access to the oceans and preserving the freedom to conduct naval operations is directly related to deterring war, or, if necessary, winning it.[44]

[*Page 549-50*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. will be able to challenge excessive claims more effectively as a party to UNCLOS

U.S. non-party status to UNCLOS means its challenges to excessive claims are less credible than they would otherwise be. Other States are less persuaded to accept its demand that they comply with the rules set forth in the Convention, given that the U.S. has not joined the Convention.

States will be less likely to challenge U.S. with excessive claims when it is backed by its ratification of UNCLOS

"The navigation and overflight freedoms we require through customary international law are better served by being a party to the Convention that codifies those freedoms. Being a party to the Convention is even more important because the trend among some coastal states is toward limiting historical navigational and overflight freedoms. Would-be adversaries, or nations that do not support the particular missions or activities we undertake, will be less likely to dispute our lawful use of the sea and air lanes if we are parties to the Convention. We support the Convention because it protects military mobility by codifying favorable transit rights in key international straits, archipelagic waters, and waters adjacent to coastal states where our forces must be able to operate freely.

[*Page 4*]

Mullen, Michael G. "***Statement of Admiral Michael G. Mullen: On the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

Ratification of UNCLOS key to resolving numerous boundary disputes in a consistent manner

"As regards maritime boundaries, there presently exist about 200 undemarcated claims in the world with 30 to 40 actively in dispute. There are 24 island disputes. The end of the Cold War and global expansion of free market economies have created new incentives to resolve these disputes, particularly with regard to offshore oil and natural gas exploration. During the last few years hundreds of licenses, leases or other contracts for exploration rights have been granted in a variety of nations outside the U.S. These countries are eager to determine whether or not hydrocarbons are present in their continental shelves, and disputes over maritime boundaries are obstacles to states and business organizations which prefer certainty in such matters. We have had two such cases here in North America where bilateral efforts have been made to resolve the maritime boundaries between

the U.S. and Mexico in the Gulf of Mexico and between the U.S. and Canada in the Beaufort Sea. Both of these initiatives have been driven by promising new petroleum discoveries in the regions. The boundary line with Mexico was resolved in 2000 after a multi-year period of bilateral negotiations. Negotiations with Canada, however, seem to be languishing.

While such bilateral resolution is always an option, the Convention provides stability and recognized international authority, standards and procedures for use in areas of potential boundary dispute, as well as a forum for dealing with such disputes and other issues.

[*Page 4*]

Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

U.S. assertion of rights and challenges to excessive claims lack credibility as long as we remain outside of treaty

"As we look into the future, our status as a non-party will increasingly disadvantage the United States. Presently, the United States is forced to rely on customary international law as the basis for asserting our rights and freedoms in the maritime domain. In situations where coastal states assert maritime claims that exceed the rights afforded to them by the Convention, USPACOM challenges such claims through a variety of means including the U.S. Freedom of Navigation program, military-to-military communications, and diplomatic protests issued through the State Department. When challenging such excessive claims through military-to- military or diplomatic exchanges, the United States typically cites customary international law and the relevant provisions of the Convention. Unfortunately, because we are not a party to the Convention, our challenges are less credible than they would otherwise be. Other States are less persuaded to accept our demand that they comply with the rules set forth in the Convention, given that we have not joined the Convention ourselves.

[*Page 3*]

Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

U.S. is in no position to challenge excessive maritime claims as a non-party to UNCLOS

"Rising maritime powers across the globe are reinterpreting customary international law to promote their own national interests -- including in ways that may conflict with longstanding maritime norms and American interests. Nowhere is this more apparent than in the South China Sea, where

China's outsized claim to the entire region flies in the face of both traditional practices and LOSC. But China is not the only offender. Burma, Thailand, and others are joining China in more restrictive interpretations of maritime navigational rights, including anti-access norms that could constrain the U.S. Navy's ease of access in this crucial maritime domain.

Unfortunately, the United States is not in a position to rebuff these restrictive interpretations and protect the maritime norms that have been so beneficial to the global economy and U.S. security. U.S. failure to ratify the treaty has prevented the United States from taking a seat at the table to avail itself of the convention's established legal frameworks, such as the Law of the Sea Tribunal. And while the United States sits on the sidelines, other countries are engaging in discussions of maritime law, and in some places working toward consensus on issues that could have consequences for the United States for decades. Joining the treaty will allow the United States to lead these important discussions and, more importantly, enable the United States to negotiate with countries from a position of strength to protect the customary practices codified by the convention.

Ratifying LOSC will also strengthen a range of ongoing U.S. security activities. The U.S. Navy and U.S. Coast Guard are our key instruments of power at sea and ratifying LOSC will strengthen their ability to do their job and work with others to protect U.S. interests, including areas such as counter proliferation and counter piracy. More importantly, ratifying the convention would give the U.S. Navy and Coast Guard the strongest legal footing for their actions, including in places like the Strait of Hormuz, where Iran has threatened to close access to the international passageway in direct violation of the convention. As Chairman of the Joint Chiefs of Staff General Martin Dempsey recently said, "It validates the operations we conduct today and realizes our vision for a secure future."

Will Rogers. "***Law of the Sea: Less boring than you think*** ." **Foreign Policy**. (May 16, 2012) [**More**]

Ratifying UNCLOS enhances U.S.national security by improving its ability to challenge excessive claims

“The time has now come for the United States to become party to this vital convention and regain its leadership position in ocean policy affairs. One benefit: Becoming a party to UNCLOS would greatly enhance homeland security. In his **testimony before the Senate Foreign Relations Committee, Admiral James Watkins**, former Commission on Ocean Policy, called the convention “the foundation of public order of the oceans.”[7] U.S. military forces, including Coast Guard units, rely heavily on the many critical freedoms of navigation, over- flight, and operational principles codified in the convention. Under the current legal regime, the United States is not guaranteed such rights. While there is a strong argument that transit passage and archipelagic sea lanes passage have become established rights under customary international law, not all agree.

For example, the Islamic Republic of Iran, whose terri- torial waters overlap the shipping lanes in the critical Strait of Hormuz (through which much of the world’s oil passes) contends that only states that are party to UNCLOS are entitled to the full rights of transit passage.[8] Moreover, neither of these

critical navigational rights exists under any of the 1958 Geneva Conventions on the Law of the Sea, to which the United States continues to be bound. Becoming a party to the 1982 convention will supersede our obligations under the 1958 conventions and will ensure the entire range and ex- tent of our critical mobility rights in all the ocean waters of the world.

[*Page 7*]

Oliver, John T. "***A Window of Opportunity: The U.N. Convention on the Law of the Sea.*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 66, No. 3 (Summer 2009): 6-10. [**More** (5 quotes)]

Model of UNCLOS useful for governance of other global commons

The negotiations and compromises that led to the development of UNCLOS were a watershed for the development of international law and could serve as a model for the development of similar regimes for the governance of other global commons, including outer space, cyberspace, and the genetic pool.

Southern countries are pursuing biodiversity strategy modelled off of the lessons learned from UNCLOS

"South countries, such as the 53 nations in the Africa Union, are advancing the way forward by legislating national laws for protecting, while at the same time sharing, biodiversity as advocated by the CDB. Such an approach delimits individual private property by affirming community rights over biodiversity, in shared jurisdiction with national governments. Another initiative among non-governmental organizations revives the international discussion that the gene pool, like the seabed, belongs to the common heritage of mankind:

> the intrinsic value of the Earth's gene pool.. .precedes its utility and commercial value .... [T]he Earth's gene pool, in all its biological forms and manifestations, exists in nature and, therefore, must not be claimed as intellectual property even if purified and synthesized in the laboratory .... Therefore, the nations of the world declare the Earth's gene pool... to be a global commons, to be protected and nurtured by all peoples and further declare that genes and the products they code for, in their natural, purified or synthesized form... will not be allowed to be claimed as commercially negotiable genetic information or intellectual property by governments, commercial enterprises, other institutions or individuals.[99]

Only in the preliminary stages of discussion in international fora, such as the Johannesburg Summit, ten years post-Rio (August 2002), this proposed treaty renews the debates over equity in the use of "common heritage" resources. As this discourse continues, legal interpretation and political experience from UNCLOS will become relevant for clarifying key issues, especially debates over private versus community versus public property over resources necessary to sustain all human life. An international law of the seed will develop dynamically, from shared use and adjudication, as is the international law of the sea.

[*Page 865-866*]

Thompson, Carol B. "*International Law of the Sea/Seed: Public Domain versus Private Commodity*." **Natural Resources Journal**. Vol. 44, No. 3 (Summer 2004): 841-866. [**More** (7 quotes)]

Multiple similarities between international approaches for the management of the ocean regime and the common gene pool

"As a summary, the chart below offers a quick comparison of important provisions of the United Nations Convention on the Law of the Seas (UNCLOS), the Trade Related Intellectual Property Rights (TRIPs) and the Convention on Biological Diversity (CBD). As discussed above, access to the sea and seed ranges from delimitation of private property under UNCLOS to allowing full privatization under TRIPs to reaffirming national control under the CBD. The extent of the enclosure against access is most serious for TRIPs and could potentially be legalized for all seeds and plants. Sustainable use of resources is a priority for UNCLOS and the CBD but is not even mentioned in TRIPs. Similarly, while it has been left undefined, both UNCLOS and the CBD promote benefit sharing, while TRIPs does not mention it. TRIPs is also the most narrow in its approach to rights, mainly recognizing individual rights. UNCLOS is the most ambitious with its principle of the common heritage of mankind giving equal rights to all beyond the exclusive economic zones (EEZs) of 200 nautical miles. The CBD enshrines community and farmers' rights (social group rights) as privileged over individual rights for seeds and plants, which belong to the common heritage of local communities. Finally, UNCLOS employs an international authority as well as legal adjudication for governance. TRIPs relies on national enforcement, with dispute settlements to follow administrative panels' rulings that are arrived at without full disclosure or the ability to cross-examine the opponent. The CBD also relies on national enforcement' with the condition that prior informed consent must come from the communities who cultivated the plant. "National" enforcement, therefore, is modified by the proviso that local communities participate in drafting agreements about seed exchange and benefit sharing, including devising local community trusts.

[*Page 863-864*]

Thompson, Carol B. "*International Law of the Sea/Seed: Public Domain versus Private Commodity*." **Natural Resources Journal**. Vol. 44, No. 3 (Summer 2004): 841-866. [**More** (7 quotes)]

UNCLOS has become a significant milestone in the development of international law

"It is difficult to overstate the extent to which this Convention has become more than a Treaty and has become, instead, an international state of mind. It created new international law, codifying much of what had become customary law of the sea, and established new norms in the negotiation of multilateral, international treaty agreements. For many emerging nations, it was the first major international treaty negotiation that they had ever participated in. According to former United Nations Secretary-General Javier Perez de Cuellar, the 1982 United Nations Convention on the Law of the Sea embodies the will of an overwhelming majority of nations from all parts of the world, at different levels of development, and having diverse geographical characteristics.[8]

[*Page 256-257*]

Galdorisi, George V. and Alan G. Kaufman. "***Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*** ." **California Western International Law Journal**. Vol. 32. (2001-2001): 253-302. [**More** (4 quotes)]

Both UNCLOS and emerging international biodiversity agreements are trying to define scope of resource sharing

"The CBD follows UNCLOS in asking for benefit sharing of the uses of biodiversity. 61 Similarly, developing countries, led by China, India, and Brazil, argued that the CBD allows them access to bio-technology that would enable them to exploit their own biological resources.[62] The compromise became a call for the transfer of technology and for "fair and equitable sharing of the benefits" when knowledge and resources are exchanged.[63] In addition, the CBD requires prior informed consent (PIC) of the local community for access to a bio-resource, not just the central state, which could sell off vital resources for a pittance.[64] All stakeholders must mutually consent.[65] Materials collected before the formation of the CBD in 1992 are not covered.

Neither the CBD nor UNCLOS has fully defined benefit sharing, but discussions prioritize sharing knowledge and funds for research and development. Discussions have progressed for the CBD, where the need for exchange is more mutual: the North desires access to the biodiversity of South countries, while the South would like access to technology. Of course, all would like to share profits from any practical uses of the resources. The discussion addresses fees for access to germplasm, royalties, profit sharing (much more than the estimated zero to five percent currently offered),[66] technology, and funds for development.[67]

[*Page 855*]

Thompson, Carol B. "*International Law of the Sea/Seed: Public Domain versus Private Commodity*." **Natural Resources Journal**. Vol. 44, No. 3 (Summer 2004): 841-866. [**More** (7 quotes)]

ISA model could be extended to protecting ocean biodiversity through a new agreement

"Eventually, the seabed regime may also be called on to make adjustments thrust upon it by states acting outside the authority. If the authority gains the trust of its members as an effective manager and steward of deep ocean minerals, it is possible that states may negotiate to add other deep ocean issues to the responsibilities assigned to the authority by UNCLOS and the 1994 Agreement. The subject of the management, protection and exploitation of the biodiversity of life on the deep ocean floor has gained some attention.[36] While there is only limited knowledge of the scope or the fraglity of the marine life of the seabed, there have been discussions of the potential commercial value of this resource.[37] The authority, charged with protecting the marine environment,

must consider effects on marine life of mineral exploration and exploitation. It is conceivable that a new agreement could extend the role of the authority to the management, exploitation and protection of deep seabed biodiversity.

[*Page 74*]

Antrim, Caitlyn L. "*Mineral Resources of Stateless Space: Lessons from the Deep Seabed*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005): 55-80. [**More** (4 quotes)]

Many valuable lessons in UNCLOS for international governance of cyberspace

The Internet poses legal challenges similar to those encountered in maintaining order in the use of the world's oceans. UNCLOS, which imposes law and order in the seas, entered into force based on "the notion that all problems of ocean space are closely related and needed to be addressed as a whole."" Similarly, the Internet is shared globally and the consequences of actions taken by an Internet user in one jurisdiction can be borne globally.

Legal challenges posed by cybercrime similar to those posed by maritime piracy

"The Internet poses legal challenges similar to those encountered in maintaining order in the use of the world's oceans. UNCLOS, which imposes law and order in the seas, entered into force based on "the notion that all problems of ocean space are closely related and needed to be addressed as a whole."" Similarly, the Internet is shared globally and the consequences of actions taken by an Internet user in one jurisdiction can be borne globally. As a result, the legal challenges posed by cyberaggression are similar in many respects to the problems posed by piracy and other criminal activity on the high seas. UNCLOS specifically addresses piracy by defining conduct that constitutes piracy[178] and describing the duties of all nations with respect to combating piracy.[179] For example, UNCLOS balances the territorial jurisdiction of nations with the concept of universal jurisdiction. Article 105 provides that "[o]n the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft" and that "[t]he courts of the State which carried out the seizure may decide upon the penalties to be imposed."[180] Moreover, if a vessel engaged in piracy is captured in international waters by a nation that does not have criminal law that applies beyond their territorial borders, other nations that do have such criminal law may prosecute the pirates based on universal jurisdiction.[181]

[*Page 267*]

Stahl, William M. "*The Uncharted Waters of Cyberspace: Applying the Principles of International Maritime Law to the Problem of Cybersecurity*." **Georgia Journal of International and Comparative Law**. Vol. 40. (2011): 247-274. [**More** (4 quotes)]

International community should follow example set by UNCLOS and establish governing regime to combat cybercrime

If members of the international community were able to develop a convention structured after

UNCLOS, mandating international cooperation on cybersecurity and applying universal jurisdiction to acts of cyberaggression, the benefits would be palpable. One such benefit would be an opportunity to create a U.N. agency comparable to the International Maritime Organization (IMO) [210] whose purpose would be to ensure the safety and security of the Internet.

The IMO was created pursuant to the adoption of the Convention on the International Maritime Organization,[211] which entered into force in 1958. The purpose of the IMO as stated in Article 1(a) of the Convention is to facilitate cooperation among governments in order to ensure that the "highest practicable standards in matters concerning maritime safety" are in place. The IMO also maintains detailed records of all incidents of piracy,[213] which supports the IMO's policy recommendations and efforts to develop new law when the need arises.[214] One such legal instrument is Resolution A.738(18), which was intended to facilitate States' duties to cooperate in the repression of piracy under Article 100 of UNCLOS.[215] Generally, Resolution A.738(18) encouraged intergovernmental cooperation in all aspects of piracy prevention and solidified the IMO's antipiracy strategy. The IMO's "strategy consist[s] of compilation and distribution of periodical statistical reports, piracy seminars and field assessment missions to regions affected by piracy and the preparation of a code of practice for the investigation and prosecution of the crime of piracy."[216]

An agency similar in function to the IMO dedicated to tracking incidents of cyberaggression and fostering cooperation between member nations would help to consolidate the international effort to monitor and deter cyberaggression. Moreover, such an agency would help to legitimize the international legal regime that created it, and would provide sound policy rooted in empirical evidence.

[*Page 270-271*]

Stahl, William M. "*The Uncharted Waters of Cyberspace: Applying the Principles of International Maritime Law to the Problem of Cybersecurity*." **Georgia Journal of International and Comparative Law**. Vol. 40. (2011): 247-274. [**More** (4 quotes)]

A cybercrime treaty that established universal jurisdiction over crimes and an international tribunal could help deter cybercrimes

The recent cyberattacks on Estonia, Georgia, and Iran demonstrate the shortcomings of both international criminal law governing cybercrime and he absence of international law addressing cyberterrorism and cyberwarfare. In a world where internet commerce is increasingly important to the growth of the global economy, nations cannot afford to shape cybersecurity law unilaterally in furtherance of provincial interests at the expense of a concerted international effort to develop uniform cybersecurity law. As the economic futures of nations become ever more intertwined, international consensus on issues like cyberaggression is essential to global security and economic well-being.

Analogizing cyberthreats to the concerns that spawned cooperation in developing international

maritime law is a useful starting point for analyzing and developing an international response that is necessary to meaningfully address global cybersecurity. Without an international agreement that defines the spectrum of cyberaggression, provides for some form of universal jurisdiction over perpetrators, and establishes an international organization focused on cybersecurity policy, the threat to international security posed by cyberaggression will continue to grow. To that end, the mere existence of an international cybercrime tribunal would go a long way toward encouraging cooperation on the development of international norms relating to cybercrime, while allowing nations to retain some level of autonomy in the development and enforcement of domestic cybersecurity policy.

[*Page 272-273*]

Stahl, William M. "*The Uncharted Waters of Cyberspace: Applying the Principles of International Maritime Law to the Problem of Cybersecurity*." **Georgia Journal of International and Comparative Law**. Vol. 40. (2011): 247-274. [**More** (4 quotes)]

Creating an international tribunal for cybercrime based on UNCLOS model would help deter and resolve cybercrime

"Although international maritime law has not established an international tribunal to prosecute acts of piracy, some experts believe that creating such a tribunal would provide a long-term solution to combating piracy.[217] Employing an international tribunal with respect to acts of cyberaggression would ensure that offenses are not treated differently across jurisdictional lines. At the very least, the existence of an international tribunal with universal jurisdiction over acts of cyberaggression would deter such acts and provide a venue for prosecution where nations otherwise often refuse to prosecute such acts. As with piracy, it may be difficult to compel nations to prosecute acts of cyberaggression in the absence of an international tribunal, where the concept of universal jurisdiction confers a right but does not impose an obligation to prosecute such crimes.[218] It has been suggested that "while every state should retain the right to redress piracy, the United Nations could create an ad hoc tribunal to have the obligationto redress piracy."[219] As has been suggested for handling the prosecution of piracy under UNCLOS, an international agreement addressing acts of cyberaggression could allow nations to retain the right to redress cybercrime, while creating an international tribunal that has an obligation to prosecute cybercrime. This type of tribunal would help to preserve national autonomy, while providing nations and private actors with an international forum for redressing their grievances. Since cybercrime, like piracy, has a large impact on private actors who are often the victims of these types of crimes, allowing private actors to pursue justice via access to an international tribunal would encourage nations to bring domestic policies in line with international standards.[220] The availability of an international cybercrime tribunal could also lessen nationalistic resistance to international standards by empowering private actors with the ability to seek international redress for economic injury inflicted by acts of cybercrime.

[*Page 271-272*]

Stahl, William M. "*The Uncharted Waters of Cyberspace: Applying the Principles of International*

Maritime Law to the Problem of Cybersecurity." **Georgia Journal of International and Comparative Law**. Vol. 40. (2011): 247-274. [**More** (4 quotes)]

UNCLOS navigational freedom provisions provides good model for regulating cyberspace

"A sound policy that balances international freedoms in Cyberspace with legitimate concerns about national security may be achieved by applying the navigational regimes of the UNCLOS III to the medium of Cyberspace. Fairly applied, such global Cyberspace policies could, borrowing from the language of the Convention,

- be an important contribution to the maintenance of peace, justice, and progress;
- resolve problems of Cyberspace;
- provide due regard for the sovereignty of all States;
- facilitate international communication;
- promote peaceful uses of Cyberspace and the equitable and efficient
- utilization of its resources;
- aid the study, protection, and preservation of the Cyberspace environment;
- contribute to the realization of a just and equitable economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries;
- establish international Cyberspace as beyond the limits of national jurisdiction, as a common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole irrespective of the geographical location of States.

From the foregoing it is suggested that if the underlying purposes of the UNCLOS III were applied to the Cyberspace medium, it would have a desirable effect on international development of Cyberspace. A test of the usefulness of this analogy in preserving national sovereignty is how well two important access rights under the UNCLOS III, "innocent passage"[4] and "transit passage,"[5] might be applied to military operations in Cyberspace.

[*Page 61*]

Barney, Steven M. . "***Innocent Packets? Applying navigational regimes from the Law of the Sea Convention by analogy to the realm of cyberspace*** ." **Naval Law Review**. Vol. 48. (2001): 56-83. [**More** (2 quotes)]

UNCLOS provisions on transit passage provide good model for international agreements governing military activity in cyberspace

When navigating Cyberspace international straits, users behave much like ships and aircraft engaged in transit passage: they proceed without delay, in the normal mode of continuous and expeditious

transit, and refrain from any threat or use of force against the national Cyberspace through which their communication is routed. The nature of telecommunications means Cyber Forces transit Cyberspace almost instantaneously and without delay except as limited by system bandwidth during periods of peak demand. The high speed of transmission is valuable to the commander as well as the State through which the Cyber Force is transmitted. The combination of speed and volume of Internet traffic means most States have limited capability to intercept and monitor Cyberspace communications. This limited ability to intercept and monitor traffic through Cyberspace is important to maintaining the neutrality of states that are mere intermediaries in information warfare, as in our opening scenario, because the transited State is unlikely to be aware of the transmission.

In summary, transit passage provides the commander two major advantages over innocent passage: forces may transit in their normal mode of operation[42] and bordering States may not suspend the right of transit passage through international straits. When applied to Cyberspace the proscription against suspending transit passage is a strong argument for applying the UNCLOS III by analogy to Cyberspace. While governments, corporations and private organizations may choose to suspend access to their internal Cyberspace for various reasons, as global economies become more dependent on the international telecommunications infrastructure it is unlikely that States could or would entirely close national Cyberspace. Even if a State tried to close national Cyberspace it would have little effect on the ability to transfer CNA packets through international Cyberspace because if intermediate routers are not available the packet will be automatically rerouted. Finally, if a belligerent State, like State A in the opening scenario, were to specifically route a CNA through the Cyberspace of a neutral intermediate state that act alone would be insufficient to violate the neutrality of the transited State if the Cyberspace transit passage analogy is used.

[*Page 73-74*]

Barney, Steven M. . "***Innocent Packets? Applying navigational regimes from the Law of the Sea Convention by analogy to the realm of cyberspace*** ." **Naval Law Review**. Vol. 48. (2001): 56-83. [**More** (2 quotes)]

UNCLOS regime sets a good precedent for governance of outer space

The solutions the international community worked out to resolve some of the most contentious issues over ocean governance -- specifically, how to equitably divide up a common shared resource, how to sustainably manage the global commons for the benefit of all, and how to ensure all states have the freedom to navigate a global common -- have potential to serve as the basis for a similar agreement for outer space.

China's use of lawfare to constrain US naval action may be precursor to how they will attempt same in outer space

"Both China and the United States agree that the EP-3E aircraft and the Impeccable were operating outside China's territorial sea but within China's EEZ.[184] Despite the unambiguous language of the UNCLOS treaty, China continues to pursue a strategy of gradually extending its strategic depth or sovereignty in order to support offshore defensive operations.[185] China's adherence to this flawed legal interpretation, reinforced by aggressive military action, demonstrates that "through an orchestrated program of scholarly articles and symposia, China is working to shape international opinion in favor of [its preferred] interpretation of the Law of the Sea by shifting scholarly views and national perspectives away from long-accepted norms of freedom of navigation and toward interpretations of increased coastal state sovereign authority."[186] By doing so, China is not only distorting the settled law of the sea, but perhaps also preparing to deploy a similar strategy in the space domain.

[*Page 137-138*]

Bellflower, John W. "***The Influence of Law on Command of Space*** ." **Air Force Law Review**. Vol. 65. (2010): 107-144. [**More** (3 quotes)]

UNCLOS offers most practical legal model for outer space for several reasons

"In addressing the philosophical foundations for the medium of space, Hugo Grotius argued that the philosophical foundation of res communis should be applied to the seas. Grotius' ideas are equally persuasive as applied to the vacuums of outer space. Of the three major property endowment theories, res nullius, res publica and res communis, res communis will most effectively encourage outer space travel because the vacuums of outer space will not be subject to control, but will allow for the free passage of all people. In proposing a comprehensive law system for the corpusjuris

spatialis for the medium of outer space, the United Nations Convention on the Law of the Sea (hereinafter "Law of the Sea Convention")[35] offers the most practicable law system for outer space exploration. Specifically, the Law of the Sea Convention's provisions regarding territorial zones of seas, military use, environmental use, jurisdictional issues, and the general treatment of vessels and their inhabitants, should be incorporated into the corpus juris spatialis with ameliorated changes.

[*Page 584*]

Thomas, Jonathan C. "*Spatialis Liberum*." **Florida Coastal Law Review**. Vol. 7. (2005-2006): 579-629. [**More** (6 quotes)]

Should apply lessons learned during UNCLOS negotiations over exploiting seabed to outer space

"While continuing upholding the concept of CHM, the free-market approach plays an important role in devising the regime for the deep seabed. Most scholars believe that only by making full use of the resources in the deep seabed rather than establishing a regime installing commercial exploitation, can the living standards in all the Nations be effectively improved.[35] Acknowledging the benefits of commercial exploitation, all nations, developed and otherwise, have a basis to work together to find an appropriate resolution. Essentially, the same political and economic environment exists for outer space. A similar regime to that of the deep seabed could, thus, be possible for the exploitation of outer space resources. Consequently, the focus for now is to identify the legal mechanisms and political compromises that successfully resolved the CHM dilemma for the deep seabed and apply it to outer space. This is more efficient than developing new legal, economic, and political theories.

[*Page 283-284*]

Zhao, Yun. "***An International Space Authority: A Governance Model for a Space Commercialization Regime*** ." **Journal of Space Law**. Vol. 30, No. 2 (Winter 2004): 277-296. [**More** (5 quotes)]

UNCLOS model offers novel solutions to regulation of outer space domain

"The Law of the Sea Convention offers novel solutions to arising issues concerning outer space exploration. Due to its well-thought out provisions, the Law of the Sea Convention has widely been acceptedand is considered international law.[147] The Law of the Sea Convention should be adapted to govern the vacuum of outer space. The Law of the Sea Convention separates different territories of the seas in relation to states' baselines.[148] States may exercise certain rights within each territory, allowing increased action in proximity to the state, and decreased action with greater distance from the state. This allows states to exercise their police powers, but encourages freedom of transit on the

seas. This system should be applied to outer space because it would recognize sovereign claims and rights, yet encourage outer space activities. The Law of the Sea Convention offers practicable solutions in other highly debatable subjects pertaining to outer space exploration, such as military uses of outer space, environmental uses of outer space, jurisdictional issues, and the treatment of vessels and their inhabits. These issues will be discussed in the proceeding sections.

[*Page 603-604*]

Thomas, Jonathan C. "*Spatialis Liberum*." **Florida Coastal Law Review**. Vol. 7. (2005-2006): 579-629. [**More** (6 quotes)]

Applying the UNCLOS model to outer space would help ensure rapid, peaceful development of outer space market

"In order to take a small step for man, the corpusjurisspatialis must accommodate rapid privatization of outer space exploration. The Outer Space Treaty fails to accommodate privatization in the postmodern world because it was the product of the Cold War era. It relies on the assumption that outer space activities will be carried on by states; however, multinational corporations are dominating the outer space industry while government presence is diminishing. In order to facilitate this rapid private growth, the vacuums of outer space should be declared as res communis. This will prohibit domination by a super power and increase world participation in outer space travel and exploration. The Law of the Sea Convention offers some practical solutions to outer space exploration. For example, the Law of the Sea Convention creates different categories of the seas and defines the states' rights in each category. Likewise, the corpus juris spatialis should be divided into territorial space, contiguous space, and transitory space. By making these divisions, states would be adequately protected against rogue space vessels, and space travelers would be encouraged to perform appropriation activities and travel in the great expanse. Accordingly, states would be allowed to exercise necessary military force in outer space. The Law of the Sea Convention offers solutions to other issues presenting the corpusjuris spatialis,such as environmental law, jurisdiction, and the treatment of space travelers. These proposals borrowed from the Law of the Sea Convention will be successful in facilitating the rapid growth of the outer space market, while ensuring state interests.

[*Page 628-629*]

Thomas, Jonathan C. "*Spatialis Liberum*." **Florida Coastal Law Review**. Vol. 7. (2005-2006): 579-629. [**More** (6 quotes)]

UNCLOS provisions on environmental protection and risk assessment offer model for protecting outer space environment

"The Law of the Sea Convention offers some interesting solutions to these problems. First, it should be noted that the Law of the Sea Convention applies to "living resources" and the

environment in which those resources live.[240] Many commentators express token tribute, due to the heightened awareness of environmental damage, to environmental standards for space travel and extraterrestrial appropriation.[241] This heightened awareness is ill-placed in most of outer space. The problem with assuming that all of outer space should be protected is that there is a lot of inanimate material in outer space. Even more importantly is that inanimate materials may provide solutions to increased populations by supporting the living population. On Earth, environmental protections are necessary to safeguard the long term habitability of this living planet and do as little harm as necessary to other living resources. On celestial bodies that have no life, not even microbial, there are no such incentives for environmental protections because there is nothing to protect. Of course, premature annihilation would defeat the ability to harvest those resources. The Law of Sea Convention attempts to place restrictions on fishery, which allow the maximization of resources over time.[242] For example, over-fishing may lead to a short term increase in food production and profit, but substantial depletions will affect the ability of fish to reproduce, thereby causing shortages in the years to come. This method allows for the maximization of resources without affecting the rights of appropriators. This is a better method for the conservation of outer space. Extraterrestrial appropriation, therefore, may occur, but in a way to maximize those resources by not prematurely destroying a nonliving resource. Likewise, in outer space exploration, waste may not poise the same kind of threats as here on Earth.[243] Outer space is a vacuum of matter. There are no living organisms in the "ethers" of space. Although there are possibilities thwastes may contaminate future explorers or haphazardly damage other systems of future generations, these concerns must be addressed in the context of outer space's huge amount of space. Under risk assessment analysis, these risks may be so insignificant that wide scale or even significant environmental protections would be unnecessary.

[*Page 624-625*]

Thomas, Jonathan C. "*Spatialis Liberum*." **Florida Coastal Law Review**. Vol. 7. (2005-2006): 579-629. [**More** (6 quotes)]

Development of regime for governing outer space would benefit from following the model of UNCLOS and the international seabed authority

"A pragmatic approach is proposed in the present paper. The progress made on the UNCLOS led to an improved understanding of the CHM and suggests that the differences between developing and developed countries can be reconciled. While leaving the theoretical discussion of the term unresolved, formulation of an international body to address the use of outer space resources can begin. Whatever form it takes, the body should be able to address and further the common, equitable interests of the developing countries (the non-space powers), and the interests of developed countries (the space powers)."' The proposed governance regime will try to encourage the beneficial aspects of property rights and formulate rules that discourage conflict and predation."

While following the example of Seabed Authority, this paper proposes the establishment of an

International Space Authority. The commercialization of outer space is no longer a fantasy. There is an urgent need to take a practical look at the issue and formulate feasible rules and organs to guard against taking the wrong direction. Humankind has taken the first tentative steps laying the technological foundation for commercial expansion. The challenge lying ahead is to build on the existing technological foundation and create the appropriate legal regime that will support and encourage this expansion.

[*Page 295-296*]

Zhao, Yun. "***An International Space Authority: A Governance Model for a Space Commercialization Regime*** ." **Journal of Space Law**. Vol. 30, No. 2 (Winter 2004): 277-296. [**More** (5 quotes)]

UNCLOS provisions on innocent passage offer a potential model for resolving military use of space

"The militarization of outer space should depend on the categorical regions of space. In territorial space, states should be allowed to use whatever force is reasonably necessary to ensure their interests. Much like the Coast Guard in the United States, armed patrol vessels may be necessary to protect the state from threats of harm ranging from customs violations to people smuggling. However, presence in territorial waters should not be sufficient to detain those engaged in innocent passage to a space port in orbit or on the celestial body. Vessels will require supplies, repairs, food, fuel and other materials for voyages, necessities which should not be restricted. By allowing open uses of territorial space for innocent passage, vessels will be able to effectively obtain supplies and make repairs. This freedom will also provide pecuniary compensation to those states. In transitory space, vessels should not face constant intrusions of being boarded and searched. Like the high seas, transitory space should allow for the quickest passage of vessels and the most freedoms. By disallowing unprovoked arrests of vessels, more powerful states will not be allowed a virtual monopoly based on their military forces. Likewise, military and government vessels are prohibited from being arrested. These restrictions support the sovereignty of each state over its persons.

[*Page 622*]

Thomas, Jonathan C. "*Spatialis Liberum*." **Florida Coastal Law Review**. Vol. 7. (2005-2006): 579-629. [**More** (6 quotes)]

Lack of a property rights structure in space is detrimental to the development of sustainable commercial space enterprises

"However, heated discussions did not lead to any substantial improvement in the legal regime accommodating the commercialization of outer space. Existing space law does not provide any guidance enabling the creation of an effective regime fostering commercial space exploitation.

Theoretical analysis did not come to any conclusion acceptable to all the parties. Nevertheless, even with the unstable legal status in place, various par- ties, foreseeing potential profit, have started their own projects aiming at commercializing outer space. For example, the IGA provides a specific model for multinational cooperation among active participants without an overarching international legal and governance regime." The United States has also executed a series of bilateral Memoranda of Understanding with Partner States concerning outer space activities."[8] With no clear-cut rules and regimes in place, the activities are carried out subject to Partner States' own interpretations. This is increasingly det- rimental to the development of commercial activities in outer space. States can take actions at will and there are no defined rules governing their activities, which ultimately leads to the devastating result of a "gold rush" by space-faring states. Developing states will be completely left out of the game. Such a situation will fail to provide a predictable and stable environment which is necessary for the involvement of private entities, and will fail to win international approval.

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Zhao, Yun. "***An International Space Authority: A Governance Model for a Space Commercialization Regime*** ." **Journal of Space Law**. Vol. 30, No. 2 (Winter 2004): 277-296. [**More** (5 quotes)]

China's vertical sovereignty argument has no basis in outer space treaty law and has been rejected before

"Reliance on the absence of an explicit airspace-space demarcation ignores historical context by attempting to identify a minimum altitude at which space begins. In fact, there is no controversy that all current satellite orbits transit within the space domain.[211] Irrespective of the demarcation argument, Articles I and II of the Outer Space Treaty (OST) expressly refute any conception of vertical sovereignty.[212] Article I designates outer space, including the moon and other celestial bodies, as "the province of all mankind." This language has been universally understood to mean that "all nations have a nonexclusive right to use and explore space.[213] Article II further prohibits in space any "national appropriation by claim of sovereignty, by means of use or occupation, or by any other means." Thus, the OST clearly permits all uses of the space domain short of an appropriation by claim of sovereignty or the like.[214]

It therefore seems clear that the plain language of the OST prohibits any claim of vertical sovereignty in space. Sovereignty denotes supreme authority within a territory,[2l5] "the right to command and correlatively the right to be obeyed," with the term "right" connoting legitimacy.[216] Thus, a claim of sovereignty over space, or any portion thereof, seeks, in some measure, to extend a state's territorial sovereignty into the space domain.[217] The holder of sovereignty derives its authority for sovereignty from some mutually acknowledged source of legitimacy.[218] In space, the OST's explicit prohibition on appropriation removes the essential support for legitimate sovereignty.[219]

In this sense, the vertical sovereignty argument is akin to the 1976 Bogota Declaration that

geostationary orbit was not part of outer space since its nature depends specifically on gravitational phenomena from earth.[220] Thus, the Declaration further argued, those portions of geostationary orbit directly above equatorial states are sovereign territory of those states rather than part of outer space.[221] The international community rejected this argument[222] Likewise, it should reject the vertical sovereignty argument.

[*Page 141-142*]

Bellflower, John W. "***The Influence of Law on Command of Space*** ." **Air Force Law Review**. Vol. 65. (2010): 107-144. [**More** (3 quotes)]

A stable governance regime, similar to that established under UNCLOS, is necessary for further commercial development of outer space

"Realizing the commercial potential of outer space is an issue in need of urgent resolution. It is important to devise a regime for the exploitation of outer space by reaching a balance between protecting the profits of relevant exploiting entities and serving the interests of humankind.[5] While previous discussions focused on the theoretical framework of the CHM concept, it is the purpose of the present paper to focus on establishing a governance regime based on the successful example of the Seabed Authority. Discussions concerning the use of CHM will continue, just like the situation regarding the deep seabed: heated discussions continued even after the Seabed Authority was established and commercial activities began. Nonetheless, the existence of a stable governance regime can, as in the case of the deep seabed, enhance the confidence of space investors and promote further development of commercial space activities.

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Zhao, Yun. "***An International Space Authority: A Governance Model for a Space Commercialization Regime*** ." **Journal of Space Law**. Vol. 30, No. 2 (Winter 2004): 277-296. [**More** (5 quotes)]

UNCLOS can easily be adapted to meet needs of outer space law

"The good news is we need not start from scratch. There already exists a body of law that can be adapted, perhaps easily, to the needs of outer space. The U.N. Convention on the Law of the Sea (UNCLOS) has provisions for managing the traffic on the surface and the resources on the deep seabed.[85] Space, like the sea, has vast amounts of area that is impractical for any one nation to claim.

Hugo Grotius, a pioneer of international law, preferred the term res extra commercium in referring to

the open ocean. He proposed the “freedom of the seas” doctrine, whereby the ocean is insusceptible of ownership as it cannot be occupied, and no one has the “right to appropriate things which by nature may be used by everybody and are inexhaustible.”[86]

Being incapable of ownership and available for everyone’s use are the very same concepts expressed in Article I of the Outer Space Treaty that allow freedom of access and exploration and grant freedom of movement throughout. The Law of the Sea Treaty contains the very same concepts and almost the very same words to describe the territories of the deep seabed as are used in the Preamble and Article I of the Outer Space Treaty to describe space. UNCLOS also speaks to the resources of the sea being the common heritage of mankind, requiring “the equitable and efficient utilization of their resources.”[87]

[T]he area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States.[88]

[*Page 49*]

Brittingham, Bryon C. "***Does the World Really Need New Space Law?*** ." **Oregon Review of International Law**. Vol. 12, No. 1 (2010): 31-54. [**More** (3 quotes)]

Process of reaching agreement with UNCLOS will prove valuable as similar effort to develop space law unfolds

“UNCLOS, especially after its realpolitik redrafting, gives us an effective framework towards drafting a new Outer Space Treaty. Both treaties contain the concept of a lack of sovereignty and that resources of the deep sea and outer space are considered to be the common heritage of mankind. UNCLOS contains a detailed process by which a State or entity is granted limited access to hard-to-reach resources that can easily be adapted to the needs of outer space. The process that the drafters of UNCLOS underwent to gain global acceptance of the Convention shows us a way towards forming an internationally directed group, such as the ISA, to manage those resources that is perhaps less than entirely idealistic, but can gain the support of most, if not all, of the world’s nations.

When all is said and done, one can hardly consider an agreement that does not acknowledge the contributions of those nations at the forefront of space exploration and give them, or their corresponding corporations, every reassurance that resources garnered from space and returned to Earth can be traded freely in the world market for the benefit of all the nations of the world.

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Brittingham, Bryon C. "***Does the World Really Need New Space Law?*** ." **Oregon Review of International Law**. Vol. 12, No. 1 (2010): 31-54. [**More** (3 quotes)]

Jurisdictional provisions of UNCLOS offer model for handling of same issues in outer space

"The Law of the Sea Convention is a good model for jurisdictional issues pertaining to outer space travel and exploration. Even in territorial waters, states are precluded from exercising civil jurisdiction on foreign vessels. This assures and encourages transitory passage and freedom on the seas. However, states may exercise criminal jurisdiction for ships not engaged in innocent passage.[245] Each vessel is required to sail under the flag of its nationality.[246] Jurisdiction of the vessel is determined by the flag of the state.[247] Vessels are prohibited from flying more than one flag.[248] In cases where there is an incident on a vessel, penal and disciplinary action may only be taken by the flag state.[249] These strict standards for jurisdiction encourage the non-interference with vessels. In many ways, vessels are treated as islands unto themselves within the territory of the flag state. Its persons cannot be disturbed, boarded, or arrested in international waters except under very limited circumstances, such as piracy.[250] Even in territorial waters, coastal states may only assert jurisdictional authority where harm has incurred.[251]

These provisions in the Law of the Sea Convention would solve many problems which might arise from outer space exploration. Outer space vessels will require crews who have varying expertise and are from various states. By only allowing one state to be sovereign over that vessel, it avoids the problems associated with anarchy or, in the alternative, judging persons by the laws of their nationality. Additionally, no state can enforce its own laws on foreign vessels in any territory in outer space. This policy ensures that states will not abuse laws in order to bar passage to foreign space vessels or to confiscate their cargos. The Law of the Sea Conventions' requirement that "ships shall sail under the flag . . . "[252] would be problematic in outer space for obvious reasons. Flags put other ships on notice of their nationality. This would be important for outer space in cases of malfeasance, wrong doing, negligence, rescue, organization, recognition of pirates, etc. Therefore, states should be required to emit a beacon which announces the sovereignty of the vessel.[253]

[*Page 625-626*]

Thomas, Jonathan C. "*Spatialis Liberum*." **Florida Coastal Law Review**. Vol. 7. (2005-2006): 579-629. [**More** (6 quotes)]

UNCLOS has empirically been successful

One way to determine the extent to which UNCLOS's navigational provisions have achieved the status of binding international law is to study the behavior of nations. The consistent practice of states—maritime states, coastal states, UNCLOS members, and nonmembers—indicates that the UNCLOS navigational provisions are almost universally accepted law.

UNCLOS has already proven itself as a powerful mechanism to bring rule of law to maritime realm

"Hans Morgenthau, an astute observer of international politics and founder of the modern school of political realism, dedicated his life to the study of the "struggle for power." "All history shows," he wrote in his classic treatise, "that nations active in international politics are continuously preparing for, actively involved in, or recovering from organized violence in the form of war."123 The Convention serves as a powerful tool to shift maritime political dis- putes from being a cause for violence and naval warfare to a legal based order, approaching the vision of Myres S. McDougal and William T. Burke of a "public order of the oceans."124 As the nego- tiations for the Convention were drawing to a close, Ambassador John Norton Moore understood that the United States was reach- ing its objective of replacing the "struggle for power" at sea with the "struggle for law" in the world's oceans, reducing, and perhaps one day eliminating, an entire class of maritime conflicts as a cause of war.125 Toward that end, the Convention successfully has influ- enced numerous countries to conform their conduct and maritime claims to the Convention, typically in a manner that inures great benefit to global stability and security. These positive adjustments and reductions in excessive maritime claims constitute the "dogs that didn't bark" in law of the sea. Over time, the individual and cumulative effect on U.S. national security and global interests has been positive.

[*Page 566-567*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Existing treaties that laid the foundation for UNCLOS have been empirically obeyed by most parties

"There are many multilateral treaties that fill in the UNCLOS framework. These instruments are widely accepted and implemented, and they promote order and the free flow of commerce by prescribing universal standards for vessel construction, operation, and management, for the training and qualification of mariners, and the like. In accordance with the 1982 United Nations Convention on

the Law of the Sea, they assign compliance responsibility to flag states.However, in the spirit of "trust but verify," they contain real enforcement mechanisms that enable coastal and port states to safeguard their vital interests, even in the face of occasionally lackadaisical flag-state oversight. Taken together, this "other" law of the sea serves a valuable purpose, the promotion of vessel safety and security and environmental stewardship. Statistics suggest that it is achieving its goals.

[*Page 94*]

Norris, CDR Andrew J. "***The "Other" Law of the Sea*** ." **Naval War College Review**. Vol. 64, No. 3 (Summer 2011): 78-97. [**More** (4 quotes)]

Most coastal states have already adapted their maritime law to bring it into compliance with UNCLOS

"Other states have also recognized the Convention's positive legal force—most recently Japan, India, and Mexico at the UN General Assembly's Sixth Committee (Legal).[135] Those nations credited the Convention with operating as a fundamental document for advancing the "rule of law" throughout the world. Most coastal states, in fact, have adjusted their maritime claims to be in conformity with the Convention. For example, 144 States claim a terri- torial sea of 12 nm or less, in accordance with Article 3 of the Convention.[136] Throughout the globe, many countries have areas within their law or state practice that are noncompliant, but "state practice complies largely" with the Law of the Sea as reflected in the Convention.[137] Even in these instances, however, diplomacy operates within the context of the rules reflected in the Convention.

[*Page 568*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Procedures of CLCS commission are empirically working with countries working peacefully together to resolve disputed claims

"For purposes of this assessment, however, the crucial point is that mechanisms exist for the peaceful establishment of these claims through the submission of scientific evidence to the Commission.[58] And the Arctic states, including Russia, have been following the rules of the game, and, in some instances, working together to develop the necessary scientific data.[59] It is important to keep in mind that while these claims may implicate very large tracts of territory (as Russia's initial application certainly did), there is nothing inherently illegitimate about such claims; the extent of "the submerged prolongation of the land mass of the coastal State" and "the slope and the rise" of "the sea-bed and subsoil of the shelf" does not command a pari passu distribution of continental shelf

among the Arctic states.[60] In brief, some states' shelves may simply be bigger than others. This outcome could be entirely consistent with the rule of law.

While there are legitimate reasons to be concerned that the Commission is overworked and understaffed, there is currently no indication that any country, Russia included, is prepared to charge ahead with an Arctic claim that has not received the Commission's approval.[61] Consistent with that view, it has emerged that February 2009 talks between Canada and Russia included discussion of a potential joint submission from Canada, Denmark, and Russia to the Commission.[62] Such an application would not determine competing claims among the three countries, but would allow for demarcation of the area under the control of those coastal states from the area beyond. Furthermore, the collaboration required to produce a joint submission could itself be a valuable confidence-building measure that would defuse nascent disagreements over exactly where final borders should be drawn.

[*Page 238-239*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

U.S. freedom of navigation disputes have decreased due in part to the influence of UNCLOS

"One effective component of the struggle for law at sea and the preservation of freedom of the seas is the U.S. Freedom of Navigation (FON) program. The FON program began, more than twenty-five years ago to tangibly exhibit the U.S. determination not to acquiesce to coastal states' excessive maritime claims. When the program began in 1979, U.S. military ships and aircraft were exercising their rights against excessive claims of about thirty-five countries at the rate of about thirty to forty challenges annually.140 As late as 1998, the United States was conducting more than twenty- five operational assertions each year.141 But by 1999 the decline in operational challenges led the Department of the Navy and the Department of Commerce (within which the National Oceanic and Atmospheric Administration resides) to recommend an expansion of the program to "exercise openly the traditional freedoms of nav- igation and overflight in areas of unacceptable claims."

In 2000, the United States conducted challenges against just fifteen states.143 The cumulative report for the years 2000 to 2003 and the 2004 report show further decline.144 By 2005, the Depart- ment of Defense reported conducting operational challenges against only six nations: Cambodia, Ecuador, Philippines, Indone- sia, Iran, and Oman. That level of operational assertions remained steady in 2006, with challenges reported against the excessive maritime claims of the Philippines, Indonesia, Iran, Oman, and Taiwan.146 The steady decline in freedom of navigation challenges over the last ten years is attributable to two factors: (1) a reduction in the number of excessive claims due to the constructive influence of the Convention and (2) Department of Defense resource constraints imposed by a declining naval force structure coupled with competing tasking in support of the War

on Terror.

[*Page 569-570*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

Consistent practice of states illustrates that UNCLOS freedom of navigation provisions have become customary international law

"One way to determine the extent to which UNCLOS's navigational provisions have achieved the status of binding international law is to study the behavior of nations. Behavior in conformity with the convention—known as "state practice"—is additional evidence that its navigational provisions reflect international law. Indications that a state is acting in conformity with international law may be found in states' "legislation, the decisions of their courts, and the statements of their official government and diplomatic representatives." A nation's inaction regarding a particular navigational provision may also be viewed as state practice because it can be deemed to be acquiescence.

The consistent practice of states—maritime states, coastal states, UNCLOS members, and nonmembers—indicates that the UNCLOS navigational provisions are almost universally accepted law. The Restatement of the Law, Third, of the Foreign Relations Law of the United States notes:

> [B]y express or tacit agreement accompanied by consistent practice, the United States, and states generally, have accepted the substantive provisions of the Convention, other than those addressing deep sea-bed mining, as statements of customary law binding upon them apart from the Convention.

[*Page 14*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS*** ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

U.S. ratification of UNCLOS would help resolve disputes with Russia in Arctic

Tension between Russia and other Arctic nations will remain high as they continue to compete for Arctic territory. Maintaining UNCLOS as a viable legal framework for settling Arctic territorial claims should help avert potential confrontations between Russia and other UNCLOS members.

U.S. participation in UNCLOS necessary to resolve Arctic dispute between Russia and Norway

"From the U.S. perspective, the crucial issue is not merely the minerals that it can claim, but the potential for a major shift in the relative mineral wealth of Russia vis-a-vis its neighbors. A growing dispute between Russia and Norway is perhaps the most important of these. In 2001, Russia submitted its definition of its continental-shelf borders. Russia's claim is widely considered a significant overreach, since it claimed a shelf extending almost to the North Pole and it made territorial claims that impinged on oil- and natural gas-rich Norwegian claims (claims that have long been widely, if informally, acknowledged as belonging to Norway) in the Barents Sea. Though Norway's claim, released in late 2006, is in some ways more realistic, it appears to have been drafted to meet Russia's aggressive claim in kind.

With Russia increasingly aggressive in its use of oil and natural gas as a lever against Europe, it will fall in part to UNCLOS (and possibly the CLCS) to make decisions that will affect the reserves and production potential of Norway and Russia.

As it stands now, the CLCS is highly unlikely to support one side over the other, and it will throw the decision over the extent of continental shelf ownership to the two countries to negotiate, a resolution that bodes ill for Norway. Treaty advocates say this would not necessarily be the case if the United States were involved in the organization.

National security-focused advocates in the United States say the country's nonparticipation in UNCLOS shuts out Washington from being able to meaningfully influence how UNCLOS resolves the disputed claims. Industry, from oil and natural gas producers to their major customers in the chemical and transportation industries, also wants the United States to have a seat at the table.

Bart Mongoven. "***The Law of the Sea: Climate Change in the Arctic and Washington Weekly*** ." **Stratfor**. (March 29, 2007) [**More**]

USNWC war game found U.S. non-ratification of UNCLOS risks U.S.

being replaced by Russia as the leader in Arctic

“Players in the Arctic groups identified the need for building Arctic partnerships and focusing on a “whole of government” approach in order to build Arctic Domain Awareness (ADA), with an emphasis on the vastness of the maritime passages and respond to crises. Players in the Arctic groups asserted that the United States should take an active leadership role in Arctic policies, issues, and development. Players further asserted that UNCLOS ratification would facilitate establishing the U.S. as a leader in Arctic issues including ADA. Conversely, continued non- ratification of UNCLOS could result in Russia emerging as the dominant power in the region, potentially claiming sovereignty of half the Arctic basin, and assuming a leadership role concerning Arctic issues (Schlauder, 2007). Overall, the United States role in the Arctic could be marginalized if actions, policies, and investments fail to keep pace with economic development in the Arctic.

[*Page 35*]

Ducharme, Prof. Doug and Dr. Hank Brightman. **Global Shipping Game: Game Report** . U.S. Naval War College: Newport, RI, December 8-9, 2010 (73p). [**More** (3 quotes)]

Russia's use of CLCS to validate its claim over Lomonsov ridge is an example of their use of lawfare to the disadvantage of the US

“Recent geopolitical developments in the Arctic region highlight yet another circumstance where both UNCLOS and U.S. national security interests are implicated, as thawing Arctic floes have brought the Arctic Ocean's untapped resource and navigation potential increasingly to the fore. States with Arctic Ocean borders-United States, Canada, Russia, Finland, Iceland, Norway, and Sweden-are, therefore, concerned with the full spectrum of national security implications-political, economic, and military-associated with increased Arctic Ocean maritime transit and resource related activity. Conflicting claims to the Arctic Ocean's waters and seabed have already commenced. A prime example is Russia's 2007 claim to the Lomonosov Ridge a 1,200 mile long undersea swath in the vicinity of the North Pole as part of its continental shelf.[68] While the Lomonosov Ridge is currently considered beyond the jurisdictional reach of any country and, therefore, administered by the ISA[69], confirmation of its claim to exclusive resource extraction rights.[70] Indeed the trend toward utilizing the CLCS appears to be intensifying, and will likely play a central role in de-conflicting Arctic Ocean claims. One such indication is the 500% year to year increase in petitions submitted to the CLCS from 2008 to 2009. As in the East and South China Sea, it appears likely that UNCLOS and its regulatory entities will play acritical role in economic and national security "scrum" beginning to play out in the Arctic region.

[*Page 13-14*]

De Tolve, Robert C. "Rock". "***At What Cost? America's UNCLOS Allergy in the Time of "Lawfare"*** ." **Naval Law Review**. Vol. 61. (2012): 1-16. [**More** (8 quotes)]

Abandoning UNCLOS framework in Arctic could lead to military confrontation with Russia, working within framework best way to resolve disputes

"Russia has staked its claim in the Arctic by symbolically planting a flag at the bottom of the North Pole and submitting an extended continental shelf claim to UNCLOS.219 The Kremlin has also established Russia's economic interest in the Arctic by describing the Arctic as "'capable in large part of fulfilling Russia's needs for hydrocarbon resources, aqueous biological resources, and other forms of strategic raw material."'220 Abandoning UNCLOS would only invite confrontation and possibly trigger Russian acts of aggression against other Arctic nations. Russia's attack on Georgia in August 2008 illustrates this very real possibility.

Tension between Russia and other Arctic nations will remain high as they continue to compete for Arctic territory. Maintaining UNCLOS as a viable legal framework for settling Arctic territorial claims should help avert potential confrontations between Russia and other UNCLOS members.222 At least UNCLOS provides its members an alternative to Russia's "newfound assertiveness and heavy-handed conduct,"223 and should therefore remain firmly in place.

[*Page 533-534*]

Wilder, Meagan P. "*Who Gets the Oil?: Arctic Energy Exploration in Uncertain Waters and the Need for Universal Ratification of the United Nations Convention on the Law of the Sea*." **Houston Journal of International Law**. Vol. 32, No. 2 (2009-2010): 505-544. [**More** (8 quotes)]

Without consensus on legal framework for Arctic, territorial disputes could result in military conflict between US and Russia

"Without a solid legal foundation in place, current Arctic territorial disputes could possibly result in military conflicts, particularly with Russia. Tomorrow's future can be predicted by looking at Russia's current natural gas economic blackmail of Europe.211 Such blackmail has been described as "undermining European security."212 Some scholars have noted that, "Russia has not ceased its efforts to use energy as a weapon," and predict "Russia is likely to use its energy muscle to impose its geopolitical agenda on its neighbors, today and in the future."

In fact, Russia's new national security strategy, released in May 2009, raises the prospect of military conflict over energy reserves in the Arctic. Russia's Security Council created the strategy to evaluate potential security threats to Russia over the next decade. With tension mounting among Russia and other Arctic nations, the strategy provocatively explains, "'[w]ith the ongoing competition for [Arctic] resources, attempts to use military force to solve emerging problems cannot be excluded- and this might destroy the balance of forces on Russia's and its allies' borders."' A recently released Kremlin document on Arctic policy also "refers to the deployment of armed forces in the Arctic zone which are 'capable of ensuring security under various military and political circumstances."

[*Page 532-533*]

Wilder, Meagan P. "*Who Gets the Oil?: Arctic Energy Exploration in Uncertain Waters and the Need for Universal Ratification of the United Nations Convention on the Law of the Sea*." **Houston Journal of International Law**. Vol. 32, No. 2 (2009-2010): 505-544. [**More** (8 quotes)]

Warming of the Arctic will change centuries-old geopolitical calculus by giving Russia a significant maritime role

"The geopolitics of the twenty-first century will be different from the days of empire and conflict of the nineteenth and twentieth. The increased accessibility of the Arctic, with its energy and mineral resources, new fisheries, shortened sea routes, and access to rivers flowing north to the Arctic, is pushing Russia to become a maritime state. As it progresses, Russia will no longer be susceptible to geographic isolation or encirclement. At the same time, these changes will require Russia to become more closely integrated into global commercial and financial networks, to welcome international business involvement, and to par- ticipate in international bodies that harmonize international shipping, safety, security, and environmental regulations.

These changes are already opening the way for a new geostrategy that has its roots in the geopolitical thinking of the twentieth century but addresses the changes that are turning the Arctic from an afterthought to a central front in the new geopolitical view of the world. In this new geostrategy, Russia assumes a role as one of the maritime powers of the "rimland," and the Russian Arctic becomes a new geographical pivot among the great powers. Decades will pass before Russia can fully make the shift from Eurasian heartland to Arctic coastal state, but it is already integrating policies toward this end into the strategies of its national security council and federal ministries, and it shows every indication of expecting to seize its future seat among the major maritime states of the world.

[*Page 15-16*]

Antrim, Caitlyn L. "***The Next Geographical Pivot: The Russian Arctic in the Twenty-first Century*** ." **Naval War College Review**. Vol. 63, No. 3 (Summer 2010): 15-38. [**More** (5 quotes)]

Russia uses UNCLOS as basis for its foreign policy in Arctic

"Foreign Policy. In seeking to establish the Arctic as a "zone of peace and cooperation," the Russian Arctic policy emphasizes mutually beneficial bilateral and multilateral cooperation among Russia and other Arctic states on the basis of in- ternational treaties and agreements to which Russia is a party. Underlying all Russian policies toward the Arctic is support for regional collaboration in the Arctic and commitment to UNCLOS and multilateral organizations and approaches, including the International Maritime Organization, the Arctic Council, and the five Arctic coastal states, who met in Ilulissat, Greenland, in 2008 to issue their declaration on management of the Arctic. The key foreign

policy point in the Ilulissat Declaration—that the Arctic coastal states will resolve disputes peacefully in line with the law of the sea—is consistent with the Russian Arctic policy.[22]

[*Page 28*]

Antrim, Caitlyn L. "***The Next Geographical Pivot: The Russian Arctic in the Twenty-first Century*** ." **Naval War College Review**. Vol. 63, No. 3 (Summer 2010): 15-38. [**More** (5 quotes)]

Russian policy in Arctic likely to remain focused on cooperative, diplomatic approach with other Arctic nations

"As a maritime state with interests in sustaining freedom of navigation on a global stage and in maintaining safety and security in its offshore waters, Russia in the twenty-first century will increasingly share interests long held by the United States and other ocean powers. Russia's interests in its Arctic will foster a maritime policy that embraces coastal resource management and freedom of international navigation, though likely with a greater emphasis on offshoresovereignty and less on distant-water power projection. Strategic security policy will be a continuation of past and current policy, the U.S.-Russian maritime boundary is already resolved de facto (pending official approval of the boundary treaty by the Russian Duma), and current and potential territorial disputes between Russia and U.S. allies Norway, Denmark, and Canada are likely to be resolved through peaceful means. The United States and Russia also have an agreement that maritime-boundary and navigation disputes will be resolved diplomatically rather than by resort to arms.[32] The conflicts that do arise will be focused on matters of commercial navigation, boundary delimitation, fisheries management, energy development, environmental protection, and ocean science, all the subjects of international diplomacy and regulatory enforcement rather than warfare.

[*Page 33*]

Antrim, Caitlyn L. "***The Next Geographical Pivot: The Russian Arctic in the Twenty-first Century*** ." **Naval War College Review**. Vol. 63, No. 3 (Summer 2010): 15-38. [**More** (5 quotes)]

U.S. should work with existing Arctic framework of UNCLOS to help guide Russia's rise as an Arctic power

"The opening of the Arctic in the twenty-first century will give Russia the oppor- tunity to develop and grow as a maritime power, first in the Arctic and eventually wherever its merchant fleet carries Russian goods and returns with foreign products. This transformation of the threatening "heartland" of Mackinder and Spykman into a member of the maritime powers will require extensive effort to bring the new maritime Russia into the collaborations and partnerships of other oceangoing states. Commitment to the rule of law, shared Arctic domain awareness, joint security and safety operations, and collaboration in developing policies for the future can maintain the Arctic as a region of peace even while the coastal states maintain naval and law enforcement capabilities in the region.

The best course is to address Russia's evolving maritime role with an Arctic regional maritime partnership based on the model of the Global Maritime Partnership initiative, expanded to address civilian interests in climate, resources, science, and conservation. The American objective should be to work collab- oratively to resolve disputes over continental shelf and fishery claims, negotiate a regional high-seas fisheries management plan, develop a regional Arctic maritime transportation plan, and coordinate security and safety policies on the ocean and ice surface and in the air, in line with the U.S. Arctic Policy and the sea services' "Cooperative Strategy for 21st Century Seapower."

[*Page 35*]

Antrim, Caitlyn L. "***The Next Geographical Pivot: The Russian Arctic in the Twenty-first Century*** ." **Naval War College Review**. Vol. 63, No. 3 (Summer 2010): 15-38. [**More** (5 quotes)]

Over 60 percent of potential Arctic oil and gas resources are located in Russian territory

"Russia's Arctic encompasses the northern seas, islands, continental shelf, and the coast of the Eurasian continent; in addition, it is closely linked to the vast watershed that flows to the sea. The Arctic coast of Russia spans from its border with Norway on the Kola Peninsula eastward to the Bering Strait. Along the coast is a wide continental shelf, running eastward from the Barents Sea in the west to the Kara Sea, the Laptev Sea, the East Siberian Sea, and the Chukchi Sea. Of these seas, only the Barents is largely ice-free throughout the year, a result of the Gulf Stream returning there to the Arctic. The continental shelf extends northward far beyond the two-hundred-nautical-mile exclusive economic zone (EEZ). When free of ice, the coastline along the Arctic extends almost forty thousand kilometers (including the coasts of the northern islands), which must be patrolled and protected. The Russian Arctic coast drains a watershed of thir- teen million square kilometers, equal to about three-quarters of the total land area of Russia and an area larger than any country on earth save Russia itself.

Russia has long been a major producer of oil and gas from land-based re- sources. Now the resources of the Arctic continental shelf are drawing increasing attention. Deposits in the Barents Sea are already being developed, with oth- er known deposits in both the Barents and the Kara seas being eyed for future exploitation. Still more energy resources are awaiting discovery. In 2008, the U.S. Geological Survey, estimating the as-yet-undiscovered resources of oil and gas in the Arctic, projected over 60 percent of the total resources (equivalent to about 412 billion barrels of oil) to be located in Russian territory, with all but a very small percentage on shore or inside the EEZ.[6] The area of greatest poten- tial is in the Kara Sea basin, with smaller, yet still respectable, prospects in the Laptev and East Siberian seas.

[*Page 19*]

Antrim, Caitlyn L. "***The Next Geographical Pivot: The Russian Arctic in the Twenty-first Century*** ." **Naval War College Review**. Vol. 63, No. 3 (Summer 2010): 15-38. [**More** (5 quotes)]

Russia is surpassing U.S. in Arctic leadership because in part of its working within the accepted multilateral framework of UNCLOS

"In defense and protection of the border and resource areas, Russia continues to bolster military presence and capability in the Arctic. In addition to the Northern Fleet, whose naval military capabilities run the full gamut of surface and subsurface operations, Moscow has created the Federal Security Service Coastal Border Guard.[67] Additional activities in the border and coastal areas include development of control infrastructure and equipment upgrades for the border guard, implementation of an integrated oceanic monitoring system for surface vessels, and a number of equipment and weapons testing and deployment initiatives.[68] Many of these initiatives demonstrate presence and resolve, such as the 2007 launch of cruise missiles over the Arctic, additional Northern Fleet exercises in 2008, and the resumption of Arctic aerial and surface patrols not seen since the end of the Cold War.[69] While many of these actions may appear provocative, Russia has also asserted its commitment to working within the framework of international law, partici- pated actively in the Arctic Council and other international bodies, and expressed interest in partnership in the region, particularly in the area of SAR.[70] In the aggregate, Russia emerges as among the most prepared of Arctic nations for the opportunities available and may well be poised to gain early regional commercial and military supremacy with the goal of similar successes in the international political arena.71 Russian commitment to mul- tilateral venues, along with the demonstrated attitudes of other Arctic nations, presents the opportunity for U.S. partnership in the region.

[*Page 121*]

Smith, Reginald R. "***The Arctic: A New Partnership Paradigm or the Next "Cold War"?*** ." **Joint Force Quarterly**. Vol. 62, No. 3 (July 2011): 117-124. [**More** (4 quotes)]

Both Canada and Russia have passed legislation restricting transit rights to Arctic routes, U.S. participation in UNCLOS discussions will be key to resolving this standof

"Both Canada and the Russian Federation have enacted regulations that the United States believes amount to unwarranted restrictions on the right of transit passage. Canada, for example, imposed a mandatory ship reporting and vessel traffic service system (NORDREG) that governs transit through the Northwest Passage.[29] NORDREG covers Canada's EEZ and the several Northwest Passage routes in the Canadian Arctic Archipelago.[30] Canada specifically cites UNCLOS Article 234 to justify NORDREG, asserting that the reporting requirements are to prevent and reduce marine pollution from vessels in the delicate Arctic waters.[31] Similarly, the Russian Federation has historically limited transit passage in the Northern Sea Route,[32] using UNCLOS Article 234 to justify the limitations,[33] and has recently implemented more extensive unilateral regulations to ensure shipping safety and environmental protection.[34] With receding amounts of ice for significant portions

of the year, whether the Northwest Passage or the Northern Sea Route meets Article 234's climatic requirements for ice- covered areas is debatable.[35]

Under UNCLOS, coastal states seeking to prescribe sea-lanes and traffic separation schemes in straits used for international navigation must receive approval by a "competent international organization" prior to adoption.[36] The International Maritime Organization (IMO) fills this role. The United States is working with other Arctic nations through the IMO to create a mandatory "Polar Code" that will cover all matters relevant to ships operating in both Arctic waters and the waters surrounding Antarctica.[37] The IMO recently announced that the Polar Code will be operational as early as 2015 and will be implemented by 2016.[38] The extent to which the Polar Code reconciles Russian and Canadian interests in regulating the Northern Sea Route and Northwest Passage with freedom of navigation interests will be critical.

[*Page 4-5*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

U.S. needs to bolster international law to constrain Russia in the Arctic

"Conflict in the region, however, is not inevitable. Among the NATO allies, especially, there have been plenty of diplomatic successes to resolve differences. All the parties within the region have shown a willingness to work within the constraints of international law. Even Russia, despite its flag-planting antics, has accepted those constraints. In discussing Russia's position on Arctic policy, its Ministry of Foreign Affairs released the following press statement, —Russia strictly abides by the principles and norms of international law and firmly intends to act within the framework of existing international treaties and mechanisms. As was pointed out in the joint declaration of the ministerial meeting of the five Arctic coastal states held in Ilulissat, Greenland, this past May, these states, including Russia, are committed to the existing international legal framework that applies to the Arctic Ocean and to the orderly settlement of any possible overlapping claims.[59] It is only in the Arctic areas where international law has failed that conflicts are escalating. Consequently, the United States must seek a way to bolster international law in order to provide stability in the region. To this end, U.S. Arctic policy must be guided by the following six steps.

[*Page 10-11*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global Rush North** . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [**More** (5 quotes)]

U.S. would be better able to contest Russian and Canadian

excessive claims in the Arctic if it were party to UNCLOS

"U.S. freedom of navigation interests in the Arctic would be bolstered by joining UNCLOS. Both Russia and Canada have maritime claims in the Arctic that are inconsistent with the rules contained in the Convention. Russia[37] and Canada[38] draw excessive straight baselines in the Arctic and restrict the right of transit passage in various international straits in the Arctic, including the Northeast Passage, the Northwest Passage and vari- ous straits located within Russia's Northern Sea Route (NSR)—the Demitri, Laptev and Sannikov Straits. Russia's straight baselines closing the NSR straits and Canada's straight baselines around its Arctic Islands do not meet the legal criteria contained in Article 7 of the Convention.[39] According to UNCLOS Article 5, the correct baseline for these areas is the low-water line. UNCLOS Article 38 also provides that the right of transit pas- sage through international straits cannot be suspended or impeded by the bordering States. Use of straight baselines by Russia and Canada to close these international straits is therefore inconsistent with the Convention. Furthermore, under UNCLOS Article 8(2), all nations enjoy at least the right of innocent passage in areas within newly drawn straight baselines. The United States has diplomatically protested and operationally challenged these excessive straight baseline claims under the U.S. Freedom of Navigation Program, citing the provisions of UNCLOS and customary international law.[40] However, the U.S. legal position would be on better footing if the United States was a party to the Convention.

[*Page 768-769*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Bilateral treaties are not a sufficient substitute for UNCLOS regime in settling Arctic disputes

"The Western Gap agreement has clear implications for the Arctic, where the United States shares a potential extended continental shelf with both Russia and Canada. **UNCLOS opponents suggest that questions regarding international legal title to the U.S. potential extended continental shelf in the Arctic will be resolved conclusively when the United States enters bilateral agreements with Russian and Canada respectively.[156] As simple and therefore attractive as this position may be, it begs several questions.**

Under what legal authority would the Arctic neighbors have the right to divide and claim for themselves an area lying, at least in theory, beyond their respective national jurisdictions? **Even assuming a legitimate legal basis to claim their extended continental shelves and delimit them bilaterally, what basis would the states have for desiring to and concluding their agreements outside the UNCLOS framework, including ignoring Article 82 royalty payments?** Finally, even if Russia and Canada— both UNCLOS member states—choose to comply with UNCLOS on their respective sides of delimited shelves, might they object to the United States not doing so on its side,

and, if so, would they pursue their objections? And how might the outer limits of the U.S. extended continental shelf in the Arctic be determined given the geographic differences from the Western Gap situation where there were only two geographically opposite states with no third state or area interests involved?

The simple answer is that only by acceding to the convention can the United States obtain its full continental shelf rights in the Arctic.

[*Page 15*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Russia is preparing for a new cold war in the Arctic

"The world is at a precipice of a potential new cold war in the Arctic between Russia and the NATO Arctic nations. Russia is in a position to win it. The number of icebreaking hulls a country operates is the simplest and most tangible measure that can be used to judge its ability to conduct northern operations. The United States has a total of four diesel-powered icebreakers (one of which is out of service for this year) whereas the Russians have 14.[51] Of the 14, seven are nuclear-powered--capable of cutting through nine feet of ice without even slowing down. In comparison, the U.S. icebreakers can only make it through six feet of ice at a constant speed.[52] Even China and South Korea, non-Arctic nations, have icebreakers in preparation for regional access.[53]

In addition to greater Arctic naval power, the Russians also have a superior support infrastructure. The Soviet Union, in sustaining the Northern Sea Route and oil development in the Barents Sea, invested tremendous capital in developing a robust infrastructure of rail lines and river transport services. It maintained this infrastructure by offering state workers huge subsidies and inflated wages. Following the collapse of the Soviet Union, and the loss of state jobs, the region experienced a significant reduction in population. However, the Russian North still has a fully functioning infrastructure in place.[54] Meanwhile, the North American presence is —naked and unguarded.[55]

Russia intends to use these weaknesses along with divisions among the NATO members to increase its power in the region. According to a leading Russian economic journal, —...Russia's main task is to prevent the opposition forming a united front. Russia must take advantage of the differences that exist [between NATO states]."[56] Moreover, a prominent Russian Navy journal acknowledged that an increase in regional militarization could increase the possibility for local military conflict. —Even if the likelihood of a major war is now small, the possibility of a series of local maritime conflicts aimed at gaining access to and control over Russian maritime resources, primarily hydrocarbons, is entirely likely."[57]

[*Page 9-10*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global**

Rush North . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [More (5 quotes)]

Russia has failed to back up its claims of peaceful intentions in the Arctic with anything more than rhetoric

"Meanwhile, Russia's actions and rhetoric in the Arctic leave no room to deduce anything but a firm and committed intent on the part of its leadership to secure its claims. There have been scant, if any, peaceful actions undertaken by the Putin and Medvedev administrations to back up their peace-seeking rhetoric. Calls for diplomatic resolution of territorial disputes in the Arctic and for working "within existing international agreements and mechanisms" have only been operationalized through agreements to cooperate on search and rescue efforts and on (competitive) scientific exploration and research for submission to the Commission on the Limits of the Continental Shelf (CLCS), a forum that has no binding authority to settle such disputes. All the while, however, Russia's ambitious militarization of the Arctic has been clearly reinforced with explicit rhetoric proclaiming its intent to defend its national security interests. For Russia, the natural resources in the Arctic are a national security asset of strategic importance.

[*Page 93*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Russia is aggressively pursuing Arctic claims

"Until such a solution is found, the Arctic countries are likely to unilaterally grab as much territory as possible and exert sovereign control over opening sea-lanes wherever they can. In this legal no man's land, Arctic states are pursuing their narrowly defined national interests by laying down sonar nets and arming icebreakers to guard their claims. Russia has led the charge with its flag-planting antics this past summer. Moscow has been arguing that a submarine elevation called the Lomonosov Ridge is a natural extension of the Eurasian landmass and that therefore approximately half of the Arctic Ocean is its rightful inheritance. The UN commission that is reviewing the claim sent Russia back to gather additional geological proof, leading Artur Chilingarov, a celebrated Soviet-era explorer and now a close confidant of Russian President Vladimir Putin, to declare, "The Arctic is ours and we should manifest our presence" while leading a mission to the North Pole last summer.

Borgerson, Scott G. "***Arctic Meltdown: The Economic and Security Implications of Global Warming*** ." **Foreign Affairs**. Vol. 87, No. 2 (March/April 2008). [**More** (10 quotes)]

U.S. cannot utilize mechanisms of treaty to contest Russian claims

as a non party to UNCLOS

“Like the other Arctic nations, except the U.S., Russia is a signatory to UNLOS. The USSR became a signatory in 1982; UNCLOS was later ratified in 1997 by the Russian Federation.[117] Russia has utilized the provisions of UNCLOS to advance sovereignty, especially along the Northern Sea trade route, which passes through Russia’s northern Exclusive Economic Zone (EEZ). Russia is using UNCLOS provisions in an attempt to exercise control over the Northern Sea route by requiring vessels to seek permits and submit their vessels to inspection due to the ice conditions. This is considered an overreach of authority by the U.S., which is protesting the plans.[118] As a non-party to UNCLOS, the U.S. cannot utilize the established means of the treaty to protest.

[*Page 36*]

Dwyer, William G. **The Evolving Arctic: Current State of U.S. Arctic Policy** . Naval Postgraduate School: Monterey, CA, September 2013 (93p). [**More** (9 quotes)]

U.S. ratification of UNCLOS would help moderate rising Chinese naval power

U.S. ratification of UNCLOS is critical to broader U.S. strategy in the Asia Pacific and managing China's rise.

US ratification of UNCLOS would aid operations in South China Sea by improving legitimacy in challenges to China, bolster credibility on rule of law, and foster multilateral dialogue

"As mentioned previously, the enhanced legitimacy gained through ratification of UNCLOS would aid PACOM in several ways. First, legitimacy gives FON assertions and diplomatic protests more weight, and leaves nations such as China constrained in their ability to challenge U.S. action. Because UNCLOS is almost universally accepted, U.S. actions would receive "tacit support" from the 160 nations party to the convention allowing commanders to more aggressively assert navigational rights within the approved framework of UNCLOS should diplomacy fail.66 In other words, after military capability, legitimacy is the second prong necessary to unilaterally conduct effective FON assertions in the SCS.

Unilateral action is always the last resort, and ratification of UNCLOS helps dramatically increase the legitimacy of U.S. FON assertions when viewed from a multinational vantage point. Rhetoric marching lock step with action will decrease PACOM difficulties convincing SCS nations that U.S. interests are not just self-serving. Although self interest plays a part, the externalities of the U.S. FON program help all coastal and maritime nations, especially those like the Philippines who do not have a strong blue water navy able to conduct these assertions on their own. Restated, ratification of the convention shows our allies and partners that we are committed to international law and a global "partnership of maritime nations sharing common goals and values."[67]

Additionally, legitimacy serves to underpin United States assertions that we are committed to the rule of law; critical if the U.S. hopes to achieve maritime security goals in the SCS. Looking closely at the EP-3 incident from 2001, notably absent is any real resolution of the underlying issues. Mainly the serious disconnect between Chinese and U.S. interpretations of UNCLOS provisions as related to military activities in the EEZ. Moreover, other than saber rattling by the U.S. and China, our closest allies in the region failed to lodge strong protests against this clear violation of UNCLOS. At best this shows other regional powers at least marginally acknowledge Chinese EEZ regulations, and at worst brings into question whether international powers fully believe U.S. actions are completely legitimate. Ratification eliminates that seam and the increased legitimacy gained helps U.S. allies come to our defense should similar issues arise in the future.

Finally, legitimacy is the key to future dialog with China over freedom of navigation in the SCS.

UNCLOS already provides the framework for communication and resolution of varying interpretations of convention provisions. With an economy increasingly dependent on maritime freedom in the global commons, China may be receptive to multilateral dialog and change internal laws to better conform to the UNCLOS.[68] This would be a win-win for PACOM as it would significantly decrease the requirement for, and probability of miscalculation during, FON assertions. Moreover, dialog could lead to multilateral security cooperation activities with the PRC Navy, such as the Proliferation Security Initiative.[69]

[*Page 12-14*]

Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

China views U.S. non-party status to UNCLOS as an example of its aggressive stance and hypocrisy on global stage

"In a vigorous denunciation of the U.S. position on UNCLOS, Shen Dingli, the vice dean of the Department of International Studies at Fudan University, comments that for a long time the United States has been acting as the world's primary maritime power, seeking to limit the rights and interests of littoral states but all the while penetrating their maritime space in ways that are "hegemonic and offensive." He asserts that the United States, which has thus far refused to ratify UNCLOS, nevertheless regards itself as if it were among those states that have ratified the convention, censuring states that genuinely have. Shen writes that the United States often interprets the convention from the vantage of its own interest rather than according to the stringent standards it claims are demanded of a world leader. If this persists, Shen cautions, it will be difficult for the United States to maintain its image as a moral and legal exemplar. Instead, it will be perceived as a state that is always scheming and seeking to profit at the expense of other states.

[*Page 112-113*]

Wachman, Alan M. "***Playing by or Playing with the Rules of UNCLOS?*** ." in Military Activities in the EEZ: A U.S.-China Dialogue on Security and International Law in the Maritime Commons, edited by **Dutton, Peter A**. U.S. Naval War College: Newport, Rhode Island, December 2010. [**More** (4 quotes)]

U.S. ability to peacefully resolve South China Sea disputes compromised by its non-party status to UNCLOS

As a signatory to UNCLOS, the PRC occasionally implies that its interpretations should trump those of the United States, which has yet to ratify the convention that Washing- ton nevertheless employs as a bludgeon against Beijing's claims that UNCLOS permits limitations by coastal states on foreign military activities in the EEZ. The message is that even though the United States asserts its compliance with UNCLOS, because it has not undertaken to be formally bound by the convention it has no standing to impose its self- regarding interpretations of the regime on those states that have ratified it.

US abstention from UNCLOS is a vulnerability China can exploit to promote its lawfare campaign to control South China Sea

"Further evidence of a multi-pronged strategy can be inferred from China's operational military efforts to reinforce its ultra vires UNCLOS positions. Specifically, China has, on occasion, engaged in illegal, unsafe airborne and seaborne tactical maneuvers in an attempt to dissuade the United States from conducting military operations-principally, military survey power in the region. it has occasionally demonstrated a willingness to employ military force in operations and intelligence collection-within the Chinese EEZ. Additionally, support of its contested claims to sovereignty over certain offshore islands. short, by pressing contested claims to maritime territorial sovereignty while simultaneously pursuing aggressive military tactics in support of ultra vires security rights in offshore waters, China has demonstrated an efficacious strategy to consolidate control over the vast majority of the South and East China Seas. Toward this end, China has the advantage of operating from interior lines-both geographically and rhetorically vis a vis the United States, due both to its status as an UNCLOS member nation and a state attempting to regulate the waters adjacent to its coast. Thus, to the extent the United States seeks to project a maritime military presence in a manner inconsistent with China's UNCLOS stance, China may gain some traction domestically, as well as internationally, by criticizing the United States as an imperialistic power seeking to threaten and provoke a distant, peace-loving nation in the waters adjacent to its coast. U.S. UNCLOS abstention will continue to facilitate China's ability to cast U.S. UNCLOS interpretation as self-serving and disingenuous by highlighting that the United States is seeking to extract the benefit of UNCLOS butt avoiding membership due to its distrust ofthe international community. It is not inconceivable that such a narrative would resonate with many coastal states, especially if the United States' relative regional and global primacy is seen to be diminishing. All else equal, nations with vulnerable coasts and small fleets might perceive an UNCLOS "securitization" norm as more attractive than the current, generally-accepted norm permitting robust military operations within EEZs and almost unrestricted innocent passage through territorial waters. Furthermore, as an UNCLOS member nation, China remains better positioned than the United States to influence UNCLOS interpretation from within UNCLOS regulatory institutions such as the ISA, ITLOS, and CLCS.

[*Page 13*]

De Tolve, Robert C. "Rock". "***At What Cost? America's UNCLOS Allergy in the Time of "Lawfare"*** ." **Naval Law Review**. Vol. 61. (2012): 1-16. [**More** (8 quotes)]

Ratifying UNCLOS would give U.S. stronger argument to pressure China in South China Sea

“Supporters of the Convention do not disagree that China’s ongoing assertiveness to territory on and beneath the South China Sea is cause for concern, if not a challenge to international norms regarding freedom of the seas, said Caitlyn Antrim, executive director of the Rule of Law Committee for the Oceans, a nonpartisan educational group whose purpose is to inform public discourse regarding U.S. interests in accession to the Convention.

Antrim noted, however, that the United States could better help the situation by acceding to the Law of the Sea Convention, whereby it would have more influence in supporting the coastal states in that region.

An area of 650,000 square miles with a sea floor believed to be rich in deposits of oil and gas, and host to the world’s second busiest sea lanes, the South China Sea is an example of “creeping jurisdiction,” said Antrim, which is represented, in the case of China, by an attempt to increase its control and extend its authority at the expense of its neighbors in Southeast Asia, as well as the United States, Japan and South Korea.

“The Law of the Sea is our lever,” she told Seapower. “We can’t go in there and continually force our way. We need to have a legal regime so that everything works smoothly. All of the other countries support the Law of the Sea, and we get to add to that strength, but it’s a little difficult when we aren’t a party to it.”

[*Page 11*]

Daisy R. Khalifa. "***A Seat at the Table: Arguments intensify for U.S. to join U.N. Law of the Sea Convention*** ." **Seapower**. (May 1, 2012) [**More**]

Multilateral cooperation to curb Chinese aggression in South China Seas depends on U.S. adherence to and ratification of UNCLOS

“The United States depends on support from ASEAN members to maintain effective operations in the South China Sea, so its responses to China must respect regional interests and concerns. While the United States is seen by the member states as a friend, they also know that U.S. interests are at times different from their own. The United States cannot take their support for granted. To do so may not just weaken joint responses to Chinese aggressiveness; it may put other multilateral maritime

initiatives at risk, such as the Proliferation Security Initiative and anti-piracy resolutions in the U.N. Security Council.

ASEAN member states must be assured that the United States will provide a balance to growing power without becoming a threat to their interests. The United States can make this clear by emphasizing that its actions will conform with UNCLOS. As long as U.S. actions are compatible with and in support of the convention, ASEAN states will feel secure in U.S. maritime activities in their region, and China will know that there are limits that bind U.S. activities in the region.

While the credibility of the U.S. commitment to the convention is currently undercut by the country's non- party status, this can be overcome by completing the effort of the previous administration to secure the advice and consent of the Senate to join the convention and then submit its ratification.[8]

[*Page 70*]

Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

Allowing China to prevail in its South China Sea claims would pose a number of risks to U.S. national security and global economy

"The differing views held by the United States and China over maritime boundaries has great significance for U.S. national security. The military forces of the United States provide a critical deterrent against foreign aggression that might affect the global flow of commerce. In order for U.S. forces to be a credible deterrent they must have access. In its analysis of the national security implications inherent in the UNCLOS convention, the U.S. Department of Defense emphatically stated that, "Assurance that key sea and air lines of communication will remain open as a matter of international legal right and will not become contingent upon approval by coastal or island nations is an essential requirement for implementing our national security strategy."[49] China's policies and actions place this freedom at risk. If they are allowed to prevail in their claims, the negative operational consequences for USPACOM are tremendous.

If China is allowed to prevail in its claims of sovereign jurisdiction over enormous ocean areas, this would seriously degrade the ability of U.S. forces to conduct peacetime operations in a critical region. Not only would the U.S. Air Force and Navy be unable to operate in much of the south-east Asian littoral, but forces responding to contingencies in other regions could be forced to take alternate routes that would significantly restrict the ability of the U.S. to quickly respond to a crisis.[50]

Second, without U.S. presence, important partners such as Singapore and the Philippines would no longer benefit from the stabilizing influence that the presence of U.S. forces provides. Instead, as the emerging naval power in the region, Chinese ships would be free to exert their influence unchecked.

Lastly, any freedom of navigation operations conducted by U.S. forces take on a new level of risk as

the mere presence of U.S. forces in China's claimed EEZ could result in hostilities. U.S. forces and Allies, like Australia, routinely conduct freedom of navigation (FON) operations in order to oppose illegitimate maritime claims. These operations are not intended to be antagonistic. Rather, they are intended to serve as just one element in the discourse between nations.[51] However, with China's extreme sensitivity to sovereignty, most U.S. FON operations will almost certainly be viewed as blatantly provocative.[52]

[*Page 13-15*]

Vincent, Steven D. CDR, USN. **China and the United Nations Convention on the Law of the Sea: Operational Challenges** . Naval War College: Newport, RI, May 18, 2005 (30p). [**More** (4 quotes)]

U.S. strategy for dealing with Chinese aggression in South China Sea must first establish credibility by ratifying UNCLOS

"The broader U.S. strategy for the South China Sea must follow three tracks. First, protect the rights of navigation for all through both diplomacy and demonstration. Second, work with the People's Liberation Army Navy to help it recognize that China's long-term interest in freedom of navigation is far more important to its national security than short-term efforts to control navigation in the EEZ. Third, promote regional resolution of jurisdictional claims over islands and seafloor resources of the South China Sea based on the principles of UNCLOS.

To this end, the United States must also recognize that regional influence depends not just on power but on its judicious application, as noted by Professor Barry Posen:

> So command of the commons will provide more influence, and prove more militarily lethal, if others can be convinced that the United States is more interested in constraining regional aggressors than in achieving regional dominance.[10]

It is important to keep in mind that our friends and allies do not want to see the United States have an un- bounded role in the South China Sea. For them, UNCLOS is important in keeping U.S. involvement in balance with regional interests. If the United States fails to accept the convention's obligations and limits as well as its rights, then its reputation, even with its allies, will be diminished.

In spite of President Reagan's endorsement of the provisions related to navigation, the EEZ, and the continental shelf, the credibility of the United States as the champion of international law is weakened by its own failure to join UNCLOS. Joining would strengthen U.S. leadership at sea, and that will serve the interests of all parties in the South China Sea.

U.S. policy is, and should remain, to demonstrate and demand adherence to the rights of navigation and over- flight and promote regional resolution of issues of territorial and resource jurisdiction defined in UNCLOS. An important element of this strategy is for the United States to join the convention and re-establish itself as a champion of the international rule of law at sea while we enjoy the rights recognized by UNCLOS.

Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

U.S. cannot advocate rule of law approach in South China Sea without being party to UNCLOS

"The United States need not take a position on the claims of parties in the South China Sea dispute or in any other dispute. It need only ensure that whatever resolutions are reached are within the bounds of international law. If China or any other party is permitted to simply ignore the rules of one facet of the international system—in this case the Law of the Sea—then the entire system loses legitimacy. Commandant of the Coast Guard, Admiral Robert Papp said it best at the same May 9 forum: "Our legitimacy as a sovereign state and as a world leader…rests with the rule of law."

The Senate should act to assert the national interests of the United States and ratify UNCLOS as soon as possible. Asserting U.S. credibility in the Asia Pacific and globally by standing by the rule of law is in our economic and security interests. In fact, U.S. ratification of UNCLOS will determine whether the twenty-first century resembles the relatively stable order of the late-twentieth century or is more like the competitive free-for-all of the nineteenth.

Ernest Z. Bower and Gregory Poling. "***Advancing the National Interests of the United States: Ratification of the Law of the Sea*** ." **Southeast Asia from the Corner of 18th & K Streets**. (May 25, 2012) [**More**]

U.S. policy towards south China seas should continue to be focused on neutrality and reinforcing international rule of law through UNCLOS

"Fourth, remain neutral about sovereignty, but not about drawing boundaries at sea. The American policy of neutrality on the outcome of sovereignty disputes—that is disputes over the ownership of islands, rocks, and reefs--is a good one, as long as the dispute is resolved without the use of force. Our refusal to be drawn into conflict with a rising power over a piece of territory that is relatively trivial is an important aspect of regional and global stability. On the other hand, the United States has a strong interest in seeing the provisions of UNCLOS strengthened, since they provide the only near-universal framework that decreases resource and security disputes in the maritime domain. As such, the American policy should be to consistently reinforce UNCLOS as the basis for resource boundaries in the South China Sea. The United States Department of State should issue a public, official statement that challenges any right for China to use the 9-dashed as a basis for maritime boundary making. China must not be allowed to use its view of history or its coercive power or any other basis to alter the existing rule set that has provided global stability in what otherwise might

have been a very contentious domain. International law must be the only basis for all states to make resource claims in the South China Sea. The United States, indeed all countries, have a vital interest in the strength of the methods of UNCLOS for allocating coastal state rights to resource zones. Not history, not power, but international law must be the standard.

[*Page 8-9*]

Dutton, Peter A. "***Viribus Mari Victoria? Power and Law in the South China Sea*** . Presented at "*Managing Tensions in the South China Sea*", **Center for Strategic and International Studies**: Washington, D.C., June 5-6, 2013. [**More** (3 quotes)]

US should challenge Chinese claims within multilateral fora like UNCLOS because China responds best to multilateral pressure

"In addition, official US statements in the future need to challenge Chinese assertions that China's position has a legal basis, whereas the US position is merely derived from its hegemonic interests. The US should encourage all countries that value its position on international maritime law or just want to discourage Chinese assertiveness in the South China Sea to openly support the US position. According to the Department of Defense Maritime Claims Reference Manual, of the 150 states with maritime claims, 127 states recognize the right of all states to undertake military activities in the EEZ and only 22 side with China by making some form of claim to regulate foreign military activities in their EEZ.[94] Joint statements made with Asian leaders and with leaders of developing countries supporting the US interpretation of EEZ rights would weaken China's argument that the US position hurts the interests of the less powerful. Moreover, China tends to cooperate more with broad international efforts than with unilateral US efforts.[95] The US should consider addressing China's position on UNCLOS and related provocative behavior in multilateral forums such as the United Nations and encouraging regional allies to bring up the issue through regional institutions such as ASEAN. In that regard, the Obama administration's recent offer to facilitate multilateral talks between China and its Southeast Asian neighbors about the territorial status of islands in the South China Sea is a step in the right direction.

[*Page 239-240*]

Skylar, Oriana Mastro. "*Signaling and Military Provocation in Chinese National Security Strategy: A Closer Look at the Impeccable Incident*." **The Journal of Strategic Studies**. Vol. 34, No. 2 (April 2011): 219-244. [**More** (4 quotes)]

China using U.S. non-party status to UNCLOS to bludgeon it for hypocrisy when U.S. challenges China's excessive claims

As a signatory to UNCLOS, the PRC occasionally implies that its interpretations should trump those of the United States, which has yet to ratify the convention that Washing- ton nevertheless employs

as a bludgeon against Beijing's claims that UNCLOS permits limitations by coastal states on foreign military activities in the EEZ. The message is that even though the United States asserts its compliance with UNCLOS, because it has not undertaken to be formally bound by the convention it has no standing to impose its self- regarding interpretations of the regime on those states that have ratified it.

For instance, Zhang Haiwen cites passages from an essay by Scott Borgerson to make the point that there is a "strong political force which is scornful of the Convention in the United States. They like to take advantage of the Convention but do not respect it."[11] Zhang writes, "It is unfair . . . that the United States, which has yet to ratify the Convention, is raising an argument on the interpretation of the Convention."[12] Reacting to what she views as Washington's selective compliance with UNCLOS, Zhang highlights the following from Borgerson's piece: "Opponents of the convention [UNCLOS] argue that there is no need to join the treaty [UNCLOS] because, with the world's hegemonic navy, the United States can treat the parts of the convention it likes as customary international law, following the convention's guidelines when it suits American interests and pursuing a unilateral course of action when it does not."[13]

In these sentiments Zhang is not alone. Chinese observers have framed the dispute about UNCLOS as illustrative of U.S. hegemonic tendencies. "America's failure to cooperate with the international community on UNCLOS is not an isolated phenomenon," writes one commentator, "but is one element in its strategy to dominate the world and monopolize the oceans."[14]

[*Page 112*]

Wachman, Alan M. "***Playing by or Playing with the Rules of UNCLOS?*** ." in Military Activities in the EEZ: A U.S.-China Dialogue on Security and International Law in the Maritime Commons, edited by **Dutton, Peter A**. U.S. Naval War College: Newport, Rhode Island, December 2010. [**More** (4 quotes)]

As a non party to UNCLOS, U.S. unable to engage in resource management discussions necessary to resolve South Chinas Seas dispute

"U.S. economic interests face two problems then in the South China Sea: the UNCLOS rules concerning exploitation of the high seas, and how much of the high seas are available in the area. The United States has not formally ratified UNCLOS for several reasons, but objections to Part XI covering exploitation of the deep seabed is a main one because its provisions are considered statist and not free-market oriented, and the ISA is expensive and inefficient.[473] Opponents also see little gain in the South China Sea for U.S. ratifica- tion since the overlapping disputes would not only remain but have no compulsory settlement agreement, and maritime jurisdiction issues like freedom of navigation are exempt from mandatory arbitration mechanisms. Thus these political issues do not change whether the United States is a member or not.[474] The irony of opposing U.S. entry to UNCLOS is that in the nearly 30 years since it was written, no country or corporation, including the

United States, has been successful in commercially mining for high seas min- eral resources, but the United States, which has the world's largest aggregate EEZ, benefits from the eco- nomic and environmental protection of its littoral that UNCLOS provides.[475] By its present stance, the United States gains freedom from the ISA to potentially mine seabed resources some day since it does not need to be a member of UNCLOS to exploit international waters under customary law, but it loses the advantages of being inside the Law of the Sea Treaty system to guide it and employ its provisions for future U.S. benefit.

[*Page 96*]

Bouchat, Clarence J. **The Paracel Islands and U.S. Interests and Approaches in the South China Sea** . Strategic Studies Institute, U.S. Army War College: Carlisle, PA, June 2014 (201p). [**More** (5 quotes)]

U.S. absence from UNCLOS puts it at a disadvantage when considering resource management solutions necessary for resolution of South China Seas disputes

"Open economic access to the South China Sea maritime commons is a second U.S. interest, but one for which the solution may diverge from freedom of navigation considerations. Access to the resources of the high seas is an important enough U.S. interest to stall the ratification of UNCLOS for nearly 20 years in order to avoid the restrictions imposed on seabed mining, although this activity has yet to become commercially viable. While the United States remains out- side the treaty, however, it holds less influence over how maritime law is interpreted and evolves, and thus is at a disadvantage to shape events like whether the South China Sea becomes a wholly divided and claimed sea. Such arrangements as a joint development zone or a joint management zone could stabilize the area to provide peace and the dividends of economic development for its participants. This could detract from potential U.S. economic development activities, depending on the arrangements, but supports U.S. security and economic prosperity goals for the region as well as attains a diplomatic settlement through recognized international law.

[*Page 116*]

Bouchat, Clarence J. **The Paracel Islands and U.S. Interests and Approaches in the South China Sea** . Strategic Studies Institute, U.S. Army War College: Carlisle, PA, June 2014 (201p). [**More** (5 quotes)]

U.S. can better advocate for freedom of navigation in South China Sea as a party to UNCLOS

U.S. ratification of UNCLOS is another important step to influence the evolution of future

interpretations of freedom of navigation toward more open stipulations than some of the states around the South China Sea now espouse. Although a more difficult proposition, the United States should demand the clarification of the historic claims made in the South China Sea, in order to facilitate negotiating a settlement, accelerate economic development, and remove the potential of shutting down all foreign navigation through the region. Support to Vietnam's current islet occupations in the Spratlys, its claims to coastal EEZ and continental shelf areas in compliance with UNCLOS, and specific historic economic rights could wean Vietnam from its otherwise weak historic claims, and start sincere bargaining by linking the Paracel and Spratly disputes in a comprehensive agreement. The United States has less influence to change China's position on historic rights because the ambiguity of its positions has served China well. Here, appealing to China's future role in world politics may help to change its parochial freedom of navigation perspective into a more global one like the United States holds.

[*Page 115*]

Bouchat, Clarence J. **The Paracel Islands and U.S. Interests and Approaches in the South China Sea** . Strategic Studies Institute, U.S. Army War College: Carlisle, PA, June 2014 (201p). [**More** (5 quotes)]

U.S. ability to advocate for joint development solution to South China Sea dispute hampered by its non-party status to UNCLOS

"Open economic access to the South China Sea maritime commons is a second U.S. interest, but one which may diverge from freedom of navigation. Access to the resources of the high seas is an important enough U.S. interest to stall the ratification of UNCLOS for nearly 20 years. The United States remains outside the treaty, however, and holds less influence over how maritime law is interpreted and evolves, and thus is at a disadvantage to shape events like whether the South China Sea becomes a wholly divided and claimed sea. Such arrangements as a Joint Development Zone or a Joint Management Zone could stabilize the area and provide stability and economic development for its participants. To support any of the joint development solutions, the United States would have to place its security interests over potential economic ones.

[*Page x-xi*]

Bouchat, Clarence J. **The Paracel Islands and U.S. Interests and Approaches in the South China Sea** . Strategic Studies Institute, U.S. Army War College: Carlisle, PA, June 2014 (201p). [**More** (5 quotes)]

U.S. ratification of UNCLOS would help mitigate tensions in South China Sea

Ratifying LOSC will give the United States added legitimacy as it seeks to defend the interests

of allies and partners in the Asia Pacific, particularly countries involved in disputes over the South China Sea. Tensions between China and Southeast Asian states over historical territorial claims and jurisdiction over potentially lucrative seabed natural resources are escalating because of increasingly assertive behavior on all sides. LOSC is central to mitigating tensions and avoiding conflict in the South China Sea, which involve territory demarcation, maritime navigation and other issues covered by the convention. **Without ratifying LOSC, the United States will be unable to credibly encourage efforts of allies like the Philippines as it attempts to mediate a dispute with China over the joint development of resources in the South China Sea using the LOSC dispute settlement mechanism.**

[*Page 7-8*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. can pressure China within framework of UNCLOS only if it is party to the treaty

Although critics of LOSC rightly argue that the treaty will not bind China's assertive behavior in the South China Sea,[29] evidence suggests that despite attempts to interpret the treaty in ways that promote its own interests, China is willing to work within the LOSC framework. According to one expert, recent statements by the ministry of foreign affairs reaffirm that "China will advance maritime claims that are consistent and compliant with UNCLOS," which may allow states to press China to clarify its claims through the treaty's dispute settlement mechanism and bring the region closer to a negotiated settlement.[30] However, countries in the region may be reluctant to press China to clarify its claims lest they strain relations with their largest trading partner. As a party to LOSC, the United States could support its partners by pressing China to clarify its maritime claims, which are legitimately tied to U.S. maritime interests in the region, including freedom of navigation rights for the U.S. Navy.

[*Page 8*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

China walked back its excessive claims with the "9-dash line" when U.S. emphasized rule of law but U.S. non-party status to UNCLOS has weakened our position

Much attention surrounding the Law of the Sea debate has focused on the Arctic. But the waters that best illustrate the need for an agreed-upon system of rules for the world's oceans and a U.S.

seat at the table are in the South China Sea, where a rising great power, China, decided to assert its maritime claims over smaller neighbors. It did so most aggressively when it submitted the infamous "9-dash line" claim to the United Nations in 2009. That claim has no basis in international law—a fact acknowledged by experts in China—and instead recalls an earlier era when the only rule of international relations was the prerogative of the mighty.

Beijing has walked back its assertive claims. But it did so not because of its ASEAN neighbors' opposition to the "9-dash line" in May 2009. It did so only when Washington made clear—first with Secretary of State Clinton's statements at the ASEAN Regional Forum in July 2010 and most recently with President Barack Obama's appearance at the East Asia Summit last November—that preserving international maritime law, embodied in the Law of the Sea, is a vital U.S. national interest .Without accession, however, the U.S. position is considerably weakened by charges of hypocrisy, a fact not lost on Beijing and of real concern to China's neighbors who rely on the United States.

Ernest Z. Bower and Gregory Poling. "***Advancing the National Interests of the United States: Ratification of the Law of the Sea*** ." **Southeast Asia from the Corner of 18th & K Streets**. (May 25, 2012) [**More**]

U.S. accession to UNCLOS is key to the multilateral framework needed to constrain China

"**UNCLOS has become an important barometer of U.S. power in the Pacific Ocean. At stake is the country's capacity to uphold, preserve, and strengthen a rules-based order in Asia as China rises**. In July 2010, at the ASEAN Regional Forum (ARF) in Hanoi, **U.S. Secretary of State Hillary Clinton stated that the United States believes that all maritime territorial disputes in the South China Sea must be resolved multilaterally and in accordance with international law**. It is a policy that she repeated at the deadlocked 2012 ARF in Cambodia. For its part, China objected to the "multilateralization" of maritime disputes then and continues to do so now. Beijing believes that it is more likely to make gains if it strikes individual bargains with weaker powers, including Manila and Hanoi. The other capitals realize this, which is why they welcomed Clinton's commitment to multilateralism.

A strong multilateral structure in Asia is a prerequisite to balancing Chinese assertiveness. **The United States should not take sides in other countries' disputes, but it can and must insist upon a strong regional framework to ensure that a rising China does not destabilize the status quo. On this issue, the 34 senators who oppose the treaty are taking Beijing's side**. They are speaking up for the bilateralism and unilateralism that will harm the U.S.-led regional order in the Asia-Pacific. No doubt, news of Ayotte and Portman's recent declarations was greeted warmly in Beijing. U.S. allies and strategic partners in South East Asia, meanwhile, will be even more doubtful of Washington's capacity to maintain its leadership role. **It is strategic multilateralism in the Atlantic that helped the United States to win the twentieth century. Without concordant multilateralism in the Asia-Pacific, it will not fare so well in the twenty-first**.

Wright, Thomas. "***Outlaw of the Sea: The Senate Republicans' UNCLOS Blunder*** ." **Foreign**

Affairs. (August 7, 2012) [**More**]

China using US non accession to UNCLOS against it in its strategy to gain control over territory in South China Sea

"Having long recognized the efficacy of legal "securitization" claims as a mechanism through which to bolster regional sea control, China has apparently developed an effective strategy in furtherance of its objective." This strategy rests upon China's UNCLOS stance and includes declaratory statements incorporated into China's UNCLOS ratification depository instrument and includes domestic legislation formally claiming security interests in its territorial seas and EEZ, development of supporting legal scholarship, and a complementary strategic communications campaign.[12] As China gradually works to set conditions conducive to marginalizing U.S. influence in the East, Southeast, and South Asia regions, its dramatic economic growth will likely further boost its ability to influence the behavior of smaller regional neighbors in a manner consistent with China's UNCLOS "securitization" narrative. The absence of a formal U.S. commitment to UNCLOS is yet an additional vulnerability China can exploit in inducing its neighbors' to acquiesce in its territorial seas and EEZ claims. Such acquiescence would strengthen China's ability to claim territorial sea sovereignty over vast swaths of the East and South China Seas, seriously hampering the United States' ability to project military power in the region.

[*Page 11-12*]

De Tolve, Robert C. "Rock". "***At What Cost? America's UNCLOS Allergy in the Time of "Lawfare"*** ." **Naval Law Review**. Vol. 61. (2012): 1-16. [**More** (8 quotes)]

U.S. credibility on multilateral negotiations over South China Sea constrained by not being party to UNCLOS

"Ultimately, **peaceful resolution of competing maritime claims in the South China Sea will require multilateral negotiations in conformity with international law**, as Secretary of State Hillary Clinton has observed. The brass ring is a binding Code of Conduct among rival claimants, which has proved elusive. Achieving this result will require at least two shifts. The first is a united front among the members of the Association of Southeast Asian Nations (ASEAN), whose summit in Pnomn Penh in July collapsed into acrimony on this question, thanks to Chinese pressure on the Cambodian hosts. Cambodia gets a second chance to get it right this month, when it hosts the final major meeting of its ASEAN chairmanship, which will consider an Indonesian-proposed draft of the code. The second is real movement from China. At stake in the South China Sea is the entire concept of China's peaceful rise. Recent weeks provide a glimmer of hope in this regard, including Beijing's endorsement in mid-October of a joint declaration with ASEAN counterparts, which among other provisions commits the parties to peaceful resolution of disputes and the ultimate goal of a code of conduct. The end of China's protracted leadership transition , which will officially begin during the

eighteenth Communist Party Conference on November 8 may allow a mellowing of recent Chinese behavior, giving the incoming government of Xi Jinping an opportunity to rein in the more assertive positions of the Peoples Liberation Army (PLA) on maritime issues.

The Obama administration should encourage all parties to move as promptly as possible toward a binding code of conduct. To be sure, as Tom Wright points out, the United States would have much more diplomatic credibility and influence if it were actually a party to UNCLOS, which would demonstrate that it is willing to play by the same rules that it seeks for others. In this regard, the upcoming lame duck session of Congress would be an ideal time for the Senate to finally ratify UNCLOS.

Stewart M. Patrick. "***Turbulent Waters: The United States, China, and the South China Sea*** ." **The Internationalist**. (November 2, 2012) [**More**]

U.S. accession to UNCLOS is a critical first step towards boosting U.S. credibility and leadership in resolving South China Sea dispute

"Third, American policy makers must realize that the contest for East Asia is one of both power and law. International law supports and legitimizes the exercise of American power. It ensures that the landscape of domestic and international opinion is favorable to American objectives, policies, and actions. International law of the sea in particular, through its assurances of freedom of navigation for security as well as commercial purposes, supports the continued nature of East Asia as a maritime system. International law regarding the free use of international airspace operates similarly. Accordingly, to ensure its future position in East Asia the United States should take specific actions to defend the international legal architecture pertaining to the maritime and aerial commons. Acceding to the United Nations Convention on the Law of the Sea and once again exercising direct leadership over the development of its rules and norms is the first and most critical step. The Department of State should also re-energize its Limits in the Seas series to publicly and repeatedly reinforce international law related to sea and airspace. A good place to begin the new series would be with a detailed assessment of why international law explicitly rejects China's U-shaped line in the South China Sea as the basis for Chinese jurisdiction there. Others could be written to describe why China's East China Sea continental shelf claim misapplies international law and why China's ADIZ unlawfully asserts jurisdiction in the airspace. My sense is that East Asian states, indeed many states around the world, are desperate for active American leadership over the norms and laws that govern legitimate international action.

[*Page 10*]

Dutton, Peter A. "***Testimonty of Peter A. Dutton: On China's Maritime Disputes in the East and South China Seas*** ." Testimony before the U.S.-China Economic and Security Review Committee, April 4, 2013. [**More** (2 quotes)]

Multiple reasons why U.S. accession to UNCLOS would help resolve territorial disputes in South China Sea

"Supporters of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- The treaty's provisions relating to navigational rights, including those in EEZs, reflect the U.S. position on the issue; becoming a party to the treaty would help lock the U.S. perspective into permanent international law.

- Becoming a party to the treaty would give the United States greater standing for participating in discussions relating to the treaty—a "seat at the table"—and thereby improve the U.S. ability to call on China to act in accordance with the treaty's provisions, including those relating to navigational rights, and to defend U.S. interpretations of the treaty's provisions, including those relating to whether coastal states have a right under UNCLOS to regulate foreign military activities in their EEZs.

- At least some of the ASEAN member states want the United States to become a member of UNCLOS, because they view it as the principal framework for resolving maritime territorial disputes.

[*Page 35*]

O'Rourke, Ronald. **Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress** . Congressional Research Service: Washington, D.C., April 11, 2014 (59p). [**More** (4 quotes)]

U.S. lacks legitimacy in arguing that China needs to abide by UNCLOS that it would get if it ratified the treaty

"Currently, the State Department's suggestion to the competing claims in the South China Sea is for all of the nations to follow UNCLOS.[230] It is hypocritical for the United States to encourage another country to follow UNCLOS without actually acceding to it herself.

Further, China is less likely to listen to the United States from a "position of weakness."[231] According to one commentator, conversations between the United States and China regarding foreign military activity in China's EEZ currently look like this:

> *Chinese official: Your navy ships have no right to be in our exclusive economic zone without our permission.*
>
> *American official: Yes they do. The U.N. Law of the Sea Convention, which reflects customary international law, provides other states have freedom of navigation in*

exclusive economic zones.

Chinese official: You are not a party to convention, so it doesn't matter what it says-you have no standing to make that argument.[232]

If the United States acceded to UNCLOS, then China's response could no longer be, "You are not a party to the convention." Admiral Locklear, the U.S. Navy Commander in the U.S. Pacific Command, has mentioned that in the South China Sea, where "competing claims and counter claims in the maritime domain are becoming more prominent . .. the effectiveness of the U.S. message is somewhat less credible than it might otherwise be, due to the fact that we are not a party to the convention."[233] The United States would finally have standing to make the argument that China needs to follow UNCLOS.

[*Page 24*]

Gallagher, Marjorie Ellen. "*The Time is Now: The United States Needs to Accede to the United Nations Convention on the Law of the Sea to Exert Influence over the Competing Claims in the South China Sea*." **Temple International and Comparative Law Journal**. Vol. 28. (2014): 1-26. [**More** (5 quotes)]

U.S. must challenge China's flawed interpretation of UNCLOS freedom of navigation provisions

China's flawed interpretation of UNCLOS freedom of navigation provisions, if left unchallenged, could begin to have the status of customary international law, setting a precedent for other nations, and ultimately have serious implications for the global norms that support security and stability at sea.

Allowing China's interpretation of Law of the Sea to prevail could have drastic consequences on global maritime stability

"Chinese anti-access policies may be designed only to expand its jurisdiction and control over the South China Sea and other near seas, but these practices will have a global impact even if the Chinese do not intend it. A key principle of international law is that law evolves as the norms that support it evolve. Thus, if other states accept China's view that the law of the sea allows it to prohibit foreign military activities in its EEZ, for instance, China will have introduced a new norm into the law that would shift the existing balance of coastal state and international rights at sea. Another key principle is that international law applies equally in all places. Thus, if China succeeds in shifting the norms for East Asia, other states in other regions could assert the same right. In this manner, Chinese actions have serious implications for the global norms that support security and stability at sea.

[*Page 74*]

Dutton, Peter A. "***Cracks in the Global Foundation: International Law and Instability in the South China Sea*** ." in Cooperation from Strength: The United States, China and the South China Sea, edited by Cronin, Patrick. . **Center for a New American Security**: Washington, D.C., January 2012. [**More** (4 quotes)]

China's excessive claims are a threat to the global commons and China's own role

"In attempting to increase its control and extend its authority throughout the South China Sea by applying domestic legislation to international waters, China has created a con- flict both with its neighbors and with UNCLOS. China's claims are not just a threat to navigation in the South China Sea. They are a threat to the global commons and to in- ternational law that was developed to protect the rights of both coastal states and distant-waters states in those regions.

China's efforts to enclose the local commons are short-sighted. It is growing into the role of a global

power with its own interests in access and use of the global commons. In fact, the balance between coastal interests and distant- water concerns may now be in the process of tipping toward the latter. Gail Harris, writing in The Diplomat, stated: “Chinese strategists now also believe in order to protect their economic development they must maintain the security of their sea lines of communications, something that requires a navy capable of operating well beyond coastal waters.”[9]

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Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

China's excessive maritime claims are directly analogous to its emerging claims for vertical sovereignty in space, a trend the US must not leave unchallenged

“This is precisely the position taken by Bao Shixiu, a Senior Fellow at the Academy of Military Sciences of the People's Liberation Army of China. In his critique of the U.S. 2006 National Space Policy (NSP), Bao advances the notion of vertical sovereignty with the following curious statement: " [t]he NSP declares that U.S. space systems should be guaranteed safe passage over all countries without exception (such as 'interference' by other countries, even when done for the purpose of safeguarding their sovereignty and their space integrity). 20 1 However, the statement in the NSP to which Bao refers is not limited solely to U.S. space systems. It reads: "The United States considers space systems to have the rights of passage through and operations in space without interference." Thus, the rights recognized in the U.S. space policy are applicable to all space systems, which is compatible with the Outer Space Treaty. However, the principal concern vis-A-vis potential Chinese claims of vertical sovereignty over portions of space above their territory lies not with a claim of complete sovereignty, but rather with the assertion that satellite navigation above Chinese territory is subject to Chinese "consent and control" as articulated by Professor Cheng.

This space sovereignty position is directly analogous to China's assertion of sovereignty over the airspace above its seaborne EEZ.2° Recall that China alleges that military reconnaissance missions constitute an abuse of overflight rights.20 5 China may easily adapt and extend this same position to the space domain, applying it to overflight by American military satellites passing over Chinese territory.

> Legal scholar Ren Xiaofeng summarizes Beijing's sensitivity to reconnaissance and military activities in its exclusive economic zone (EEZ) and its adjacent airspace this way: "Freedom of navigation and overflight does not include the freedom to conduct military and reconnaissance activities. These things [military reconnaissance activities] amount to forms of military deterrence and intelligence gathering as battlefield preparation." These activities in the EEZ, according to Ren, connote preparation to use force against the coastal state. When Ren refers to the "adjacent airspace," he includes outer space and space reconnaissance.20

China's ostensible military objective for such action is denial, "the temporary elimination of some or all of a space system's capability to produce effects, usually without physical damage. 20 8 This legal argument, if ultimately successful, would have the strategic effect of rendering American military satellites useless and could establish a lawful predicate for Chinese military action against those satellites.20 9 Given its increased military expenditures for research and development of counterspace 21 technology, China could contemplate action that would effectively blind the United States with regard to Chinese military actions. International acquiescence or acceptance of Chinese assertions of vertical sovereignty would effectively vitiate national means of verification of compliance regarding any existing or new arms reduction treaties, and would render meaningless any proposal to ban or limit weapons in space.

[*Page 140-141*]

Bellflower, John W. "***The Influence of Law on Command of Space*** ." **Air Force Law Review**. Vol. 65. (2010): 107-144. [**More** (3 quotes)]

China's excessive claims run counter to its global economic ambitions and its own territorial defense strategy

"Attributing motives to Chinese actions is difficult under the best of circumstances. In the South China Sea, it is even more so. Chairman of the Joint Chiefs of Staff Admiral Mike Mullen recently said that China's "heavy investments of late in modern, expeditionary maritime and air capabilities seem oddly out of step with their stated goal of territorial defense," while Secretary of Defense Robert Gates accused China's top military officers of not following the same policy as senior political leaders who have worked to develop other aspects of the U.S.-China relationship.[6]

As a large and increasingly industrial state, China is concerned with matters of access to strategic and critical materials, especially oil and gas and industrial minerals. In the short term, China may give its regional interests highest priority. As it grows as a global economic power, however, it will find that freedom of navigation and over- flight worldwide are essential to its security.

Increasing dependence on sea lanes for imports of oil and minerals and access to export markets will push for a shift of priority on global mobility over control of the regional sea. A key reason for China to support UNCLOS is the "transit passage" provisions that assure the unimpeded passage of commercial vessels and the warships that are increasingly called on to escort them through the Straits of Singapore and Malacca, the Strait of Hormuz, and other chokepoints through which its critical imports flow.

[*Page 69-70*]

Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

If other nations follow China's example of limiting access to the maritime commons, the results could have devastating economic impact

"Ensuring the security of the maritime commons against piracy is another motivating factor of such endeavors.26 China, for instance, has shown some signs of beneficent intentions by increasing its role in international counter-piracy missions. In 2008, the PLA Navy (PLAN) sent warships to join U.S. naval operators patrolling the Somali Coast. More recently, Beijing has expressed interest in leading some of the planning of such missions." Unfortunately, these positive steps are tempered by concerning Chinese actions with respect to the seas. Specifically, China's assertion of exclusionary rights in its exclusive economic zone (EEZ)-in opposition to UNCLOS treaty provisions and its territorial claims in the South China Sea-heighten suspicion of Chinese intentions in the region. If other states follow suit to prevent safe, unrestricted passage of sea vessels through their EEZ (200 miles from the coastline into a bordering body of water), the openness of the commons is directly challenged and could have devastating economic results.

[*Page 34*]

Murphy, Tara. "*Security Challenges in the 21st Century Global Commons*." **Yale Journal of International Affairs**. Vol. 5. (Spring/Summer 2010): 28-41. [**More** (5 quotes)]

Chinese naval ambitions likely to drive changes in the customary international law of the sea

"The U.S.'s post-World War II record of success in shaping a favorable law of the sea agenda was achieved without a serious rival. For decades, developing nations looked to the Soviet Union for leadership in opposing perceived imperialistic trends in U.S. foreign policy. However, within the law of the sea, the Soviet antagonist was notably absent. As the nation most capable of challenging U.S. operations and underlying legal doctrines, the Soviets had no interest in doing so. The U.S. and Soviet Union were, in effect, law of the sea allies.[53]

Today, China shows far less inclination toward cooperation. Although Chinese legal arguments are not entirely original, what separates China from the traditionally ineffectual opponents of military maritime mobility is China's ambitious naval modernization.[54] The Chinese have served notice they intend to be at least a regional maritime power and perhaps more. Moreover, the Chinese intend to protect their maritime interests by redefining key aspects of the maritime legal regime.[55]

If indeed the Chinese are inclined to lead a law of the sea insurgency from a position of maritime strength, the international political climate for doing so is more favorable today than 1982, when UNCLOS opened for signature, or even than 1994, when UNCLOS entered into force. Today, states with coastal concerns and interests of their own may find China's arguments useful in their own contexts. Two especially fertile justifications for increased regulation are protecting the coastal

marine environment and ensuring off-shore security.

[*Page 10-11*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

China's assertive naval rise will change the nature of the customary international law of the sea

"Regardless of the pace of change, the critical factor in creating and changing international custom will continue to be the relative power of relevant actors.[93] The creation of international law is a political process and those with the political, economic, and military power to bend the international legal environment to their own objectives are generally successful in doing so. As relative power changes among international actors, changes to established legal paradigms should be expected.

The implications for the law of the sea are obvious. China's willingness to challenge traditional legal constructs and ability to influence states with similar interests cannot be dismissed, especially if a dramatic event accelerates the change. One need not agree with China's arguments or be certain of their ultimate success to acknowledge China's potential as an advocate for coastal state interests. Whether these interests will reshape the law of the sea remains to be seen. However, to assume that customary law will remain static and that the traditional maritime powers will continue to dictate its future seems retrospective.[94]

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Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

U.S. interests in China's excessive claims have broader impact on navigation rights than just in South China Seas

"Some observers are concerned that China's maritime territorial claims, particularly as shown in the map of the nine-dash line, appear to challenge to the principal that the world's seas are to be treated under international law as international waters. If such a challenge were to gain acceptance in the SCS region, it would have broad implications for the United States and other countries not only in the SCS, but around the world, because international law is universal in application, and a challenge to a principal of international law in one part of the world, if accepted, can serve as a precedent for challenging it in other parts of the world. Overturning the principal of freedom of the seas, so that significant portions of the seas could be appropriated as national territory, would overthrow hundreds

of years of international legal tradition relating to the legal status of the world's oceans.[54]

More specifically, if China's position on whether coastal states have a right under UNCLOS to regulate the activities of foreign military forces in their EEZs were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS (see Figure 5 for EEZs in the SCS and ECS), but around the world, which in turn could substantially affect the ability of the United States to use its military forces to defend various U.S. interests overseas. As shown in Figure 6, significant portions of the world's oceans are claimable as EEZs, including high-priority U.S. Navy operating areas in the Western Pacific, the Persian Gulf, and the Mediterranean Sea. The legal right of U.S. naval forces to operate freely in EEZ waters is important to their ability to perform many of their missions around the world, because many of those missions are aimed at influencing events ashore, and having to conduct operations from more than 200 miles offshore would reduce the inland reach and responsiveness of ship-based sensors, aircraft, and missiles, and make it more difficult to transport Marines and their equipment from ship to shore. Restrictions on the ability of U.S. naval forces to operate in EEZ waters could potentially require a change in U.S. military strategy or U.S. foreign policy goals.[55]

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O'Rourke, Ronald. **Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress** . Congressional Research Service: Washington, D.C., April 11, 2014 (59p). [**More** (4 quotes)]

China's interpretation of UNCLOS at odds with U.S. and rest of the world

Chinese practice with regard to innocent passage, exclusive economic zones, and sovereignty claims over what China calls “Historic Waters” is largely inconsistent with UNCLOS.

China at odds with UNCLOS standards defining coastal baselines

“Another area where the United States and China differ is on the establishment of the baselines on which all the maritime regimes are defined. The Convention allows the coastal state to determine its baselines in one of three methods: the low-water line, straight baselines, and archipelagic baselines.[29] For coastal states such as China and the United States, UNCLOS declares, "the normal baseline for measuring the breadth of the territorial sea is the low-water line along the Coast."[30] UNCLOS allows a coastal state to apply straight baselines to measure the extent of their territorial seas under certain circumstances. These circumstances include: where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity.[31] China, in its 1996 Declaration of the Government of the People's Republic of China on the Baseline of the Territorial Sea, declared straight baselines and promulgated their geographic positions.[32] Although the Chinese first claimed straight baselines in the 1958 Declaration on the Territorial Sea and again in the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1996 Declaration was the first time that the Chinese actually specified the geographic coordinates of its straight baseline claims. An analysis of China's baseline claims by the U.S. State Department's Office of Ocean Affairs finds that, "much of China's coastline does not meet either of the two LOS Convention geographic conditions required for applying straight baselines."[33] In some areas, the misapplication of the straight baselines allows the Chinese government to excessively claim nearly 2000 square nautical miles as territorial seas that should be regarded as high seas if the baselines were properly drawn.[34] The consequence of these straight baseline claims is clear. These straight baselines extend China's territorial, jurisdictional, legal, and economic authorities into the high seas beyond where the Convention intended.

[*Page 8-9*]

Thomson, Andrew J. **Keeping the Routine, Routine: The Operational Risks of Challenging Chinese Excessive Maritime Claims** . Naval War College: Newport, RI, February 9, 2004 (24p). [**More** (6 quotes)]

U.S. and China disagree on definition of Marine Scientific Research

clause under UNCLOS

“Lastly, the Government of the People's Republic of China and the United States disagree on the differences between military surveys and marine scientific research (MSR). UNCLOS affirms the right of all States and other international organizations to conduct MSR. At the same time, however, it grants to coastal states the right and authority to control, and conduct MSR in its territorial seas and its EEZ.35 The Convention, however, distinguishes between MSR and "hydrographic surveys" and "survey activities." UNCLOS clearly associates hydrographic surveys and other survey activities with those commonly performed by warships, thus granting them the same privilege as other activities commonly associated with warships such as launching and recovering aircraft.36 In its 1996 Regulations Regarding Management of Marine Scientific Research (MSR) Involving Foreign Vessels, the Chinese Government, however, "appears not to distinguish between MSR and military surveys."37 Furthermore, the People's Republic of China enacted domestic legislation in early 2003 that further amplified their attempts to restrict the rights of maritime nations to conduct military surveys in its EEZ.38

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Thomson, Andrew J. **Keeping the Routine, Routine: The Operational Risks of Challenging Chinese Excessive Maritime Claims** . Naval War College: Newport, RI, February 9, 2004 (24p). [**More** (6 quotes)]

Chinese practice and policy are at odds with UNCLOS agreement

“In theory, the 1982 UNCLOS Treaty leveled the playing field and created an unambiguous set of rules for all countries to abide by. While the convention represents a major step forward in codifying many of the historical practices that had evolved into international law and crafted practical guidelines designed to promote equitable commerce, the contemporary practice does not yet mirror the theory.

China’s national defense policy declares, “China . . . defends and administers its land borders and seas under its jurisdiction, safeguards the country’s territorial sovereignty and maritime rights and interests, and secures both its lands and sea borders strictly in accordance with treaties and agreements it has signed with neighboring countries, and the United Nations Convention on Law of the Sea.”[12] In reality, however, Chinese practice with regard to innocent passage, exclusive economic zones, and sovereignty claims over what China calls “Historic Waters” is largely inconsistent with UNCLOS.

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Vincent, Steven D. CDR, USN. **China and the United Nations Convention on the Law of the Sea: Operational Challenges** . Naval War College: Newport, RI, May 18, 2005 (30p). [**More** (4 quotes)]

China has disagreed with principle of EEZ in UNCLOS since initial discussions

"An innovation of the 1982 UNCLOS Treaty was the creation of EEZs set forth in Articles 55 through 58.[22] These zones ensure that coastal states maintain a significant degree of control over the natural resources off their coasts while retaining a substantial portion of the navigational and over-flight freedoms associated with the high seas region.[23] Military ship and aircraft activities are not explicitly limited in the EEZ, so long as their activities do not involve exploitation of the resources resident in the EEZ. China sees the EEZ differently.

During development of the UNCLOS Treaty, Chinese delegate Li Ching made it clear that China did not concur with the EEZ concept. "China's contention is that the essence of the new zone lies in the exclusiveness of coastal State jurisdiction. This contention explains why China repudiated the idea that the economic zone should be regarded as part of the high seas. If that zone were considered to be included in the high seas, so runs the argument, there would be no sense in labeling it as exclusive."[24] Not surprisingly, upon ratification in 1996 China asserted full sovereign rights over a 200 nautical mile EEZ.[25] This assertion only adds to the complexities of the new EEZ concept.

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Vincent, Steven D. CDR, USN. **China and the United Nations Convention on the Law of the Sea: Operational Challenges** . Naval War College: Newport, RI, May 18, 2005 (30p). [**More** (4 quotes)]

China's claims are without legal merit and reflect an aggressive military approach to test limits of international community

"China's claims to those resources rest in part on his- toric claims illustrated in a map in which a series of nine dashed lines indicate some degree of jurisdiction over virtually all of the waters of the region (a similar claim has been made by Taiwan). With regard to U.S. naval op- erations, China has argued that the 1982 United Nations Convention on the Law of the Sea (UNCLOS) prohibits foreign military operations within its EEZ, a contention found nowhere in the text of the convention itself. China has raised the stakes by stating that control of the South China Sea and its resources is a core national interest on par with its claims to Tibet, Taiwan, and Xinjiang.

Yet Chinese claims are ambiguous. Does the nine-dash chart signify territorial claims to the South China Sea and the seafloor, or does it apply only to the rocks and their territorial sea within the marked zone? Are the claims really a "core interest," or are they a starting point for negotiating the division of fishing and energy resources of the region?[4]

China's arguments and actions reflect its regional per- spective and willingness to exercise its military in pursuit of regional interests. This is changing as China becomes increasingly reliant on distant sea lanes for access to stra- tegic and critical materials, particularly energy from the Persian Gulf,

minerals from Africa, and recently, resources passing the Arctic. Security of sea lanes is now becoming a part of its strategic world view.

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Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

China is directly challenging the norms that govern the global maritime commons in two ways

“China is asserting its interests in ways that threaten the foundational norms that govern the global maritime commons. This trend is most evident in the South China Sea, where China’s policies and activities are challenging stability and security.

China is challenging these norms in two ways. First, it is challenging established provisions of the United Nations Convention on the Law of the Sea (UNCLOS), which allows states to claim Exclusive Economic Zones (EEZs) and continental shelves. Instead, China bases its maritime jurisdictional rights on a historical a “nine-dashed line,” instead of an EEZ or a continental shelf.1 This view regarding how states may legitimately claim maritime resource rights increasingly is causing friction with its South China Sea neighbors.

Second, China is challenging the rights of navies to conduct operations, undertake exercises and gather intelligence in the EEZs of other states. Though China benefits substantially from the existing order, Beijing’s views about some key norms governing military activities throughout the global system diverge from those of the United States and other like-minded countries. Such Chinese activities are both creating instability in the South China Sea and undermining international legal norms designed to suppress international instability and armed conflict.

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Dutton, Peter A. "***Cracks in the Global Foundation: International Law and Instability in the South China Sea*** ." in Cooperation from Strength: The United States, China and the South China Sea, edited by Cronin, Patrick. . **Center for a New American Security**: Washington, D.C., January 2012. [**More** (4 quotes)]

U.S. can best influence China to abide by international rule of law as a party to UNCLOS

U.S. capability to influence China would be strengthened by a reassertion of the American leadership role over the development of international law of the sea. Since UNCLOS is the basis of modern international law of the sea, the U.S. should ratify the Convention in order to more effectively exercise this leadership from within the ranks, not just from outside them.

U.S. can best demonstrate rule of law leadership by ratifying the Law of the Sea

"The US also needs to continue to bring its diplomatic power to bear to persuade and encourage parties to pursue non-coercive measures. American persuasive power would be strengthened by a reassertion of the American leadership role over the development of international law of the sea. Since UNCLOS is the basis of modern international law of the sea, the U.S. should ratify the Convention in order to more effectively exercise this leadership from within the ranks, not just from outside them. It is my view that the American policy of neutrality on the outcome of sovereignty disputes is a good one, as long as the dispute is resolved without coercion of any kind. However, the US should not be neutral about disputes over how to divide water space and the resources in them. The US, indeed all countries, have a vital interest in the strength of the methods of UNCLOS for allocating coastal state rights to resource zones. Not history, not power, but international law must be the guide.

Dutton, Peter A. "***Testimonty of Peter A. Dutton: On China's Maritime Disputes in the East and South China Seas*** ." Testimony before the U.S.-China Economic and Security Review Committee, April 4, 2013. [**More** (2 quotes)]

U.S. credibility in the Asia Pacific region is dependent on its ratification of UNCLOS

"The credibility of the United States in the Asia Pacific is at stake on a decision whether to ratify the United Nations Convention on the Law of the Sea (UNCLOS). While there are other compelling arguments for ratification, none is as urgent as the requirement for the United States to solidify its commitment to the rule of international law, including in the Asia Pacific. This is particularly true in regard to one of the world's most important foreign policy and security challenges: resolving disputes in the South China Sea.

This week, the Obama administration went all in on UNCLOS and sent Secretary of State Hillary

Clinton, Defense Secretary Leon Panetta, and the chair of the Joint Chiefs of Staff, General Martin Dempsey, to testify before the Senate Foreign Relations Committee in support of ratification. The ball is now in the Senate's court.

A decision to anchor the United States in UNCLOS is one that cannot be delayed. The president has wisely refocused the country on Asia to advance U.S. interests, from economic recovery and growth to regional peace and security to developing new sources of innovation. Countries around the Asia Pacific are assessing whether the United States has the political will, the pocketbook, and the commitment to further institutionalize its presence in the region. UNCLOS ratification is necessary to answer those important questions in the affirmative.

Ernest Z. Bower and Gregory Poling. "***Advancing the National Interests of the United States: Ratification of the Law of the Sea*** ." **Southeast Asia from the Corner of 18th & K Streets**. (May 25, 2012) [**More**]

UNCLOS is having a normative effect on shaping China's laws and behavior

"The most significant strength of international law—especially international treaty law—is its ability to establish norms of expected behavior among the community of sovereign states. This normative power of international law should not be underestimated for its ability to drive and shape the behavior of states toward stabilizing, predictable behavior. Maritime disputes in particular have benefited from the normative power of the United Nations Convention on the Law of the Sea (UNCLOS). One important normative aspect of UNCLOS was its establishment of a limit of a fully sovereign territorial sea to 12-nautical miles and creation of a 200-nautical mile exclusive economic zone. Prior to international negotiation of a final text in 1982, international claims reflected a hodgepodge of approaches. Indeed, as late as 1990, prior to the date in 1996 when UNCLOS came into force, thirteen states still claimed a 200 nautical mile territorial sea. By 2008, the normative power of UNCLOS reduced this number to seven. As of today six of these remaining seven States are party to UNCLOS, which through Article 3 explicitly limits the territorial sea to 12-nautical miles. Thus, on a global basis the number of states remaining beyond the normative reach of UNCLOS and continuing to claim a 200-nautical mile, fully sovereign territorial sea appears in fact to be only one—Peru.

In East Asia, in many ways there is a similar pattern of close conformity to the norms established in UNCLOS. China and Vietnam represent two countries that have not yet fully adopted its norms. In Vietnam's case, its baselines remain grossly excessive. In China's case, it too maintains numerous excessive, non-normative baseline claims, an ambiguous claim of historic or other rights within the 9-dashed line that has no basis under UNCLOS, and it remains a leaders among a small group of coastal states with non-normative perspectives on foreign military activities in the exclusive economic zone. Recent public coverage of Chinese naval activities in the exclusive economic zones of Japan and the United States suggest that perhaps this is one more way in which Chinese perspectives on international law will join the normative tide. However, even with the remaining deficiencies, both China and Vietnam are party to UNCLOS, have fully incorporated many of its other provisions into their domestic laws, and take an active part in the organizations established by this convention to

further develop international law of the sea.

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Dutton, Peter A. "***Viribus Mari Victoria? Power and Law in the South China Sea***. Presented at "*Managing Tensions in the South China Sea*", **Center for Strategic and International Studies**: Washington, D.C., June 5-6, 2013. [**More** (3 quotes)]

Ratifying UNCLOS would give US ability to credibly demand nations abide by rules in South China Sea

"As the Asia Pacific region continues to rise, competing claims and counter claims in the maritime domain are becoming more prominent. Nowhere is this more prevalent than in the South China Sea. Numerous claimants have asserted broad territorial and sovereignty rights over land features, sea space, and resources in the area. The United States has consistently encouraged all parties to resolve their disputes peacefully through a rules-based approach. The Convention is an important component of this rules-based approach and encourages the peaceful resolution of maritime disputes. Here again though, the effectiveness of the U.S. message is somewhat less credible than it might otherwise be, due to the fact that we are not a party to the Convention.

Some States in the USPACOM AOR have adopted deliberate strategies vis-à-vis the United States to try to manipulate international law to achieve desired ends. Such strategies are infinitely more achievable when working within the customary international law realm, versus the realm of treaty-based law. By joining the Convention, we greatly reduce this interpretive maneuver space of others and we place ourselves in a much stronger position to demand adherence by others to the rules contained in the Convention – rules that we have been following, protecting and promoting from the outside for many decades.

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Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

China's challenge in South China Sea is at is core a dispute over international rule of law and U.S. needs to ratify UNCLOS to have any impact on the outcome

"Third, American policy makers must realize that the contest for East Asia is one of both power and law. International law supports and legitimizes the exercise of American power. It ensures that the landscape of domestic and international opinion is favorable to american objectives, policies, and actions. International law of the sea in particular, through its assurances of freedom of navigation for

security as well as commercial purposes, supports the continued nature of East Asia as a maritime system. International law regarding the free use of international airspace operates similarly. accordingly, to ensure its future position in east asia the United States should take specific actions to defend the international legal architecture pertaining to the maritime and aerial commons. acceding to the United Nations Convention on the law of the sea and once again exercising direct leadership over the development of its rules and norms is the first and most critical step. The Department of State should also reenergize its limits in the seas series to reinforce, publicly and repeatedly, international law related to sea and airspace. a good place to begin the new series would be with a detailed assessment of why international law explicitly rejects China's "U-shaped line" in the South China Sea as the basis for Chinese jurisdiction there. others could be written to describe why China's east China sea continental-shelf claim misapplies international law and why China's ADIZ unlawfully asserts jurisdiction in the airspace. My sense is that East Asian states, indeed many states around the world, are desperate for active american leadership with regard to the norms and laws that govern legitimate international action.

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Dutton, Peter A. "***China's Maritime Disputes in the East and South China Seas*** ." **Naval War College Review**. Vol. 67, No. 3 (Summer 2014): 7-18. [**More** (2 quotes)]

U.S. must emphasize rule of law to counter China's aggressive maritime strategy

"China pursues its security through interior strategies that involve the development of rings of security around central areas of national interest. The Chinese have long felt vulnerable from the sea, and their current maritime strategy seeks to reduce that vulnerability by extending a ring of maritime control around China's periphery. China pursues this control through a combination of force-structure development and legal assertions. Tensions arise because China's strategy conflicts with the territorial claims, resource interests, and security concerns of other states in East Asia. China's strategy also causes friction with the United states, which relies on freedom of navigation in maritime East Asia for American security interests and which must reassure regional allies and partners that american security guarantees are meaningful. In order to ensure the position of the United States in East Asia, american policies must focus on maintaining the region as an open, maritime system. This requires continuous development of technological advantages to ensure that the center of power in Asia does not migrate from the maritime domain to the continent. It also requires the United states to support the ability of allies, friends, and partners to resist China's non-militarized coercion, as well as to reinforce the normative structure that supports the efficacy of maritime power in the region and around the globe.

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Dutton, Peter A. "***China's Maritime Disputes in the East and South China Seas*** ." **Naval War College Review**. Vol. 67, No. 3 (Summer 2014): 7-18. [**More** (2 quotes)]

U.S. can best challenge China's excessive claims as a party to UNCLOS

By ratifying the Convention, the U.S. will have the support of the international community to exert pressure on China—either for peaceful dispute resolution or to adhere to the provisions of the Convention that it too has ratified.

Convention offers diplomatic mechanism to resolve maritime disputes with China

"Finally, the Convention also offers the United States a diplomatic and political solution should a dispute with China arise.[167] Although the United States traditionally resists dispute resolution mechanisms, it would be in its interest to embrace them here. As a non-party to the Convention, a potential dispute between China and the United States could escalate into an explosive situation. By ratifying the Convention, the U.S. will have the support of the international community to exert pressure on China—either for peaceful dispute resolution or to adhere to the provisions of the Convention that it too has ratified.[168]

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Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

China's aggressive maritime posture is a consequence of U.S. failure of leadership on UNCLOS

"Those who argue that the United States should think twice before ratifying UNCLOS because the Convention "has done nothing to avert the current impasse in the South China Sea" are only partially right.30 True, UNCLOS has not deterred Chinese regional maritime expansionism, at least in part because the United States has failed to ensure its leadership over this cornerstone of the global system. By failing to ratify UNCLOS, the United States has allowed China, which ratified it in July 1996, to pursue its own interpreta- tions and to pressure others with the mantle of institutional legitimacy. Thailand's recent ratifi- cation statement shows this clearly and is not a healthy development for a global system predi- cated on free and open trade through a stable maritime domain. Additionally, those South China Sea states that are attempting to conform with UNCLOS norms in order to shape Chinese behaviors and limit China's excessive claims in the South China Sea will require full American leadership and support to be successful.

Although the cracks in the foundation so far remain hairline fractures, sustained and effective American leadership over the pillars of the global system will be essential to repair the damage and to keep the foundation solid. In the South China Sea, this will require the United States to continue to encourage progress by all parties to the region's disputes toward bringing their laws and claims into compliance with UNCLOS. Furthermore, the United States must maintain a sustained focus on this strategically important region, providing con- sistent diplomatic leadership supported by a strong regional military presence.

[*Page 79*]

Dutton, Peter A. "***Cracks in the Global Foundation: International Law and Instability in the South China Sea*** ." in Cooperation from Strength: The United States, China and the South China Sea, edited by Cronin, Patrick. . **Center for a New American Security**: Washington, D.C., January 2012. [**More** (4 quotes)]

China using U.S. non-party status to UNCLOS to bludgeon it for hypocrisy when U.S. challenges China's excessive claims

"As a signatory to UNCLOS, the PRC occasionally implies that its interpretations should trump those of the United States, which has yet to ratify the convention that Washing- ton nevertheless employs as a bludgeon against Beijing's claims that UNCLOS permits limitations by coastal states on foreign military activities in the EEZ. The message is that even though the United States asserts its compliance with UNCLOS, because it has not undertaken to be formally bound by the convention it has no standing to impose its self- regarding interpretations of the regime on those states that have ratified it.

For instance, Zhang Haiwen cites passages from an essay by Scott Borgerson to make the point that there is a "strong political force which is scornful of the Convention in the United States. They like to take advantage of the Convention but do not respect it."[11] Zhang writes, "It is unfair . . . that the United States, which has yet to ratify the Convention, is raising an argument on the interpretation of the Convention."[12] Reacting to what she views as Washington's selective compliance with UNCLOS, Zhang highlights the following from Borgerson's piece: "Opponents of the convention [UNCLOS] argue that there is no need to join the treaty [UNCLOS] because, with the world's hegemonic navy, the United States can treat the parts of the convention it likes as customary international law, following the convention's guidelines when it suits American interests and pursuing a unilateral course of action when it does not."[13]

In these sentiments Zhang is not alone. Chinese observers have framed the dispute about UNCLOS as illustrative of U.S. hegemonic tendencies. "America's failure to cooperate with the international community on UNCLOS is not an isolated phenomenon," writes one commentator, "but is one element in its strategy to dominate the world and monopolize the oceans."[14]

[*Page 112*]

Wachman, Alan M. "***Playing by or Playing with the Rules of UNCLOS?*** ." in Military Activities in the EEZ: A U.S.-China Dialogue on Security and International Law in the Maritime Commons, edited by **Dutton, Peter A**. U.S. Naval War College: Newport, Rhode Island, December 2010. [**More** (4 quotes)]

US shaping operations in Asia Pacific region would be greatly enhanced by US accession to UNCLOS

"In order to be prepared to counter specific threats as they arise across the globe, operational commanders continuously conduct shaping activities in order to give U.S. forces the most favorable operating conditions across the spectrum of conflict. As defined by Joint Publication 3-0, shaping operations are intended to dissuade or deter adversaries, assure or solidify relationships, enhance international legitimacy, and gain multinational cooperation.[51] Therefore, collectively, shaping operations are arguably the most important activity undertaken within an area of responsibility (AOR).

In the PACOM AOR, this note rings especially true. With no major combat operations currently underway, the majority of operations conducted directly support shaping operations. Furthermore, strategic guidance put forth by ADM Robert F. Willard, Commander U.S. Pacific Forces, seeks to protect and defend U.S. interests in the region while promoting regional security and deterrence of aggression; all functions within or underpinned by the effectiveness of shaping operations.[52] Specifically, for the South China Sea this means maintaining forward presence, providing for extended deterrence, and concentrating on the focus areas of allies and partners, China, and transnational threats.[53] In every instance, the United Nations Convention on the Law of the sea and the 1994 Implementation Agreement support those objectives. In fact, for the South China Sea, Freedom of Navigation assertions and the Proliferation Security Initiative would benefit immediately.

[*Page 9-10*]

Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

Ratification of UNCLOS gives U.S. more ground to challenge China on freedom of navigation rights in South China Sea

"Militarily, the Convention provides the United States with a key strategic advantage that its armed services rely upon. That advantage is "the ability to navigate freely on, over, and under the world's oceans."[158] In an urgent situation, the United States would be free to enter the territorial sea of any party to the Convention, including China, without losing momentum by halting to obtain permission, enter into negotiations, or weigh the benefits of violating international law.[159] This is increasingly important given the recent skirmish between China and the United States on the seas. In March of 2009, U.S. ships were collecting information in what China claimed was an illegal manner in

its exclusive economic zone.[160] Chinese and U.S. naval ships had a brief standoff that was peacefully resolved. Because “such incidents can be expected in the future,” U.S. ratification of the Convention is essential.[161] If the United States were a party to the Convention, it could argue that it was freely navigating—an activity that is permissible in China’s exclusive economic zones under the Convention.

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Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. failure to ratify UNCLOS has been detrimental

U.S. failure to ratify UNCLOS has damaged U.S. national security and economic growth by forclosing valuable opportunities, increasing the costs for military operations, and crippling U.S. maritime leadership as our adversaries become more aggressive.

U.S. non-participation in UNCLOS has tangible costs to our national security

"On balance, the arguments in favor of the convention far outweigh those opposed, which is the reason the convention has attracted such a diverse and bipartisan constituency. As presidents Clinton and George W. Bush forcefully argued in their written communications with the Senate (Appendix II), objections to the 1982 convention were substantively addressed in the 1994 agreement on implementation. Continuing to treat most parts of the convention as customary international law, as the United States does now, literally leaves it without a seat at the table in important decision-making bodies established by the convention, such as the Commission on the Limits of the Continental Shelf (CLCS); weakens the hand the United States can play in negotiations over critical maritime issues, such as rights in the opening of the Arctic Ocean; and directly undercuts U.S. ability to respond to emerging challenges, such as increasing piracy in the Indian Ocean. Joining or not joining the convention is more than an academic debate. There are tangible costs that grow by the day if the United States remains outside the convention.

[*Page 19*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Both US and world losing out by US non-participation in UNCLOS

"Without becoming party to the Convention, the United States cannot benefit from all the Convention offers, while the rest of the world also loses from our non-participation in the continued progressive development ofthe Law of the Sea. The United States cannot turn to the binding dispute settlement regime of Part XV should it wish to contest overly assertive straight baseline claims or arbitrary restrictions on innocent passage or marine scientific research.[16] The United States cannot make a claim for an extended continental shelf beyond 200 nautical miles under Article 76. The United States has also been without representation on the Commission on the Limits ofthe Continental Shelf. The Commission has been quietly developing international law on the continental shelf by formulating its Scientific and Technical Guidelines and by reviewing the dozen or so claims that have so far been made. If and when the United States ever does become a party, its extended

continental shelf claim will be assessed, perhaps decades after the Commission began its work, on the basis of standards now being worked out without its participation.

[*Page 23-24*]

Briscoe, John and Peter Prows. "***The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Not in Sight - Still*** ." **The Publicist**. Vol. 1. (2009): 18-26. [**More** (3 quotes)]

As most prominent advocate of UNCLOS during negotiations, US has lost significant political capital by remaining outside the treaty

"The immediate effect of our failure to sign the Convention was a loss of political capital. Had we been only a peripheral player in the UNCLOS process, or had we objected earlier and more vigorously to certain proposals, our refusal to sign would not have been so conspicuous. Unfortunately, our 25 years of active participation in the process, and our mild objections to the initial deep seabed mining provisions, gave the community of nations every reason to believe we were going to sign and support the Treaty. Our refusal to sign at the end of the process was viewed as a capricious policy reversal, resulting in significant political cost.

This situation was exacerbated by the 1983 Reagan Proclamation, which appeared to the international community as an attempt to mold the Treaty for our own use. We lost significant political credibility with our decision not to sign the Treaty and touched off a further torrent of criticism in the wake of the Presidential statement. Some of the international community refused to accept the U.S. contention that the non-seabed provisions of the Treaty reflected customary law and therefore were applicable to all states, whether or not they were parties to it. As one of the most influential UNCLOS negotiators expressed it: "The provisions of the Convention are closely interrelated and form an integral package. Thus, it is not possible for a state to pick what it likesand disregard what it does not like."[10]

[*Page 233*]

George, Cpt. V. Galdorisi USN and Cdr. James G. Stavridis USN. "*United States Convention on the Law of the Sea: Time for a U.S. Reevaluation?*." **Naval Law Review**. Vol. 40. (1992): 229-239. [**More** (2 quotes)]

It is not too late for the U.S. to join UNCLOS but there are and will continue to be real costs for delaying accession

"*[Question] Will there ever reach a point where the United States will have missed so many opportunities to participate in dispute resolutions, or negotiations pursuant to the Convention, that it will no longer will have an interest in joining?* Ambassador Balton responded that delay does not

mean it is somehow too late to join UNCLOS, but that it has real negative consequences. Even if the United States joined UNCLOS today, it would be some time before the Commission on the Limits of the Continental Shelf would make recommendations about the U.S. continental shelf.

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0 "***National Security, Economic Well-Being, and the Law of the Sea*** ." **Environmental Law Institute**. (June 6, 2011) [**More**]

Serious consequences for U.S. by remaining outside the treaty

"The debate on the Convention would be just an interesting political science case study if it were not for the fact that there are serious consequences to not ratifying it. The Convention comes open for amendment for the first time in November of this year. If the United States is not party to the Convention at that time, we will not have a seat at the table to protect against proposed amendments that would roll back Convention rights we fought hard to achieve.

Some nations may press for restrictions on the movement of naval or commercial vessels near their coastline. Others may pursue the right to exclude nuclear-powered vessels from their territorial waters. (Under the Convention, a ship's propulsion system cannot be used as an argument to restrict its movements.) As a party, we will be in a very strong position to prevent harmful amendments.

In addition, the Convention's Commission on the Limits of the Continental Shelf will soon begin making decisions on claims to continental shelf areas that could impact the United States' own claims to the area and resources of our broad continental margin. Russia is already making excessive claims in the Arctic. Unless we are party to the Convention, we will not be able to protect our national interest in these discussions.

Lugar, Richard. "***The Law of the Sea Convention: The Case for Senate Action*** . Presented at "*Conference on the Law of the Sea*", **Brookings Institution**: Washington, D.C., May 4, 2004. [**More** (5 quotes)]

U.S. critical security interests are continually harmed by its non party status to UNCLOS

"If one were to travel back in time and inform the high-level members of the eighteen agency National Security Council Interagency Task Force which formulated United States oceans policy under Presidents Nixon and Ford during the principal formative Convention process – an effort never matched before or since in the care with which it reviewed United States international oceans interests – that the Convention today in force, powerfully meeting all United States oceans interests, would not yet be in force for the United States nine years after being submitted to the Senate, the news would have been received with incredulity. As this suggests, the Congress should understand that United States oceans interests, including our critical security interests, are being injured – and

will continue to be injured – until the United States ratifies the Convention. Among other costs of non-adherence we have missed out in the development of rules for the International Law of the Sea Tribunal and the Commission on the Limits of the Continental Shelf, and in ongoing consideration of cases before the Tribunal as well as ongoing consideration of the Russian continental shelf claim now before the Continental Shelf Commission; we have had reduced effect in the ongoing struggle to protect navigational freedom and our security interests against unilateral illegal claims; and we have been unable to participate in the decisions of the meetings of States Parties. These are not just my conclusions. They are the conclusions of every Chief of Naval Operations and every Secretary of State who has considered these issues and of all the law of the sea experts I work with on a continuing basis.

[*Page 8-9*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

U.S. non-participation in UNCLOS and ceding of seabed to foreign parties could become greatest foreign policy failure

"MOORE: The third question is, well, why do we really need to have adhered to the convention? I hope I have answered that in giving you some of the issues already. Let me just say, if you really believe that you prefer the United States not to be THE oceans leader in the world but simply to be an observer while the rest of the world changes the law and things, then you should be for this opposition. Because that's exactly what is happening.

We are being harmed and being harmed in very serious ways. And one of those that I've been particularly paying attention to economically that has not gotten much attention is literally we have remaining three huge mine sites in the deep ocean floor. A mine site is approximately the size of the state of Rhode Island, each one somewhere around $1 trillion in aggregate value of hard minerals for the United States. We've lost one out of the four of those already because of the delay. The companies just got tired of this and basically sold it for nothing. And if the United States doesn't adhere in a reasonable period of time, what's going to happen is those sites will be turned over to the Chinese and the Russians and the others. And this will be one of the greatest travesties, I think, in the history of U.S. foreign policy.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

U.S. is losing emerging Arctic race by not being party to UNCLOS

By remaining outside of UNCLOS, the U.S. is ceding its leadership role in the region in a number of ways. First, and most importantly for the U.S. strategic and economic interests, by remaining outside of the treaty the U.S. is not able to submit its claims for the extended continental shelf in the Arctic to the CLCS, preventing U.S. industries from claiming mineral rights. Secondly, existing Arctic governance regimes are based on and rely on UNCLOS and the U.S. non-party status prevents it from contributing as a full partner, weakening the overall Arctic governance regime. Finally, U.S. efforts to develop a strategy for the Arctic are constrained by the continual question of its non-party status and legitimacy as a leader.

U.S. is being left behind in race for the Arctic as a non-party to UNCLOS

"As the global climate is warming up rapidly, leading to ice-free summers in the Arctic Ocean, Arctic nations are confronting the prospect of new rights over the Arctic's vast natural resources. All Arctic nations— Canada, Denmark, Norway, Russia—except for the United States, ratified the Convention and have already submitted, or are preparing to submit, proposed limits for their extended continental shelves to the Commission. The submissions will enable these countries to obtain international recognition over their extended continental shelves in the Arctic, including exclusive rights over oil and gas reserves.

As a nation with an extensive coastline and a continental shelf with enormous oil and gas reserves, the United States has much more to gain than lose from joining the Convention. Furthermore, the uncertainties stemming from the customary law make it a less effective measure to protect American interests. Only a universal regime such as the Convention can adequately safeguard the United States' interest in the Arctic Ocean. The best way to guarantee access to the Arctic's resources is for the United States to become a party to the Convention.

[*Page 173*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

U.S. has limited time to ratify convention to secure access to Arctic resources

Ratification of the Convention is an urgent matter. Although a state has up to ten years after it has

ratified the Convention to map and submit proposed limits of its continental shelf to the Commission on the Limits of the Continental Shelf, by that time it may be too late.[196] Global climate change has caused parts of the Arctic Seacap to begin melting, making it navigable for the first time.[197] While this is promising for underwater mining industries, these environmental effects have attracted a great deal of attention and the international community is cooperating to reverse them.[198] Instead of engaging in fruitless political battles with its strategic adversaries, the United States should move quickly to ratify the Convention and focus its energy on extracting the resources beneath the Arctic as quickly as possible.[199] Ratification "would allow full implementation of the rights afforded by the convention, [allowing member nations] to protect coastal and ocean resources."[200]

[*Page 390-391*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. national interest harmed by remaining outside UNCLOS regime and unable to take advantage of Arctic boom

"The good news is that it's not too late to play catch-up. The first and most obvious place for the United States to start is to finally join the 164 other countries that have acceded to unclos. Ironically, Washing- ton had a hand in drafting the original treaty, but Senate Republicans, making misguided arguments about the supposed threat the treaty poses to U.S. sovereignty, have managed to block its ratification for decades. The result has been real harm to the national interest.

UNCLOS allows countries to claim exclusive jurisdiction over the por- tions of their continental shelves that extend beyond the 200-nautical- mile exclusive economic zones prescribed by the treaty. In the United States' case, this means that the country would gain special rights over an extra 350,000 square miles of ocean—an area roughly half the size of the entire Louisiana Purchase. Because the country is not a party to unclos, however, its claims to the extended continental shelf in the Beaufort and Chukchi seas (and elsewhere) cannot be recognized by other states, and the lack of a clear legal title has discouraged private firms from exploring for oil and gas or mining the deep seabed. The failure to ratify unclos has also relegated the United States to the back row when it comes to establishing new rules for the Arctic. Just as traffic through the Bering Strait is growing, Washington lacks the best tool to influence regulations governing sea-lanes and protecting fisheries and sensitive habitats. The treaty also enshrines the international legal principle of freedom of navi- gation, which the U.S. Navy relies on to project power globally.

[*Page 86*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

U.S. should make ratification of UNCLOS a top priority to ensure it doesn't lose out on opening of Arctic

“In light of a global climate crisis and the escalating battle over the valuable resources below the North Pole, Congress should make ratification of UNCLOS one of its top priorities. Until the United States is a treaty member, it cannot enjoy voting privileges on the influential ISA (on which it would be granted a permanent seat) nor submit claims to the CLCS to gain legal rights to the resources in the North Pole‘s seabed. The concerns that influenced President Reagan not to sign the treaty in 1982 have largely disappeared, and the remaining concerns are easily refuted. U.S. ratification of UNCLOS makes sense not just for economic, national security, and environmental reasons, but also to enhance the diplomatic standing of the United States. Accession to UNCLOS now would be a powerful and meaningful gesture on behalf of the United States, symbolizing a recommitment to global cooperation.

[*Page 370*]

Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

Ratification of UNCLOS is critical component of any U.S arctic strategy

“Despite the slowdown, Russia continues to increase its military presence in the Arctic. The National Security Strategy of the Russian Federation until 2020 stresses the importance of strengthening border guard forces in the region and updating their equipment, while creating a new unit of military forces to “ensure military security under various military-political circumstances.”[78] Russia’s assertive rhetoric has been matched by a range of steps that stake its military prominence in the Arctic by developing its coastal defense infrastructure and enhancing its technology capa- bilities, which have been perceived by its Arctic neighbors as provocative and controversial. For example, Russia fired cruise missiles over the Arctic in a summer 2007 exercise; reinforced its Northern Fleet in order to perform additional exercises in the summer of 2008; tested new electronic equipment and precision weapons; and resumed Arctic patrols for the first time since the end of the Cold War. Several times during the past two years U.S. and NATO jets have shadowed Russian bombers close to the Norwegian and Alaskan coasts, particularly during and after the Georgia-Russia conflict in August 2008.

[*Page 25*]

Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

US is falling behind in the race to exploit Arctic resources because it remains outside of UNCLOS

"The Arctic Ocean is currently at the center of the outer continental shelf discus- sion. In fact, the Arctic is becoming the test bench for international politics. It is an ocean where oil and gas, minerals, fisheries, sea lanes, military interests, and gover- nance over ocean spaces meet in conflict among the five "frontline" states (USA, Canada, Denmark/Greenland, Norway, and Russia) while other neighboring entities like Iceland, the EU, Japan, and China express their Arctic interests as well.

All these happen at the same time when Arctic temperatures are rising twice as fast as in the rest of the world20 and climate change becomes incalculable. The warming temperatures break up polar ice, raise sea levels, erode coastlines at a remarkable speed,21 and potentially cause international conflicts as the Arctic becomes accessible at least during the summer. The USA, unlike the other Arctic states, is falling behind in this contest with little or no icebreaking and naval capacities in the region. Moreover, since the USA has not ratified the Law of the Sea Convention, it is neither in a position to claim outer continental shelf areas nor has a say in the International Seabed Authority ISA which will be responsible for deep-sea mining in central parts of the Arctic. Denmark, on the other hand, is working on its "Arctic strategy" with an anticipated claim of outer continental shelves north of Greenland to include the pole, which will be formally presented to the CLCS before 2014.

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Jenisch, Uwe K. "*Old laws for new risks at sea: mineral resources, climate change, sea lanes, and cables*." **WMU Journal of Maritime Affairs**. Vol. 11. (2012): 169-185. [**More** (4 quotes)]

U.S. is locked out of the institutions that will govern control of arctic resources as a non party to UNCLOS

"Corollary to the non-accession to the LOS convention, the US can not access the institutions and mechanisms operating under the legal regime of the Convention. In the present scenario, therefore, the United States lacks legal basis to submit claims for enlarging its continental shelf beyond 200 NM to the CLCS Commission until it ratifies the LOS Convention. This in turn will hamper the US prospects of accessing the Arctic resources. In the meantime, however, state parties to the Convention - Canada, Denmark, Finland, Iceland, Norway, Sweden, and Russia - are all currently competing for valuable sea-bed overlapping rights in the Arctic and collecting evidences to make claim for an extended continental shelf (ECS) in the Arctic region. While the CLCS Commission may begin evaluating their respective ECS claims after receiving submissions at any time, the US continues to have its hands tied for its inability to use the CLCS procedure until it ratifies the LOS Convention. In sum, until the US becomes a party to the LOS Convention, it cannot access the CLCS Commission to gain legal rights to the Arctic seabed resources, nor can it enjoy voting privileges on the influential ISA Authority in influencing decision-making in deep-seabed mining in the —Areall beyond the national jurisdiction.

[*Page 14*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

U.S. non party status to UNCLOS complicates ability to operate and compete for Arctic resources

"Unfortunately, as UNCLOS nears its 40th anniversary, the United States has yet to ratify the treaty despite strong urging from the U.S. Defense and State Departments, as well as from the Joint Chiefs of Staff. In its "Arctic Roadmap," the U.S. Navy actively supports accession to UNCLOS because it provides "effective governance: freedom of navigation, treaty vs. customary law, environmental laws, and extended continental shelf claims."[33] Joining UNCLOS would give the U.S. government a clear framework in which it could more effectively confront growing difficulties pertaining to freedom of navigation in the Arctic region. By not ratifying the U.N. Convention on the Law of the Sea, the United States is at a considerable economic disadvantage as the other Arctic coastal states submit their claims. The United States maintains the world's largest EEZ and has 360 major commercial ports. With potential claims of up to 600 miles of possible resource-rich continental shelf territory in the Arctic, remaining outside the UNCLOS only erodes the position of the United States in the region.

These difficulties have been made explicitly clear in recent reports from the Department of Defense and the U.S. Navy. The Department of Defense has noted that its "lack of surface capabilities able to operate in the marginal ice zone and pack ice will increasingly affect accomplishment of this mission area [sea control] over the mid- to far-term."[34] Moreover, the U.S. Navy "acknowledges that while the Arctic is not unfamiliar for the Navy, expanded capabilities and capacity may be required for the Navy to increase its engagement in this region."[35] These challenges are likely to increase moving forward unless further action is taken. As discussed below in further detail, the fact that the United States has yet to ratify UNCLOS compounds these issues.

[*Page 24-25*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

Warming of the arctic is a compelling reason for U.S. to pursue ratification of UNCLOS at earliest opportunity

The United States has basic and enduring national interests in the oceans. These diverse interests—

security, economic, scientific, dispute settlement, environmental, and leadership—are best protected through a comprehensive, widely accepted international agreement that governs the varying (and sometimes competing) uses of the sea. Although the United States has lived outside the Convention for 30 years, climate change in the Arctic provides the current Administration with a new and urgent incentive to re-engage the Senate and urge that body to provide its advice and consent to U.S. accession to the treaty at the earliest opportunity. As a nation with both coastal and maritime interests, the United States would benefit immensely from becoming a party to UNCLOS—accession will restore U.S. oceans leadership, protect U.S. ocean interests and enhance U.S. foreign policy objectives, not only in the Arctic, but globally.

[*Page 774-775*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

U.S. could challenge China's claim to Arctic resources by becoming party to UNCLOS

"In May 2013, five Asian nations—including China—were granted ob- server status in the Arctic Council, and China has stated it does not intend to be a "wallflower" in the forum.[33] Beijing has expressed an interest in developing new shipping routes through the Arctic that will connect China with its largest export market—the European Union. To that end, in August 2013, a Chinese merchant vessel loaded with heavy equipment and steel set sail from Dalian en route to Rotterdam via the Arctic's Northern Sea Route (NSR).[34] China has also expressed an interest in developing Arc- tic resources. In March 2010, Rear Admiral Yin Zhou of the People's Liberation Army Navy stated at the Eleventh Chinese People's Political Consultative Conference that "under . . . UNCLOS, the Arctic does not belong to any particular nation and is rather the property of all the world's people" and that "China must play an indispensable role in Arctic exploration as it has one-fifth of the world's population."[35] Officials from the State Oceanic Administration have similarly indicated that China is a "near Arctic state" and that the Arctic is an "inherited wealth for all humankind."[36] As a party to UNCLOS, the United States could claim an ECS in the Arctic and forestall any encroachment of U.S. ocean resources by China or any other nation.

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Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Most important step U.S can take to shore up its Arctic Strategy is to ratify UNCLOS

“The United States must take some very concrete steps over the next several years to improve its strategic posture in the Arctic so that over the next 40 years the region is a model of regional coop- eration and not a zone of potential conflict.

The most vital step the United States must take immediately is ratification of the Law of the Sea Convention (UNCLOS). UNCLOS provides the necessary guidance and appropriate frame- work to resolve claims to an extended continental shelf in the Arctic region. To prepare itself for ratification, the United States must continue to invest funds in Arctic scientific research and explo- ration in preparation for submitting U.S. claims for extended territorial boundaries. The Obama Administration must make UNCLOS ratification a legislative priority (amongst many other competing priorities) and achieve Senate ratification as soon as possible. Should the U.S. remain outside of UNCLOS for the foreseeable future, it will find itself in a growing strategic disadvantage in shaping future policy outcomes vis-à-vis the Arctic.

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Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

U.S. needs to ratify UNCLOS to establish shared law in the Arctic to avoid conflict

“The Arctic nations are preparing submissions for the extended shelves; Russia’s is currently under review. Under the terms of the convention, the American zone would be the largest in the world — more than 3.3 million square miles, an area greater than the lower 48 states combined.[74] In addition to protection of shelf claims, the convention is good for the United States because it sets pollution standards and requires signatories to protect the marine environment. The United States has not submitted a claim because it has not ratified the Convention.[75]

Ratification is also important for U.S. long-term presence in the region. In the absence of shared law, countries often make unreasonable and irres- ponsible claims in the maritime environment—the Arctic will be no different.[76] Without binding law, the United States gambles on long-term credibility to enforce international law, freely navigate the oceans, and protect the business ventures that rely on uniform laws.

[*Page 13*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

U.S. economic security is at risk by not engaging in the Arctic -- ratification of UNCLOS is a critical first step

"The United States stands atop a precipice, faced with a momentous opportunity to take advantage of trillions of dollars in natural resources, while sim- ultaneously restoring the nation's economic security through governance and job creation. Governance is the first step. Ratifying the Law of the Sea Conven- tion must be a priority for the administration or the United States will lose economically and could be challenged as the global maritime leader. The Inter- national Maritime Organization will remain the key vehicle for governance mechanisms. AIS expansion, as well as mandated Arctic shipping guidelines and establishing traffic patterns should be top priorities for the United States. Governance needs to be accompanied by a significant acquisition program to keep pace with the other Arctic nations. Ice- breakers, additional aircraft, and infrastructure can no longer be shoehorned into a Coast Guard budget, which has inadequate funding even for recapitaliza- tion of its Vietnam-era fleet.

The United States needs an Arctic economic development strategy that incorporates the departments of Defense, Homeland Security, Commerce, and Energy. Such strategy should include plans for shore-based infrastructure, communications, and surveillance technology, icebreakers, and response aircraft for the region. In an era of declining budgets, the simplest course of action would be to ignore the tremendous potential of investment in the Arctic. However, such willful turning away reduces our ability to reap tremendous economic benefits and could harm U.S. national security interests.

[*Page 16-17*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Current interest in arctic development gives special urgency to US need to ratify UNCLOS

"The activity related to Arctic claims suggests an urgency for U.S. accession to the Convention. This urgency is driven both by what the United States can do and what it can undo as a party to the Convention. While we currently can comment on proposals by other Convention nations[9], accession to the treaty would give the United States standing to substantially modify or block proposals that the U.S. found detrimental to its national interests. This could be done by preparing its own claim to the Continental Shelf Commission, or by working cooperatively with other Arctic nations to develop logical rules to govern exploitation of resources and other uses of the Arctic Sea. This latter strategy reflects one of the biggest benefits of U.S. accession to the Convention-namely that it would generate goodwill and a sense of cooperation over a shared mission to responsibly use the resources of the sea while protecting the oceanic environment for generations to come.

[*Page 5*]

Sagarin, Raphael , Larry Crowder et al. Balancing U.S. Interests in the UN Law of the Sea Convention. Nicholas Institute for Environmental Policy Solutions, Duke University: Durham, NC, October 2007 (8p). [**More** (4 quotes)]

U.S. has already committed to UNCLOS framework in Arctic by signing 2008 Illulissat Declaration but will remain outside of conversation until party to UNCLOS

"The legal regime applicable in the Arctic is the customary international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). While the United States has not ratified UNCLOS, it considers the convention's navigation and jurisdiction provisions to be binding international law. The convention advances and protects the national security, environmental, and economic interests of all nations, including the United States, codifying the navigational rights and freedoms that are critical to American military and commercial vessels. It also secures economic rights to offshore natural resources.[26] Article 76 of the convention allows nations to claim jurisdiction past their exclusive economic zones on the basis of undersea features that are considered extensions of the continental shelf, if a structure is geologically similar to a nation's continental landmass.[27] In May 2008 five of the Arctic nations adopted the Illulissat Declaration, which acknowledges that "the Law of the Sea is the relevant legal framework in the Arctic" and that there is "no need to develop a new comprehensive international legal regime to govern the Arctic," committing the signatories to an "orderly settlement of any possible overlapping claims."[28]

Currently there are overlapping, unresolved maritime boundary claims between the United States and Canada, Canada and Denmark, Denmark and Norway, and Norway and Russia. At this time, none of these disputed boundary claims pose a threat to global stability. While the United States and Canada disagree on the location of the maritime boundary in and northward of the Beaufort Sea, the United States considers Canada a close ally, and the dispute does not jeopardize this relationship.[29] Unfortunately, the United States is the only Arctic nation that has not joined UNCLOS, despite support from President Barack Obama and the Bush and Clinton administrations. Because the Illulissat Declaration recognizes the law of the sea as the framework for deciding issues of Arctic territoriality, the United States will likely find itself at a disadvantage when critical Arctic conversations occur.[30]

[*Page 40*]

Titley, Rear Admiral David W., U.S. Navy, and Courtney C. St. John. "***Arctic Security Considerations and the U.S. Navy's Roadmap for the Arctic*** ." **Naval War College Review**. Vol. 63, No. 2 (Spring 2010): 35-48. [**More** (3 quotes)]

U.S. excluded from discussions on future of Arctic because dispute

resolution is governed by UNCLOS framework

"Meanwhile, U.S. influence in the region is waning, which will only exacerbate America's ability to secure its interests in the region. Within the Arctic Council, the primary venue for promoting cooperation in the region, the United States remains the only member that has not ratified LOSC. The Arctic Council is a consensus-based forum which often debates and makes decisions regarding issues already governed by previous agreements and international law, such as the natural resource exploitation protections provided by LOSC. Considering agreements within existing frameworks such as LOSC can make it easier to level the playing field and hold discussions with countries – except the United States. Given its failure to date to ratify LOSC and subsequent lack of international legitimacy and protections provided under the International Seabed Authority for its natural resource claims, the United States remains excluded from important mechanisms for promoting economic cooperation and respect for rightful natural resource claims by all Arctic countries.

[*Page 7*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. running risk of losing out on Arctic territory by not being a signatory to UNCLOS

"While the United States debates whether or not the convention would undermine U.S. sovereignty, Russia, Canada, and the other Arctic nations are doing all they can to prove that these newly available territories belong to them. By waiting to ratify the convention, the United States risks losing potential territory to countries that are already operating under the treaty, specifically Canada. For example, the Beaufort Sea includes an area where the EEZs of the United States and Canada overlap. Predictably, the two countries have differing opinions on how the area, which covers more than 7,000 square nautical miles, should be demarcated. Canada argues that the treaty signed between Russia and the United Kingdom in 1825, defining the boundary as following the 141° west meridian "as far as the frozen ocean," should stand. The United States position is that since no maritime boundary was ever negotiated between Canada and the United States, the boundary should run along the median line between the two coastlines. This is the kind of territorial dispute the United States stands to lose by not ratifying the convention.

[*Page 38*]

Carlson, Jon D., Christopher Hubach, Joseph Long, Kellen Minteer, and Shane Young. "*Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims*." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 21-43. [**More** (5 quotes)]

UNCLOS ratification is key to securing claims to Arctic resources

through CLCS

“UNCLOS holds specific value for the Arctic security environment as it lays out a set of rules on how to divide disputed territory and resolve possible tensions. It also represents the only path for Arctic coastal states to submit scientific claims to extend their outer continental shelf, which provides important clarity for future economic development. While the five Arctic coastal states are limited by their exclusive economic zone of 200 nautical miles from their coasts, the convention allows them to extend their economic zone if they can prove that the Arctic seafloor’s underwater ridges are a geological extension of the country’s own continental shelf. Within 10 years of ratifying the UNCLOS, countries must submit evidence to the UN Commission on the Limits of the Continental Shelf, the governing body created to deliberate on these submissions, to make their case for an extended continental shelf.

[*Page 24*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

U.S. must adopt multilateral approach to succeed in the Arctic region, starting with ratification of UNCLOS

“Global climate change is bringing about epochal transformation in the Arctic region, most notably through the melting of the polar ice cap. The impact of these changes, and how the global community reacts, may very well be the most important and far-reaching body of issues humanity has yet faced in this new century. A number of nations bordering the Arctic have made broad strides toward exercising their perceived sovereign rights in the region, and all except the United States have acceded to the United Nations Convention on the Law of the Sea (UNCLOS), which provides an international legal basis for these rights and claims.[1] Similarly, while most Arctic nations have been planning, preparing, and program- ming resources for many years in anticipation of the Arctic thaw, the United States has been slow to act on any of the substantive steps necessary for the exercise of sovereign rights or the preservation of vital national interests in the region.[2]

The United States must move outside the construct of unilateral action in order to preserve its sovereign rights in the Arctic, capitalize on the opportunities available, and safeguard vital national interests in the region. In today’s budget-constrained environment and as a Nation at war with higher resource priorities in Iraq and Afghanistan than in the Arctic, it is unrealistic to believe that any significant allocation will be programmed for addressing this issue.[3] Since the United States is too far behind in actions necessary to preserve its critical interests as compared to the other Arctic countries, the Nation must take the lead to cultivate a new multilateral partnership paradigm in the region.

[*Page 117*]

Smith, Reginald R. "***The Arctic: A New Partnership Paradigm or the Next "Cold War"?*** ." **Joint Force Quarterly**. Vol. 62, No. 3 (July 2011): 117-124. [**More** (4 quotes)]

Consensus of military, political, and business authorities support U.S. ratification of UNCLOS to further interests in the Arctic

"In support of multilateral Arctic partnerships are a number of broad-based and disparate organizations and policies nonetheless unified in support of the issue, and additional support comes from consequential benefits inherent in UNCLOS accession. Overarching is National Security Presidential Directive (NSPD) 66, "Arctic Region Policy," released in 2009. Among the directive's policy statements is a robust admonishment for accession to UNCLOS:

> Joining [the UNCLOS treaty] will serve the national security interests . . . secure U.S. sovereign rights over extensive maritime areas . . . promote U.S. interests in the environmental health of the oceans . . . give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted . . . [and] achieve international recognition and legal certainty for our extended continental shelf.[19]

Furthermore, NSPD 66 persuasively promotes multinational partnership in the Arctic to address the myriad issues faced in the region.[20] Likewise, the Department of Defense, as articulated in its 2010 Quadrennial Defense Review, strongly advocates accession to UNCLOS in order "to support cooperative engagement."[21] Also among the tenacious supporters of accession are the U.S. Navy, whose leadership stresses that UNCLOS will protect patrol rights in the Arctic, and a number of environmental groups who want to advocate on behalf of Arctic fauna and flora.[22] In addition, the oil industry lobby representing Chevron, ExxonMobil, and ConocoPhillips asserts that oil and gas exploration cannot reasonably occur without the legal stability afforded in UNCLOS.[23] In a consequential benefit of accession, the extended U.S. continental shelf claims could add 100,000 square miles of undersea territory in the Gulf of Mexico and on the East Coast plus another 200,000 square miles in the Arctic.[24] Accession acts to strengthen and extend Arctic jurisdiction, open additional hydrocarbon and mineral resource opportunities, add to the stability of the international Arctic framework, and boost the legal apparatus for curtailing maritime trafficking and piracy.[25] The benefits appear to outweigh the costs as the United States is increasingly moving to a position of strategic disadvantage in shaping Arctic region policy outcomes by failing to ratify UNCLOS.[26]

[*Page 118-119*]

Smith, Reginald R. "***The Arctic: A New Partnership Paradigm or the Next "Cold War"?*** ." **Joint Force Quarterly**. Vol. 62, No. 3 (July 2011): 117-124. [**More** (4 quotes)]

U.S. at a disadvantage in Arctic Council discussions by not being a

member of UNCLOS

"The United States' continued failure to ratify the U.N. Convention on the Law of the Sea, or UNCLOS, despite broad, bipartisan consensus on its importance undermines our nation's credibility in international marine affairs and diminishes our influence in international forums such as the Arctic Council. Since it was negotiated under Ronald Reagan, every president has supported ratification, and failure to ratify is preventing the United States from defining territorial claims in the Arctic under international law. This leaves us at a disadvantage to every other Arctic Council member. The Obama administration, as part of its comprehensive planning for the Arctic Ocean, should elevate efforts to secure Senate ratification of this treaty after the midterm elections. This effort should include renewed coordination with the Senate Foreign Relations Committee chairman, as well as high-level outreach to all members of the Senate to convey the vital importance of UNCLOS to U.S. commercial, scientific, and security interests in the Arctic Ocean. The administration should call on former Presidents Bill Clinton and George W. Bush to jointly encourage ratification.

[*Page 16*]

Kelly, Cathleen , Michael Conathan, and Vikram Singh. **Helping the Arctic Council Find Its True North** . **Center for American Progress**: Washington, D.C., April 2014 (26p). [**More**]

U.S. must adopt cooperative multilateral approach by ratifying UNCLOS if it wants to regain leadership role in Arctic

"A cooperative approach among international partners is key to ensuring U.S. interests are met within the Arctic region. A multinational effort is essential to ensure both human safety and appropriate environmental stewardship. A unilateral U.S. approach is simply not feasible. However, as the world's sole superpower and as a contiguous Arctic nation, it is imperative that the U.S. assumes an Arctic leadership role within the international community.

Perhaps the most important step for the U.S. is to ratify UNCLOS in order to establish the legitimacy of U.S. leadership among the other stakeholders who have interests in the Arctic. This would partner the United States with the seven other Arctic nations (Russia, Canada, Denmark, Finland, Sweden, Norway, and Iceland), along with six indigenous organizations that are permanent members of the Arctic Council.[52] This multinational assembly meets semiannually and "provides the greatest potential for a comprehensive resolution of environmental and governance issues in the Arctic."[53] NSPD-66/HSPD-25 clearly acknowledges that the "Arctic Council has produced positive results for the United States by working within its limited mandate of environmental protection and sustainable development."[54] U.S. representation on the Arctic Council has slowly increased since its first meeting in 1996. In fact, in March 2010 Secretary of State Hillary Clinton met with her counterparts from Canada, Russia, Denmark, and Norway in Chelsea, Quebec, as part of the Arctic Ocean Foreign Ministers' Meeting. This meeting affirmed the importance of the Arctic Council, its membership, and the need for "new thinking on economic development and environmental protection."[55] However, the

Arctic Council is hindered by its “lack of regulatory authority and the mandate to enact or enforce cooperative security-driven initiatives.”[56] Although very useful for “scientific assessments” and “policy-relevant knowledge”, the Council does not address military concerns.[57]

[*Page 17-18*]

Bunker, Wayne M. **U.S. Arctic Policy: Climate Change, UNCLOS and Strategic Opportunity**. U.S. Army War College: Carlisle, PA, March 22, 2012 (24p). [**More** (4 quotes)]

CLCS has already received submissions from 40 countries without participation of a U.S. commissioner

“Other Benefits. We should also join the Convention now to steer its implementation. The Convention’s institutions are up and running, and we – the country with the most to gain or lose on law of the sea issues – are sitting on the sidelines. As I mentioned, the Commission on the Limits of the Continental Shelf has received submissions from over 40 countries without the participation of a U.S. commissioner. Recommendations made in that body could create precedents, positive and negative, on the future outer limit of the U.S. shelf. We need to be on the inside to protect and advance our interests. Moreover, in fora outside the Convention, the provisions of the Convention are also being actively applied. Only as a party can we exert the level of influence that reflects our status as the world’s foremost maritime power.

Clinton, Hillary. "***Statement from Hillary Clinton: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)***." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More** (3 quotes)]

Two decades of widespread UNCLOS observance in Arctic have given treaty status of binding customary international law

“Additionally, the practice of States in a regional grouping, such as the Arctic Circle, can result in special customary law for all of the similarlysituated States, applicable only in that area.[n353] Further jeopardizing American interests is that the doctrine of the continental shelf in particular has been considered "instant customary law,"[n354] provided that the practice of States whose interests are affected is sufficiently extensive and uniform to indicate a legal obligation.[n355] If the other Arctic nations continue to assert sovereign rights, uniformly based on an extended continental shelf, America may easily be hamstrung by provisions that it does not acknowledge but nonetheless prove binding. By way of example, if an American mining corporation were to form a consortium under a bilateral treaty to harvest sea floor resources with a State that was already a member of UNCLOS, and sought to mine in an area already recognized by UNCLOS as an extension of another Arctic State's continental shelf, or even merely outside its own EEZ, it would contravene the Convention and

also subject both countries to international judicial proceedings.[n356]

It has been suggested that the universal right of navigation under UNCLOS [n357] might be able to provide an alternate legal basis for claiming Arctic economic rights.[n358] However, finessing this argument into a circumvention of the Convention's obligations and limits within the Arctic would be nothing more than unilateralism disguised as political legerdemain. The blithe dismissal of UNCLOS in favor of reliance on the Grotian conception of the freedom of the high seas in order to legitimize American rights over Arctic resources mistakenly ignores the global support and position of authority UNCLOS has achieved.

Rather, in all likelihood, America might be forced to accept the modus vivendi [n359] in the Arctic that has developed over two decades of widespread UNCLOS observance. If the Senate continues to blockade attempts to ratify the treaty, other contingencies should be considered, such as negotiating alternate regimes or implementing UNCLOS via executive order.[n360] Should several "uncooperative members of the Senate" force the United States to the sidelines, "the shortterm political costs of resubmitting UNCLOS [as an executive agreement would be justified] by America's need to be a full player in the remainder of this Arctic competition."

[*Page 244*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

U.S. has made a claim for the Arctic Seacap but as a non-party to UNCLOS, it has limited capacity to defend it

"The United States has also taken steps to tie its continental shelf to the Arctic Seacap in an effort to claim some of the re- sources beneath it.192 The most recent U.S. expedition may have found evidence to extend the continental shelf north of Alaska 100 miles from where it was originally thought to be.193 This could provide a challenge to Russia, Denmark and even Canada’s claims to the territory in the Arctic Seacap.

However, as a non-party to the Convention, the United States has limited recourse for its claim.194 As a party, the United States may (and likely would) submit evidence of its expansive continental shelf to the Commission on the Limits of the Continental Shelf and conclusively establish the outer limits of its territorial sea in the Arctic.195 Should another state try to infringe upon these limits, the United States would have evidence supported by international law to protect itself. The states most likely to pose a threat to the United States in the Arctic—Denmark, Canada and Russia—are all parties to the Convention and therefore must adhere to the findings of the Commission on the Limits of the Continental Shelf. Absent ratification of the Convention, the United States could have taken Russia’s approach. In the unlikely event that terra nullius is found to be an acceptable method for claiming territory on the seas, this action, nevertheless, would have been futile since Russia was the

first to assert a claim over the Arctic.

[*Page 389-390*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. non-party status to UNCLOS puts them at a disadvantage in the Arctic

“For all the changing conditions of the Arctic Ocean, one thing has not changed: the basic rules of international law relating to oceans. These laws apply to the Arctic in the same way that they apply to all the oceans. The international legal oceanic framework remains the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The United States has not yet become party to it, despite the fact that we recognize its basic provisions as reflecting customary international law and follow them as a matter of long-standing policy.

Our status as a non-party to the UNCLOS, however, puts the United States at a disadvantage in a number of fundamental respects, most of which lie beyond the scope of this discussion. But our efforts to address the changing Arctic region bring at least two of those disadvantages into sharp focus.

First, we are the only Arctic nation that is not party to the UNCLOS. As our neighbors debate new ways to collaborate on Arctic Ocean issues, they necessarily will rely on the UNCLOS as the touchstone for their efforts. The United States will continue to take part in these initiatives, but our non-party status deprives us of the full range of influence we would otherwise enjoy in these discussions.

Second, the four other nations that border the central Arctic Ocean—Canada, Denmark/Greenland, Norway, and Russia—are advancing their claims to the continental shelf in the Arctic beyond 200 nautical miles from their coastal baselines. The UNCLOS not only establishes the criteria for claiming such areas of continental shelf, it also sets up a process to secure legal certainty and international recognition of the outer limits of those shelves. The United States also believes that it will be able to claim a significant portion of the Arctic Ocean seafloor as part of our continental shelf. But as a non-party to the UNCLOS, we place ourselves at a serious disadvantage in obtaining that legal certainty and international recognition.

Ambassador David Balton and Rear Admiral Cari Thomas, U.S. Coast Guard. "***Ocean Governance in the High North*** ." **Proceedings Magazine**. (July 1, 2013) [**More**]

U.S. could send powerful signal of its willingness to cooperate in

Arctic by ratifying UNCLOS

"In terms of capabilities, the US is like most Arctic neighbours in not being adequately equipped to optimally operate year-round in an arctic maritime environment. After the events of September 11, 2001 funding for polar research was dramatically cut, and the US was left with only three Arctic-capable icebreakers.[61] The disparity between the growing importance of the Arctic and the lack of capability to adequately patrol it has been recognised by the US government.[62] The issue evidently has not reached a point yet where significant resources will be diverted to the Arctic at the expense of other priorities. Thus like most Arctic states at the moment, with the possible exception of Russia and to a lesser degree Canada, the US chooses to substitute rhetoric over substance.

From a security perspective, this may in fact be viewed in a positive light. While the US and other Arctic states recognise that access to the region may dramatically increase in coming years, the current reality is that Arctic sea ice will dramatically limit marine traffic and resource exploitation for the immediate future. The longer the sea ice serves as a deterrent for any possible 'scramble for the Arctic', the more time is available for stakeholders to use dialogue to diffuse stress points and find compromise positions on contentious issues such as boundary disputes. One such area of friction that the US could eliminate is its non-ratification of UNCLOS. Ratifying the Convention would send a signal to all Arctic and maritime stakeholders that the US is not simply a hegemonic state that abides by only its own rules, but a member of the global community that values and upholds international law.

[*Page 307-308*]

Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

U.S. stuck on the sidelines in the Arctic as a non-party to UNCLOS

"While the other Arctic powers are racing to carve up the region, the United States has remained largely on the sidelines. The U.S. Senate has not ratified the UN Convention on the Law of the Sea (UNCLOS), the leading international treaty on maritime rights, even though President George W. Bush, environmental nongovernmental organizations, the U.S. Navy and U.S. Coast Guard service chiefs, and leading voices in the private sector support the convention. As a result, the United States cannot formally assert any rights to the untold resources off Alaska's northern coast beyond its exclusive economic zone -- such zones extend for only 200 nautical miles from each Arctic state's shore -- nor can it join the UN commission that adjudicates such claims. Worse, Washington has forfeited its ability to assert sovereignty in the Arctic by allowing its icebreaker fleet to atrophy. The United States today funds a navy as large as the next 17 in the world combined, yet it has just one seaworthy oceangoing icebreaker -- a vessel that was built more than a decade ago and that is not optimally configured for Arctic missions. Russia, by comparison, has a fleet of 18 icebreakers. And even China operates one icebreaker, despite its lack of Arctic waters. Through its own neglect, the world's sole superpower -- a country that borders the Bering Strait and possesses over 1,000 miles

of Arctic coastline -- has been left out in the cold.

Borgerson, Scott G. "***Arctic Meltdown: The Economic and Security Implications of Global Warming*** ." **Foreign Affairs**. Vol. 87, No. 2 (March/April 2008). [**More** (10 quotes)]

U.S. has significant interests in untapped mineral wealth in Arctic

According to the U.S. Geological Survey, the Arctic region is the largest unexplored prospective area for petroleum remaining on earth with an estimated ninety billion barrels of undiscovered oil reserves, and 1,670 trillion cubic feet of natural gas. In addition, the unpredictability of the Persian Gulf region makes the Arctic region even more attractive for exploitation.

U.S. has significant economic interest in Arctic oil reserves

"The economic importance of the energy resources trapped under the Arctic seabed is difficult to overstate. In 2007, Alaska produced 722,000 barrels of oil per day.[96] This is only a fraction of the state's 1988 production peak of 2,017,000 barrels of oil per day.[97] Today, Alaskan oil production accounts for more than sixteen percent of all U.S. production; in 1988, it was more than a third. Natural gas is a significant energy resource in Alaska (433.5 billion cubic feet are marketed from Alaska per year) but contributes only 2.2% to the U.S. market.[98] U.S. Arctic oil exploitation pales, however, in comparison with that of the other Arctic nations.[99] Norway, for instance, has produced dramatically more oil from its Arctic sea beds than the United States has over similar periods. In 2007, Norway produced 2,564,884 barrels of oil per day compared to Alaska's mere 722,000 barrels per day; approximately 500,000 barrels per day more than Alaska's 1988 peak.[100] The other Arctic nations each produce significant quantities of oil as well.[101]

[*Page 319*]

Larkin, John E. D. "*UNCLOS and the Balance of Environmental and Economic Resources in the Arctic*." **Georgetown International Environmental Law Review**. Vol. 22. (2010): 307-336. [**More** (5 quotes)]

Warm arctic will increase availability of key resources including minerals and oil

"One future change in the Arctic region is greater accessibility to, and availability of, natural resources, including offshore oil and gas, minerals, and fisheries. The Arctic contains 10 percent of the world's known petroleum reserves and approximately 25 percent of its undiscovered reserves.[18] The U.S. exclusive economic zone has a potential thirty billion barrels of oil reserves and 221 billion cubic feet in natural gas reserves.[19] Minerals available for extraction in the Arctic include manganese, copper, cobalt, zinc, and gold. Coupled with a rise in global demand for natural oil and gas resources

and improved accessibility, the Arctic has become a new focus for oil companies looking for untapped resources. Already $2.6 billion has been spent on active oil and gas leases in the Chukchi Sea.[20] Yet the extraction of these minerals and petroleum reserves depends heavily upon development and deployment of resilient technology that can function in such harsh conditions, marked by lack of infrastructure and long distances to markets.

[*Page 38*]

Titley, Rear Admiral David W., U.S. Navy, and Courtney C. St. John. "***Arctic Security Considerations and the U.S. Navy's Roadmap for the Arctic*** ." **Naval War College Review**. Vol. 63, No. 2 (Spring 2010): 35-48. [**More** (3 quotes)]

U.S. access to Arctic mineral and oil wealth depends on accession to UNCLOS

“Determination of who owns the Arctic Ocean and any resources that might be found beneath those waters will have significant economic implications. The U.S. Department of Energy predicts a decline in petroleum reserves and, despite oil prices topping $146 in June 2008, the demand for oil is growing.[6] In addition to the vast mineral resources, the unpredictability of the Persian Gulf region makes the Arctic region even more attractive for exploitation. Russia and Norway have already submitted their claims to the Commission on the Limits of the Continental Shelf (“the Commission”), while Canada and Denmark are collecting evidence to prepare their submissions in the near future.[7] All of these nations can gain considerable oil and gas resources as a result of the Convention.

However, one Arctic state has so far failed to join the race. Unlike the other Arctic nations, the United States has not ratified the Convention. Although the United States has complied voluntarily with the Convention, the failure to ratify the Convention could foreclose its ability to tap into potential energy resources. This failure could prevent significant contributions to American energy independence, and increase security threats. Thus, the best way to guarantee access to the Arctic’s resources and to protect other economic and non-economic interests is for the United States to become a party to the Convention.

[*Page 149-150*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Trillions of dollars of natural resources waiting to be developed in the Arctic

According to a 2008 assessment by the U.S. Geological Survey (USGS), “the total mean

undiscovered conventional oil and gas resources in the Arctic are estimated to be approximately 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids."[17] The overwhelming majority of these resources—84 percent—is expected to occur in offshore areas. Over 70 percent "of the mean undiscovered oil resources is estimated to occur in five provinces: Arctic Alaska, Amerasia Basin, East Greenland Rift Basins, East Barents Basins, and West Green- land-East Canada."[18] Similarly, over 70 percent "of the undiscovered natural gas is estimated to occur in three provinces: the West Siberian Basin, the East Barents Basins, and Arctic Alaska."[19] Arctic Alaska, the Amerasia Ba- sin, and the North Chukchi-Wrangel Foreland Basin provinces, portions of which could be claimed by the United States, account for over 40 million barrels of oil, 284 billion cubic feet of natural gas, 6.5 million barrels of natural gas liquids and 94 million barrels of oil and oil-equivalent natural gas.[20] The value of these resources is estimated to be in the trillions of dollars.[21]

[*Page 763-764*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Arctic resources are vital for U.S economic and national security

"Traditionally, national security is conceptualized as hard and soft power or military might and diplomatic influence. Economic strength, however, is the foundation of power. Adm. Mike Mullen, former chairman of the Joint Chiefs of Staff, proclaimed that debt poses the biggest threat to U.S. national security.[1] Although his warning hardly raised an eyebrow, the economic engines that are China and Germany—and their corresponding global strength—are evidence of the interdependence of economic and national security.

For the United States, greater economic security can be supplied by the untapped resources of the Arctic, where this nation has been dealt an exceptional, yet underutilized, hand. The U.S. share of the Alaskan Arctic holds an estimated 30 billion barrels of oil and more than 220 trillion cubic feet of natural gas, as well as rare earth minerals and massive renewable wind, tidal, and geothermal sources of energy. Unprecedented climate changes have increased access to the region and transformed it into an emerging commercial sector. In total, the economic potential amounts to trillions of dollars. In this period of financial stagnation, developing these energy sources would be a tremendous boost to the United States.

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Arctic region contains largest unexplored deposits of oil left

“The race for resources is on, although the United States remains at the starting gate. Joining Arctic neighbors in the exploration for and extraction of oil, gas, and rare earth minerals in the U.S. portion could provide an economic boon to the flailing economy of the United States. In 2008, the U.S. Geological Survey (USGS) stated that ‘‘The extensive Arctic continental shelves may constitute the geographically largest unexplored prospective area for petroleum remaining on earth.’’[11] In the report, the USGS estimates that 90 billion barrels of oil, nearly 1,700 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids may remain to be discovered throughout the region. Nearly all (84 percent) of the oil and gas is expected to be found offshore. The USGS estimate for total undiscovered oil and gas in the Arctic exceeds the total discovered amount of Arctic oil and oil-equivalent natural gas.[12]

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Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

U.S. economic security is at risk by not engaging in the Arctic -- ratification of UNCLOS is a critical first step

“The United States stands atop a precipice, faced with a momentous opportunity to take advantage of trillions of dollars in natural resources, while sim- ultaneously restoring the nation’s economic security through governance and job creation. Governance is the first step. Ratifying the Law of the Sea Conven- tion must be a priority for the administration or the United States will lose economically and could be challenged as the global maritime leader. The Inter- national Maritime Organization will remain the key vehicle for governance mechanisms. AIS expansion, as well as mandated Arctic shipping guidelines and establishing traffic patterns should be top priorities for the United States. Governance needs to be accompanied by a significant acquisition program to keep pace with the other Arctic nations. Ice- breakers, additional aircraft, and infrastructure can no longer be shoehorned into a Coast Guard budget, which has inadequate funding even for recapitaliza- tion of its Vietnam-era fleet.

The United States needs an Arctic economic development strategy that incorporates the departments of Defense, Homeland Security, Commerce, and Energy. Such strategy should include plans for shore-based infrastructure, communications, and surveillance technology, icebreakers, and response aircraft for the region. In an era of declining budgets, the simplest course of action would be to ignore the tremendous potential of investment in the Arctic. However, such willful turning away reduces our ability to reap tremendous economic benefits and could harm U.S. national security interests.

[*Page 16-17*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American**

Foreign Policy Interests. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Arctic contains huge deposits of oil and natural gas

"According to the U.S. Geological Survey, the Arctic region is the largest unexplored prospective area for petroleum remaining on earth.[21] The agency estimated that the Arctic may hold as much as ninety billion barrels of undiscovered oil reserves, and 1,670 trillion cubic feet of natural gas.[22] This would amount to 13% of the world's total undiscovered oil and about 30% of the undiscovered natural gas. With an average consumption rate of eighty six million barrels per day, "the potential oil in the Arctic could meet global demand for almost three years."[23] The Arctic's potential natural gas resources are three times bigger, which is equal to Russia's gas reserves, which are the world's largest.[24]

[*Page 152*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Arctic oil deposits may make up an estimated 22% of undiscovered resources

"It also includes massive oil and gas deposits—the main reason the region is so economically promising. Located primarily in western Siberia and Alaska's Prudhoe Bay, the Arctic's oil and gas fields account for 10.5 percent of global oil production and 25.5 percent of global gas production. And those numbers could soon jump. Initial estimates suggest that the Arctic may be home to an estimated 22 percent of the world's undiscovered conventional oil and gas deposits, according to the U.S. Geological Survey. These riches have become newly accessible and attractive, thanks to retreating sea ice, a lengthening summer drilling season, and new exploration technologies.

Private companies are already moving in. Despite high extraction costs and regulatory hurdles, Shell has invested $5 billion to look for oil in Alaska's Chukchi Sea, and the Scottish company Cairn Energy has invested $1 billion do the same off the coast of Greenland. Gazprom and Rosneft are planning to invest many billions of dollars more to develop the Russian Arctic, where the state-owned companies are partnering with ConocoPhillips, ExxonMobil, Eni, and Statoil to tap remote reserves in Siberia. The fracking boom may eventually exert down- ward pressure on oil prices, but it hasn't changed the fact that the Arctic contains tens of billions of barrels of conventional oil that will one day contribute to a greater global supply. Moreover, that boom has also reached the Arctic. Oil fracking exploration has already begun in northern Alaska, and this past spring, Shell and Gazprom signed a major deal to develop shale oil in the Russian Arctic.

[*Page 80-81*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

Approximately 1/3 of Arctic resources lie within region U.S. would gain access to if it ratifies UNCLOS

"The U.S. Geological Survey released a report in 2008 that indicated approximately 13 percent of the world's untapped oil reserves reside in the Arctic region. One-third of these reserves lie inside the U.S. Exclusive Economic Zone (EEZ) off the northern slope of Alaska. The report also estimated that approximately 30 percent of the world's remaining natural gas reserves reside within the Arctic region.[19] In recent years, icecap melting, along with advances in technology, has rendered retrieval of natural resources in the Arctic both feasible and acceptable in terms of environmental risk.

[*Page 7*]

Bunker, Wayne M. **U.S. Arctic Policy: Climate Change, UNCLOS and Strategic Opportunity** . U.S. Army War College: Carlisle, PA, March 22, 2012 (24p). [**More** (4 quotes)]

Warming of the Arctic is allowing access to its mineral resource wealth, including precious gems and rare earth elements

"Then there are the minerals. Now, longer summers are providing additional time to prospect mineral deposits, and retreating sea ice is opening deep-water ports for their export. The Arctic is already home to the world's most productive zinc mine, Red Dog, in northern Alaska, and its most productive nickel mine, in Norilsk, in northern Russia. Thanks mostly to Russia, the Arctic produces 40 percent of the world's palladium, 20 percent of its diamonds, 15 percent of its platinum, 11 percent of its cobalt, ten percent of its nickel, nine percent of its tungsten, and eight percent of its zinc. Alaska has more than 150 prospective deposits of rare-earth elements, and if the state were its own country, it would rank in the top ten in global reserves for many of these minerals. And all these assets are just the beginning. The Arctic has only begun to be surveyed. Once the digging starts, there is every reason to expect that, as often happens, even greater quantities of riches will be uncovered.

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Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

U.S. stands to make hundreds of billions of dollars and create 55,000 new jobs a year from developing Arctic oil and gas resources

"The potential implications of this extended continental shelf regime are profound. With one of the largest coastlines in the world, the United States is expected to have over 291,000 square miles of extended continental shelf.[89] The U.S. continental margin off the coast of Alaska alone may extend to a minimum of 600 miles from the Alaskan baseline.[90] Alaska's extended continental shelf lies over the Arctic Alaska province, one of the many oil- and gas-rich basins in the Arctic.[91] It is estimated that there may be almost 73 billion barrels of oil and oil-equivalent natural gas located in the Arctic Alaska province, the second highest estimated production capability of all Arctic provinces.[92] The continental shelf within the 200-mile EEZ under the Beaufort and Chukchi Seas alone may have over 23 billion barrels of oil and 104 trillion cubic feet of natural gas.[93] Not only would development of these resources promote energy independence, a U.S. national security objective,[94] it would also create almost 55,000 jobs per year nationwide and generate over $193 billion in federal, state, and local revenue over a fifty-year period.[95] Due to delays in Arctic oil and gas exploration in the Chukchi and Beaufort Seas, both within the U.S. 200-mile EEZ, the earliest estimated date of extraction is sometime after 2019.[96]

[*Page 8*]

Houck, James W. The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Arctic warming is unlocking potentially greatest untapped reserve of oil and gas resources

"Shrinking ice caps, melting permafrost, and technological advances enable greater access to the region's abundant oil and gas reserves, which include as much as one-fifth of the undiscovered petroleum on the planet. With longer ice-free periods now available to explore for hydrocarbons, a new scramble for oil and gas could occur especially if oil prices recover to levels above $100 per barrel. In July 2008, the U.S. Geological Survey (USGS) estimated that the Arctic comprises 30 percent of the world's remaining natural gas resources, or 44 billion barrels, and 13 percent of untapped oil supplies, or 90 billion barrels. Nearly all (84 percent) of the oil and gas is expected to occur offshore, and most of the projected reserves are located in waters less than 500 meters deep and will likely fall within the uncontested jurisdiction of one or another Arctic costal state. "The extensive Arctic continental shelves may constitute the geographically largest unexplored prospec- tive area for petroleum remaining on Earth."7 The Arctic already accounts for one-tenth of global conventional petroleum reserves, and the projections of the latest USGS study did not even ad- dress the potential for developing energy sources such as oil shale, gas hydrates, and coal-bed methane, all of which could be present. But with it comes the risk of increased pollution, pos- sible spills from oil and gas, and the threat of contaminating water sources during the extraction process.

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Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

Arctic seabed has potential to be significant source of valuable minerals

"Oil and natural gas are not the only resources likely to be found in the Arctic valuable minerals may also exist on the seabed. Scientists have long known about unconventional mineral ore deposits known as manganese nodules. These nodules are spherical accretions of manganese, cobalt, copper and nickel which precipitate out of sea water at depth. n48 They form when warm solutions of dissolved metals from the earth's crust leach into cold ocean waters, and they are found on roughly a quarter of the ocean floor.[n49] Recovering the nodules can be technically difficult. The nodules are usually found under at least 2 miles of water and dredging them stirs large quantities of sediment which seriously disrupts marine habitat.[n50] Thus, excitement surrounding the minerals has calmed significantly since the 1970's.[n51] Not only must the technology become cheaper and more widely available, but industrial commodity prices must also remain high to make manganese nodules profitable.[n52]

[*Page 532-533*]

Mendez, Tessa. "***Thin Ice, Shifting Geopolitics: The Legal Implications Of Arctic Ice Melt*** ." **Denver Journal of International Law and Policy**. Vol. 38. (Summer 2010): 527-547. [**More** (6 quotes)]

Vast amounts of mineral and energy resources available in U.S. and Russian Arctic territories

"The U.S. Geological Survey estimates that the Arctic might hold as much as 90 billion barrels (13 percent) of the world's undiscovered oil reserves and 47.3 trillion cubic meters (tcm) (30 percent) of the world's undiscovered natural gas. At current consumption rates and assuming a 50 percent utilization rate of reserves, this is enough oil to meet global demand for 1.4 years and U.S. demand for six years. Arctic natural gas reserves may equal Russia's proven reserves, the world's largest.[1] (See Table 1.)

The Russian Ministry of Natural Resources estimates that the underwater Arctic region claimed by Russia could hold as much as 586 billion barrels of unproven oil reserves.[2] The ministry estimates that proven oil deposits "in the Russian area of water proper" in the Barents, Pechora, Kara, East

Siberian, Chukchi, and Laptev Seas could reach 418 million tons (3 billion barrels) and proven gas reserves could reach 7.7 tcm. Unexplored reserves could total 9.24 billion tons (67.7 billion barrels) of oil and 88.3 tcm of natural gas.[3] Overall, Russia esti- mates that these areas have up to 10 trillion tons of hydrocarbon deposits, the equivalent of 73 trillion barrels of oil.[4]

In addition to oil and gas, the Arctic seabed may contain significant deposits of valuable metals and precious stones, such as gold, silver, copper, iron, lead, manganese, nickel, platinum, tin, zinc, and diamonds. The rise of China, India, and other developing countries has increased global demand for these commodities.[5]

[*Page 3-4*]

Cohen, Ariel , Ph.D., Lajos F. Szaszdi, Ph.D., and Jim Dolbow. **The New Cold War: Reviving the U.S. Presence in the Arctic** . **Heritage Foundation**: Washington, D.C., October 30, 2008 (13p). [**More** (3 quotes)]

Other nations are pursuing Arctic claims to the detriment of the U.S.

Russia, Denmark, Norway, and Canada are staking their claims to Arctic resources but the United States, which has conducted research on how far the continental shelf extends from Alaska toward the North Pole, cannot submit any of its evidence because it is not a party to the UN Convention on the Law of the Sea (UNCLOS).

Russia asserting its rights in Arctic to gain access to resources

"The resource race of the 21st century requires that nations seek resources from every corner of the globe to meet growing demand.[169] The seas—long considered valuable sources of minerals, food, and now, energy—are no exception.[170]

Not surprisingly, nations are racing to stake a claim to these resources.[171] Russia made a bold move in August of 2007 by planting a flag on the Arctic Seacap at the North Pole in an attempt to reinforce claims it has been making since 2001 that it owns the resources on the floor of the Arctic Ocean.[172] The Arctic Seacap is an especially sought after area since it "may hold billions of gallons of oil and natural gas—up to 25 percent of the world's undiscovered reserves"[173] and is rapidly melting, making it navigable for the first time.[174] Russia's actions met immediate resistance from members of the international community, and have sparked debate over the resources the sea holds and who their lawful owner is.[175] In fact, one journalist commented that "[t]he polar dive was part publicity stunt and part symbolic move to enhance [Russia's] disputed claim to nearly half the Arctic seabed."[176]

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Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Several countries including China and Japan are lobbying for permanent observer status at the Arctic Council

"Chinese activity in the Arctic to some extent mirrors that of other non-Arctic countries, as the region warms.

The European Union, Japan and South Korea have also applied in the last three years for permanent

observer status at the Arctic Council, which would allow them to present their perspective, but not vote.

This once-obscure body, previously focused on issues like monitoring Arctic animal populations, now has more substantive tasks, like defining future port fees and negotiating agreements on oil spill remediation. “We’ve changed from a forum to a decision-making body,” said Gustaf Lind, Arctic ambassador from Sweden and the council’s current chairman.

Elisabeth Rosenthal. "***Race Is On as Ice Melt Reveals Arctic Treasures*** ." **The New York Times**. (September 19, 2012) [**More**]

China using local companies as way of gaining access to Arctic resources

“Even so, Arctic nations and NATO are building up military capabilities in the region, as a precaution. That has left China with little choice but to garner influence through a strategy that has worked well in Africa and Latin America: investing and joining with local companies and financing good works to earn good will. Its scientists have become pillars of multinational Arctic research, and their icebreaker has been used in joint expeditions.

And Chinese companies, some with close government ties, are investing heavily across the Arctic. In Canada, Chinese firms have acquired interests in two oil companies that could afford them access to Arctic drilling. During a June visit to Iceland, Premier Wen Jiabao of China signed a number of economic agreements, covering areas like geothermal energy and free trade.

In Greenland, large Chinese companies are financing the development of mines that are being developed around discoveries of gems or minerals by small prospecting companies, said Soren Meisling, head of the China desk at the Bech Bruun law firm in Copenhagen, which represents many of them. A huge iron ore mine under development near Nuuk, for example, is owned by a British company but financed in part by a Chinese steel maker.

Chinese mining companies have proved adept at working in challenging locales and have even proposed building runways for jumbo jets on the ice in Greenland’s far north to fly out minerals until the ice melts enough for shipping.

“There is already a sense of competition in the Arctic, and they think they can have first advantage,” said Jingjing Su, a lawyer in Bech Bruun’s China practice.

Elisabeth Rosenthal. "***Race Is On as Ice Melt Reveals Arctic Treasures*** ." **The New York Times**. (September 19, 2012) [**More**]

Ratification of UNCLOS is necessary to exploit Arctic oil and gas

The Convention also gives the United States an opportunity to expand its sovereignty rights over resources on and under the ocean floor beyond 200 nautical miles to the end of its continental shelf, up to 350 nautical miles.[140] This mechanism is especially valuable to the United States as it would maximize legal certainty regarding the United States' rights to energy resources in large offshore areas, including the areas of the Arctic Ocean. However, the United States must ratify the Convention for its claims to be internationally recognized.[141] Not surprisingly, the American oil companies favor ratification, as it will allow them to explore oceans beyond 200 miles off the coast, where evolving technologies now make oil and natural gas recoverable.[142] If the United States ratifies the Convention it could expand its areas for mineral exploration and production by more than 291,383 square miles.[143] The United States' claim under article 76 would add an area in the Arctic (Chukchi Cap) roughly equal to the area of West Virginia.[144] With a successful claim the United States would have the sole right to the exploitation of all the resources on and under the Arctic Ocean bottom. These potential energy resources could make significant contributions to United States energy independence. Because the Convention is the only means of assuring access to the mineral resources beneath the Arctic Ocean, American companies "wishing to engage in deep seabed mining operations will have no choice but to proceed under the flag of a country that has adhered to the treaty."[145]

[*Page 169-170*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

China expanding ties with Iceland to gain access to Arctic resources

"No region so rich in resources, both real and man-made, can avoid attracting the attention of China for long. Indeed, right on cue, Beijing has begun a concerted effort to make inroads in the Arctic—especially in Iceland and its semiautonomous neighbor, Greenland—with far- reaching geopolitical implications. In May, the Arctic Council granted observer status to China, along with India, Italy, Japan, Singapore, and South Korea.

China sees Iceland as a strategic gateway to the region, which is why Premier Wen Jiabao made an official visit there last year (before heading to Copenhagen to discuss Greenland). China's state-owned shipping company is eyeing a long-term lease in Reykjavik, and the Chinese billionaire Huang Nubo has been trying for years to develop a 100-square-mile plot of land on the north of the island. In April, Iceland signed a free-trade deal with China, making it the first European country to do so. Whereas the United States closed its Cold War–era military base in Iceland in 2006, China is expanding its presence there, con- structing the largest embassy by far in the country, sending in a constant stream of businesspeople, and dispatching its official icebreaker, the Xue Long, or "Snow Dragon," to dock in Reykjavik last August.

[*Page 84*]

Borgerson, Scott G. "*The Coming Arctic Boom: As the Ice Melts, the Region Heats Up* ." Foreign Affairs. Vol. 92, No. 4 (July/August 2013): 76-89. [More (7 quotes)]

Other Arctic nations are taking the lead in developing rich Arctic resources in oil, minerals, and rare earth elements

"Russia is in the lead for Arctic oil exploration in its region, with its neighbors not far behind. Last year, Russia announced plans for two oil giants to begin drilling as early as 2015.[15] The Russian firm Gazprom is developing the Shtokman field in the Barents Sea, home to one of the world's largest natural gas deposits. Russia has active oil and gas fields off western Siberia and is shipping oil from an offshore terminal in the Pechora Sea to Murmansk.[16] Greenland is embarking on offshore drilling near Disko Island off its west coast.[17] Norway has developed the Snoh- vit gas field in the Barents Sea near the Hammerfest and is shipping its output of liquefied natural gas to Europe and North America.[18] In 2008, Canada received C$1.2 billion ($1.8 billion) from British Petroleum for rights to explore three parcels in Canada's Beaufort Sea, north of the Arctic Circle.19 The world is one step closer to the Arctic economy. Rare earth minerals are also embedded in the Arctic. Red Dog Mine, the largest zinc mine in the world, is located in northwest Alaska and is quite profitable despite operating only 99 days a year.[20] Across the Arctic in Siberia, is the Norilsk Nickel mining com- plex, which leads the world in nickel and palladium production, and is not far behind with copper.[21] Rich iron ore deposits run through Canada in the Baffin Basin.[22]

[*Page 7*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." American Foreign Policy Interests. Vol. 34. (2012): 5-19. [More (7 quotes)]

Multiple states have competing claims for jurisdiction over the North Pole

"As Russia, Denmark and Canada vie to stake their claims, a complicating factor is that a fourth country, the United States, has conducted research on how far the continental shelf extends from Alaska toward the North Pole and could potentially stake its own claim. However, the U.S. cannot submit any of its evidence because it is not a party to the UN Convention on the Law of the Sea (UNCLOS).

Norway, a fifth country that could conceivably have a territorial claim to the North Pole, has said that it will not pursue any claim under UNCLOS.

Russian officials are making repeated statements about the government's intent to claim jurisdiction over the North Pole through a coming submission of evidence to the Commission on the Limits of the Continental Shelf under UNCLOS. The submission will be a continuation of one made to the

commission in 2001, which the panel determined insufficient. Russia was directed to resubmit its evidence “within a reasonable time.”

Canada and Denmark likely won't be far behind, claiming in recent submissions to the commission that they each will soon submit evidence that their continental shelves extend to the North Pole.

Canada made a partial submission to the commission on Dec. 9, 2013, on delineating its outer continental shelf in the Atlantic Ocean. It did not include data about the North Pole, but specifically reserved Canada's right to make a submission of such evidence in the future.

Jenny Johnson. "***Who Owns the North Pole? Debate Heats Up as Climate Change Transforms Arctic*** ." **Bloomberg News**. (April 4, 2014) [**More**]

Many countries are trying to expand their influence within Arctic Council to have a say over arctic resources

“Highlighting the Arctic’s growing global importance, a number of countries with no geo- graphical links to the Arctic region but with important commercial and economic interests, such as China, South Korea, and the European Union, want to have a voice in future Arctic delibera- tions. France, Germany, Poland, Spain, the Netherlands, and the United Kingdom have been granted “permanent observer” status on the Arctic Council, and China is considered an “ad hoc observer.” Only Arctic Council member states have voting rights, and therefore “ad hoc observer” status does not differ from “permanent observer” with regard to the influence on the decision- making process in ministerial meetings. However, “ad hoc observer” status requires that nation to apply to be admitted to each Arctic Council meeting. The European Union’s application to become a “permanent observer” was blocked in 2009 by Arctic Council member Canada in response to the European Union’s ban on the importation of seal products. This example illustrates the chal- lenges of relying on the current structure of the Arctic Council for balanced and objective rulings, which often fall victim to paralyzing squabbles and the partial leveraging of national interests. On the other hand, the Arctic Five excludes nations and indigenous peoples with legitimate interests in the region, compromising its international credibility as a comprehensive governing arrange- ment. As rifts among international governance institutions continue to emerge, to the detriment of regional policy cohesiveness, the U.S. government must clarify how it wishes to primarily proceed with its multilateral Arctic engagement, either principally through the Arctic 5 ad hoc process or through the more institutionalized Arctic Council’s effort.

[*Page 14*]

Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

China views US non signatory status to UNCLOS as a liability it can exploit to gain access to Arctic resources

"The 2009 article that started the series on Arctic issues in the Journal of the Ocean Uni- versity of China, "Research on the Issue of Arctic Environmental Law from the Point of View of International Law," by Liu Huirong and Yang Fan of Ocean University's School of Law and Political Science, is from start to finish an examination of environmental and legal issues pertaining to the Arctic.26 It contains no substantial discussion of specifically Chinese interests in the Arctic and does not regard or treat Arctic environmental issues as representing a legal or diplomatic back door through which China could enter the Arctic and then throw its weight around geopolitically.

Liu and Yang bemoan the present lack of a comprehensive international Arctic treaty, and consider extensively the reasons for the "fragmentation of international law" as it pertains to the Arctic environment. They also discuss at some length the contradictions among various treaties and instruments of environmental law, as well as between na- tional and international law. They then give suggestions for resolving these conflicts.27 In their conclusion they express optimism about UNCLOS as the best means for balancing international interests, characterizing the U.S. refusal to accede to the convention as an American liability:

> Looking far and wide at the legal documents which can resolve disputes related to the Arctic and how each state implements them, [it is our opinion that] UNCLOS is the most effective path for balancing the rights and interests among each of the signatory Arctic states. In the present disputes, with the exception of the United States, all other countries have already ratified UNCLOS. As a nonsignatory state to UNCLOS, in the midst of the disputes over resources which are growing fiercer by the day, the United States is meet- ing up with risks and hazards [regarding access to] the rich resources of several thousand square kilometers of continental shelf. The position of the U.S. as a nonsignatory state in reality impedes its protection of its maritime interests. To protect their rights and interests in the Arctic region, every state has started paying serious attention to UNCLOS and hopes to find in it the legal basis for supporting its positions, this in order to win advantageous positions in international court decisions and obtain the recognition of international society.

[*Page 9-10*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

US policy makers should not underestimate Chinas potential interests or influence in the Arctic region

The United States should neither underestimate China's burgeoning interests in the Arctic region nor

allow itself to be outdone by China. The Chinese have become acute observers of the region.

“According Dr. Robert Huebert, an internationally renowned Canadian expert on the Arctic at the University of Calgary, China has shown itself to be a quick study in Arctic affairs and has been doing a lot of very good homework on the region.108 The government of the United States should pay close attention to China’s engagement in Arctic affairs and consider its possible security implications, especially since the U.S. Navy in late 2009 observed that increasing economic and scientific activi- ties in the Arctic are “potential sources of competition and conflict for access and natural resources.”

[*Page 35*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

UNCLOS ratification is the only way U.S. can preserve sovereignty in Arctic

“Opponents to ratification argue that ratifying the treaty undermines U.S. sovereignty.[64] In essence, in the event of a dispute, the ISA would have the ability to rule against the interests of the United States. Not only is this position outdated, it is incorrect. It assumes that the United States has the naval power to assure its interests at sea. However, U.S. naval power in the Arctic is limited, at best. Moreover, the continental shelf extensions in the Arctic are a perfect example of how ratifying the treaty would actually enhance U.S. sovereignty, rather than limit it. Additionally, ratifying a multilateral treaty would signal to the world that the United States will operate on the same set of rules agreed to by everyone. At a minimum, ratification would buy some badly needed international goodwill.

[*Page 11-12*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global Rush North** . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [**More** (5 quotes)]

U.S. failure to ratify UNCLOS complicates U.S. naval operations in the Arctic

By remaining outside the Convention, the United States makes it more difficult for U.S. naval forces to have maximum operating flexibility in the Arctic and complicates negotiations with maritime partners for coordinated search and rescue operations in the region. The ability of U.S. naval forces to carry out their missions would be assisted if the United States were to ratify UNCLOS.

US failure to ratify UNCLOS complicates ability of military to operate in the Arctic

"FINDING: The committee has studied the implications of the failure of the United States to ratify the 1982 United Nations Convention on the Law of the Sea (UNCLOS) from the standpoint of potential impacts on national security in the context of a changing climate. As climate change affords increased access to the Arctic, it is envisioned that there will be new opportunities for natural resource exploration and recovery, as well as increased ship traffic of all kinds, and with that a need for broadened naval partnership and cooperation, and a framework for settling potential disputes and conflicts. By remaining outside the Convention, the United States makes it more difficult for U.S. naval forces to have maximum operating flexibility in the Arctic and complicates negotiations with maritime partners for coordinated search and rescue operations in the region. (Chapter 1)

RECOMMENDATION: The ability of U.S. naval forces to carry out their missions would be assisted if the United States were to ratify UNCLOS. Therefore, the committee recommends that the Chief of Naval Operations, the Commandant of the Marine Corps, and the Commandant of the Coast Guard continue to put forward the naval forces' view of the potential value and operational impact of UNCLOS ratification on U.S. naval operations, especially in the Arctic region. (Chapter 1)

[*Page 4*]

Committee on National Security Implications of Climate Change for U.S. Naval Forces. **National Security Implications of Climate Change for U.S. Naval Forces** . National Research Council: Washington, D.C., 2011 (226p). [**More** (5 quotes)]

U.S. ratification of UNCLOS key to securing freedom of navigation rights in Arctic

The foundational element of any U.S. security strategy for the Arctic, including NSPD-66, is to ensure freedom of navigation. As a nation heavily dependent on shipping and maritime access, the United

States has a vital national interest in supporting the most stringent enforcement of open sea lanes of communication. The most effective tool for governing and enforcing the right of free passage in international straits is the UNCLOS treaty.

The fact that the United States has not ratified the treaty is of key relevance to its efforts to ensure freedom of navigation in the Arctic and to take full advantage of the region's economic benefits. A product of nine years of international collaboration and active U.S. participation, UNCLOS entered into force in 1994 and provides the most comprehensive framework available for governing the world's oceans, including the Arctic. The treaty established internationally rec- ognized measures to claim sea areas and rights to territorial waters, exclusive economic zones, and extensions of national underwater continental shelves. Currently 161 countries and the European Union have joined the convention.[32] While the United States has not ratified the treaty, it does view the treaty as international customary law and abides by nearly all its articles. It is unclear when the U.S. Senate will ratify the treaty, although both the Bush and the Obama administrations have sought ratification.

[*Page 23-24*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

UNCLOS is best regime for Arctic Governance

UNCLOS represents the consensus of decades of debate on how best to govern shared ocean resources and to handle disputes over border conflicts. The Arctic nations have settled on UNCLOS, adopting it in their laws and subsequent agreements, and it forms the basis for governance of the Arctic region.

Antarctica treaty is poor alternative to UNCLOS for resolving Arctic disputes because it was based on environmental protection, not resource exploitation

"In particular, the rush to reclaim the Arctic is "reminiscent of early efforts to conquer Antarctica." [n293] The Antarctic Treaty System is a unique international legal regime and has developed international cooperation for almost fifty years. [n294] When the Antarctic Treaty was negotiated in 1959, it designated the continent as a completely demilitarized zone of peace, halting all claims of sovereignty in order to focus on exploration and scientific research. [n295] Drilling was also prohibited without the approval of threefourths of the nations with voting power.

However, the South Pole is an inexact parallel. Antarctica, in contrast to the Arctic, is an expansive landmass, and over 90% of the Antarctic is entirely inaccessible. Measuring 14 million square kilometers, the continent is larger than the U.S. and Mexico combined, and dwarfs the Arctic. [n296] While there is extensive marine biodiversity, the mineral and hydrocarbon resources of the Antarctic do not exist in the same commercially exploitable quantities as they do in the North Pole. [n297] Several effete attempts have been made to stake a claim of sovereignty in the pursuit of Southern Ocean seabed mining, but these are without precedential value. The most dispositive reason militating against using the Antarctic Treaty system as a basis for a new Arctic regime is simply that some Arctic States are far more concerned with their own claims of sovereignty than with environmental issues.

[*Page 234-235*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Abandoning UNCLOS in Arctic would undermine all principles UNCLOS is based-on, encouraging non-diplomatic solutions to

territorial disputes

“Although some policy officials and scholars argue countries should abandon UNCLOS and implement a new legal regime,[207] such action would undermine the effectiveness of the existing legal norms provided by UNCLOS. Abandoning UNCLOS would only weaken current international Arctic law, create economic uncertainty, and pose potential security issues.[208] In addition, the formulation, adoption, and implementation of new international Arctic legislation would, at best, be a difficult, if not impossible, process.[209] Considering the enormous economic wealth at stake, coupled with the political power of today's oil, abandoning UNCLOS might erroneously be interpreted by some as encouraging military solutions to Arctic territorial disputes.

[*Page 532*]

Wilder, Meagan P. "*Who Gets the Oil?: Arctic Energy Exploration in Uncertain Waters and the Need for Universal Ratification of the United Nations Convention on the Law of the Sea*." **Houston Journal of International Law**. Vol. 32, No. 2 (2009-2010): 505-544. [**More** (8 quotes)]

Law of the sea is an ideal framework for arctic governance

“Over the past year or so, some of the most interesting law of the sea issues for us have come from the Arctic, where climate change is creating the prospect for increased shipping, oil and gas activity, tourism, and fishing. As a result, the law of the sea has become more relevant than ever. I want to conclude with a few observations and some ideas about ways forward regarding the melting Arctic.

My first observation is that while some have expressed concern that the Arctic is a “lawless” region, this could not be further from the truth. For one, the law of the sea, as reflected in the Convention, provides an extensive legal framework for a host of issues relevant to the Arctic. It sets forth navigational rights and freedoms for commercial and military vessels and aircraft in various maritime areas. It addresses the sovereignty of the five Arctic coastal States – the U.S., Russia, Canada, Denmark, and Norway – by setting forth the limits of the territorial sea and the applicable rules. It addresses sovereign resource rights by setting forth the limits of the exclusive economic zone and the continental shelf and rules governing those areas. It provides the geological criteria relevant to establishing the outer limits of the continental shelf beyond 200 nautical miles – a topic of great interest these days as the Arctic coastal States seek to extend their respective shelves to the limits permissible under international law. For Parties to the Convention – that is, the four other coastal States – it sets forth a procedure for securing international recognition of those outer limits. International law also sets forth rules for resolving cases where the maritime claims of coastal nations overlap. And finally, the law of the sea provides rules regarding marine scientific research in the Arctic and sets out the respective rights and responsibilities among coastal States, flag States, and port States regarding protection of the marine environment.

[*Page 10*]

Bellinger, John B. The United States and the Law of the Sea Convention . Institute for Legal Research: Berkeley, CA, 2008 (12p). [**More** (6 quotes)]

U.S. needs to ratify UNCLOS to establish shared law in the Arctic to avoid conflict

"The Arctic nations are preparing submissions for the extended shelves; Russia's is currently under review. Under the terms of the convention, the American zone would be the largest in the world — more than 3.3 million square miles, an area greater than the lower 48 states combined.[74] In addition to protection of shelf claims, the convention is good for the United States because it sets pollution standards and requires signatories to protect the marine environment. The United States has not submitted a claim because it has not ratified the Convention.[75]

Ratification is also important for U.S. long-term presence in the region. In the absence of shared law, countries often make unreasonable and irres- ponsible claims in the maritime environment—the Arctic will be no different.[76] Without binding law, the United States gambles on long-term credibility to enforce international law, freely navigate the oceans, and protect the business ventures that rely on uniform laws.

[*Page 13*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Arctic states have committed to cooperation under existing UNCLOS regime in the Ilullisatt and Ottawa declarations

"So far, the goal of the Arctic states seems to be cooperation in protecting the environment while encouraging investment in hydrocarbon development. This goal is reflected in both regional and country-specific documents. At a regional level, Arctic states have repeatedly declared goals for cooperation. For example, the Ottawa Declaration established the Arctic Council—the main regional coordinating body of Arctic states—in 1996 with the following mission statement:

[T]o provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic Indigenous communities and other Arctic inhabitants on common Arctic issues; in particular, issues of[28] sustainable development and environmental protection in the Arctic.

More recently in 2008, five key Arctic states—Canada, Denmark, Norway, the Russian Federation, and the United States—adopted the Ilulissat Declaration, claiming a set of unified policy goals.[29] The Ilulissat Declaration captured the following regional policies of the Arctic States:

- commitment to the current legal framework and an observation that there is “no need to develop a new comprehensive international legal regime to govern the Arctic Ocean;”[30]
- recognition of the role of the Arctic States in protecting the unique Arctic ecosystem; and
- commitment to a cooperative approach to making Arctic development a sustainable undertaking.[31]

[*Page 397*]

Rice, Kristen. "*Freezing to Heat the Future: Streamlining the Planning and Monitoring of Arctic Hydrocarbon Development*." **Colorado Natural Resources, Energy & Environmental Law Review**. Vol. 24, No. 2 (Summer 2013): 391-418. [**More** (3 quotes)]

UNCLOS key framework for peaceful resolution of competing hydrocarbon claims in Arctic

“Arctic states are also cognizant of the fact that the current legal framework provides an opportunity for them to obtain effectively sovereign control over the hydrocarbon-rich Arctic waters. The main goal of the United Nations Convention on the Law of the Sea (“UNCLOS”), the international regulatory framework governing the use of the world’s oceans and seas, is to:

> facilitate international communication, and . . . promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.[5]

Part VI of UNCLOS is key to Arctic hydrocarbon development because it governs the boundaries and extent of states’ sovereign control over offshore natural resources.[6] A state exercises “sovereign rights for the purpose of exploring [its continental shelf] and exploiting its natural resources” and may exclude other states from doing so without its consent within its continental shelf.[7] As a default rule, a state’s continental shelf extends to the greater of the outer edge of its continental margin[8] (up to 350 nautical miles), or 200 nautical miles from the baselines[9] from which the breadth of the territorial sea is measured.[10] The burden is on the coastal state to establish that the outer edge of its continental margin extends beyond 200 nautical miles.[11] To do this, the state must submit certain information outlined in Article 76 to the Commission on the Limits of the Continental Shelf (“CLCS”).[12] The CLCS, consisting of twenty-one experts nominated by individual states and elected by all parties to five-year terms, can accept or reject the claims.[13] If the CLCS rejects the claim, the state must revise its submission to conform to the formula set out in Article 76.[14] The limits established by the state are final and binding.[15] Finally, the state provides the Secretary-General of the United Nations with charts and relevant data describing the established outer limits, and then the information is published.[16]

[*Page 394-395*]

Rice, Kristen. "*Freezing to Heat the Future: Streamlining the Planning and Monitoring of Arctic Hydrocarbon Development*." **Colorado Natural Resources, Energy & Environmental Law Review**. Vol. 24, No. 2 (Summer 2013): 391-418. [**More** (3 quotes)]

An Arctic treaty modeled off of the Antarctic treaty system is unlikely to succeed in the Arctic because it Is not in the interest of any of the Arctic states

"An ATS-style ban or overarching regulatory regime is not suitable for the Arctic for two reasons. First, a regime banning Arctic oil and gas production will not materialize because it is not in the interests of the would-be signatories. Whereas the drafters of the ATS were interested in preserving the continent as a scientific sanctuary,[37] the Arctic states are already heavily invested in Arctic oil and gas development, not preservation of the region as a scientific sanctuary. For states to disregard those investments in exchange for a ban on development at this point is not feasible.

Second, the five Arctic states likely to have jurisdiction over Arctic waters—Canada, Denmark, Norway, the United States, and Russia— have already declared in unison that no new regulatory scheme is needed.[38] Furthermore, building consensus is difficult. For example, the United States' experience with state regulation of hydraulic fracturing disclosure demonstrates this point. In the United States, public outcry about the contents of hydraulic fracturing fluids has failed to induce a comprehensive national policy response, but instead has led to a flurry of state regulations in recent years.[39] States responded quickly to the call for regulation in divergent ways based on what local lawmakers saw as the best way to approach the situation. For example, while New York instituted a moratorium on the use of fracturing in the Syracuse watershed,[40] Colorado adopted regulations requiring disclosure of chemicals used in the process with an exception for trade secrets.41 Building consensus regarding a comprehensive regulatory regime between states within a single country is difficult enough, and building such a consensus between countries with no overarching sovereign body may be even more difficult.

[*Page 399*]

Rice, Kristen. "*Freezing to Heat the Future: Streamlining the Planning and Monitoring of Arctic Hydrocarbon Development*." **Colorado Natural Resources, Energy & Environmental Law Review**. Vol. 24, No. 2 (Summer 2013): 391-418. [**More** (3 quotes)]

UNCLOS regime in the Arctic responsible for keeping the scramble for arctic resources from devolving into resource conflicts

Fifth and finally, it does seem that UNCLOS reflects a larger sea-change in how the international

community, and legitimate international governing bodies, can create frameworks for cooperative action, or at least limit the damage of non-cooperative action. As such, by including dispute-resolution mechanisms in future framework agreements, IGOs like the United Nations can productively expand into new or emerging areas of global governance. Accordingly, it does appear that the Arctic Scramble, and maritime disputes elsewhere, need not recall the imperial division of Africa. Rather, there appears to be widespread recognition and acceptance of UNCLOS as the legitimate framework for establishing, defining, deciding, and resolving disputes on maritime territorial issues. Merely by existing and coming into legal standing with ratification, UNCLOS delegitimizes the traditional power-politics methods of settling the disputes. Instead, UNCLOS is overtly designed to handle these events. By defining the rules of the road, and by defining where the road begins and ends, UNCLOS is the discursive legisla- tor, judge and policeman on the maritime highway. And no one, as yet, is seriously challenging that role, at least in the Arctic.

[*Page 41*]

Carlson, Jon D., Christopher Hubach, Joseph Long, Kellen Minteer, and Shane Young. "*Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims*." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 21-43. [**More** (5 quotes)]

UNCLOS is the established, consensus framework for Arctic governance

Recent trends strongly indicate that human activity in the Arctic region will continue to increase for the foreseeable future. This raises certain national and global security concerns. UNCLOS represents the international consensus on rules governing the use of the planet's oceans. This treaty was developed between 1973 and 1982; it was implemented on 16 November 1994. It combined several treaties governing laws of the sea that were previously separate. So, UNCLOS is a comprehensive treaty that codifies international law for the vast global commons of the world's oceans, which make up nearly three-quarters of the earth's surface. Notably, UNCLOS is an internationally accepted — and therefore a legitimate — means of defining sovereignty over the world's oceans. It is particularly important in the Arctic, where several nations — including the United States — have conflicting claims. Articles within UNCLOS offera framework for a peaceful resolution of sovereignty disputes. UNCLOS clearly specifies state and international rights as they pertain to the world's oceans.

[*Page 4-5*]

Bunker, Wayne M. **U.S. Arctic Policy: Climate Change, UNCLOS and Strategic Opportunity** . U.S. Army War College: Carlisle, PA, March 22, 2012 (24p). [**More** (4 quotes)]

All arctic nations are pursuing claims within framework of UNCLOS

"While it may be peculiar that geologic structures might dictate ownership of resources,[n269] Russia has obtained a competitive edge by operating persistently and adhering to the provisions of the Convention. Most importantly, other Arctic States have seen the writing on the wall. Aware of the undeniable progress Russia has made, the other littoral countries have been stirred from their casual observance of UNCLOS within the Arctic, and have undertaken new cartographic datagathering expeditions to claim as much territory as they can under the parameters of the Convention.[n270] In fact, following Russia's 2001 submission, eight other countries began work on filing their own CLCS submissions under UNCLOS.

For example, Canada recently changed the nature of its Arctic claims to conform to UNCLOS procedure, by departing from simple reaffirmations of past assertions of sovereignty and instead beginning work on a continental shelf proposal due for submission in 2013.[n272] Even the United States participated in a joint seabedmapping mission in the Beaufort Sea last month, a region widely considered the "top prize in the Arctic oil rush."

[*Page 231-232*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Reforming UNCLOS for the Arctic is not a viable option -- consensus would take too long

"Reforming the treaty, however, would be difficult. The UNCLOS is not a region-specific treaty: over 150 nations are signatories, and 145 have ratified it.[154] The UNCLOS initially took over a decade to acquire the required number of signatures to become effective.[155] The dramatic reform required to make the UNCLOS an effective means to protect the Arctic would likely require member states to redraft large portions of the massive document. Nations around the world would subsequently have to acquiesce to the changes.[156]

If the international community makes the required changes to the UNCLOS, there is always the risk that current member states will rebuke the new treaty. If the reformed treaty fails to gain acceptance, not only would the Arctic remain unprotected, but so would the world's other oceanic environments. This risk may not be worth its potential cost. Even if member states form a consensus of better protecting the Arctic environment, and more ratify the treaty, it still may prove to be ineffective. Many nations, including the United States, tend to ratify treaties only to claim reservations about provisions they do not like.[157] This severely limits a treaty's ability to create the kind of change necessary to protect the Arctic.

[*Page 674*]

Farrens, Thomas C. "***Shrinking Ice, Growing Problems: Why We Must Act Now to Solve Emerging Problems Posed by an Ice-Free Arctic*** ." **Transnational Law & Contemporary Problems**. Vol. 19. (Spring 2010): 655-679. [**More** (5 quotes)]

Struggle for Arctic resources could devolve into conflict

Currently, there is no major tension between the Arctic states. They all want peaceful solutions to their border disputes and see the advantages of freedom of navigation through the Northern Sea Route and the Northwest Passage. However, at the time when the coastal nations are able to increase their oil production in the Arctic, conflict can more easily occur. A shortage of energy and other resources will make the nations more determined to solve their border issues, which may increase the tension between them.

Warming arctic is opening up new potential shipping lanes and resource extraction possibilities but increasing risks of conflict and tension over the same

"Once long neglected in terms of governance and management, the Arctic is slowly attracting greater attention as a region in need of an effective legal regime following the observed and potential the impact of climate change in recent time.[29] Science has provided overwhelming evidence of human-influenced Arctic climate change and the likelihood that the pace of change is accelerating. Scientists predict that the Arctic may be ice-free for the first time in recorded history by as early as 2013.[30]

An ice-free Arctic has two important implications. First, it will expose vast regions of seabed that are rich in natural resources, making extraction of these resources possible. It is estimated that about 30 per cent of undiscovered gas and 13 per cent of undiscovered oil can be found in the marine areas north of the Arctic Circle.[31] According to the USGS estimates, Arctic region has the hydrocarbon reserves of 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids.32 Second, an ice-free Arctic will open previously impassable shipping lanes, thereby, improving prospects for Arctic navigation. The most promising route, historically known as the "Northwest Passage" may become navigable, which would reduce the length of the voyage between the Atlantic and Pacific oceans by an astonishing 9000 kilometers.[33]

This will result in two separate but related problems. First, the increased value of the region due to commercial exploration and trade will prompt Arctic nations to rush to establish their claim over the region. In fact, many Arctic countries, pursuant to Article 76 of the UNCLOS, are preparing to submit requests to the United Nations Commission on the Limits of the Continental Shelf to establish the outer limits of their continental shelves.[34] This has caused the spectre of rising tension over yet to be asserted maritime claims over the vast Arctic Ocean. The tension been further acerbated by the feasibility to extract the potential hydrocarbon resources in the Arctic seabed. The receding polar ice cap has ignited the competition for the mineral rights in the Arctic seabed. The competition arises from the fact that the Arctic is —the only place where a number of countries encircle an enclosed

ocean,[35] which gives numerous countries a valid claim for the same territory.[36]

[*Page 12-13*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

Russia is preparing for a new cold war in the Arctic

"The world is at a precipice of a potential new cold war in the Arctic between Russia and the NATO Arctic nations. Russia is in a position to win it. The number of icebreaking hulls a country operates is the simplest and most tangible measure that can be used to judge its ability to conduct northern operations. The United States has a total of four diesel-powered icebreakers (one of which is out of service for this year) whereas the Russians have 14.[51] Of the 14, seven are nuclear-powered--capable of cutting through nine feet of ice without even slowing down. In comparison, the U.S. icebreakers can only make it through six feet of ice at a constant speed.[52] Even China and South Korea, non-Arctic nations, have icebreakers in preparation for regional access.[53]

In addition to greater Arctic naval power, the Russians also have a superior support infrastructure. The Soviet Union, in sustaining the Northern Sea Route and oil development in the Barents Sea, invested tremendous capital in developing a robust infrastructure of rail lines and river transport services. It maintained this infrastructure by offering state workers huge subsidies and inflated wages. Following the collapse of the Soviet Union, and the loss of state jobs, the region experienced a significant reduction in population. However, the Russian North still has a fully functioning infrastructure in place.[54] Meanwhile, the North American presence is —naked and unguarded.[55]

Russia intends to use these weaknesses along with divisions among the NATO members to increase its power in the region. According to a leading Russian economic journal, —...Russia's main task is to prevent the opposition forming a united front. Russia must take advantage of the differences that exist [between NATO states]."[56] Moreover, a prominent Russian Navy journal acknowledged that an increase in regional militarization could increase the possibility for local military conflict. —Even if the likelihood of a major war is now small, the possibility of a series of local maritime conflicts aimed at gaining access to and control over Russian maritime resources, primarily hydrocarbons, is entirely likely."[57]

[*Page 9-10*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global Rush North** . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [**More** (5 quotes)]

Nations are pursuing Arctic claims in emotional and nationalistic manner, heightening the risks of conflict

"Further, the responses of Arctic nations have been framed more as nationalistic and emotional arguments, rather than legal opinions. Despite the dubious legal authority of the Russian flagplanting in 2007, the incident provoked a degree of international consternation. True, a "19th Century imperial land grab" n242 in the Arctic is not a feasible outcome, since UNCLOS does provide a mechanism for resolving disputes that can be relied on to a certain extent. However, the illegality of a land grab does little to dampen the excited clamor of an Arctic "resource rush," poorly disguised by the other Arctic States.

For example, Canada's Foreign Minister at the time objected to the imperial nature of Russia's expedition. n243 Prime Minister Stephen Harper also hopes that Canada's renewed commitment to the region will bolster its longterm presence and strengthen the nation's sovereignty over the Arctic. n244 A Danish scientist has stated that "'the Vikings hope to get [to the Arctic] first.'" n245 The Russian scientist and legislator Artur Chilingarov has avowed that "'the Arctic is ours and we should demonstrate our presence.'" n246 There is good reason to expect that the frenetic scramble to establish Arctic sovereignty will only gain momentum as the ice continues to recede, especially considering "the alacrity with which coastal states [first] 'implemented' the sovereign rights ... with respect to oil and gas, fisheries, and other natural resources of the economic zone and continental shelf" when UNCLOS entered into force.

[*Page 227*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

No major tension between Arctic states but situation could change dramatically as race for resources heats up

"Currently, there is no major tension between the Arctic states. They all want peaceful solutions to their border disputes and see the advantages of freedom of navigation through the Northern Sea Route and the Northwest Passage. However, at the time when the coastal nations are able to increase their oil production in the Arctic, conflict can more easily occur. A shortage of energy and other resources will make the nations more determined to solve their border issues, which may increase the tension between them. Even if Russia cooperates with the other coastal Arctic nations today, there is a growing uncertainty about the stability and aspirations of this regime. Several scholars express concerns about a new “cold war” in the region. Rob Hubert, a professor of political science at the University of Calgary warn about the beginning of an arms race, and claims that the Arctic states talk about cooperation, but are preparing for conflict.[27] NATO’s Supreme Allied Commander in Europe, Admiral Stavridis, has also argued, “For now, the disputes in the north has

been dealt with peacefully, but climate change could alter the equilibrium over the coming years in the race of temptation for exploration of more readily accessible natural resources."[28]

[*Page 6-7*]

Margrethe, Ingrid Gjerde. **U.S. Policy for the Arctic and the Nation's Ability to Sustain Global Leadership** . U.S. Army War College: Carlisle, PA, March 2013 (32p). [**More** (3 quotes)]

Disputes over arctic fishing resources have already lead to increased tensions between arctic nations

"In addition to large deposits of Arctic oil, gas, and other natural minerals, the Arctic Ocean is connected to several significant breeding areas of fish stocks, which are anticipated to move farther north as an apparent result of changes in Arctic water temperatures. The National Oceanic and Atmospheric Administration has stated that this shift has been going on for the past 40 years, with some stocks nearly disappearing from U.S. waters as the fish "seem to be adapting to changing temperatures and finding places where their chances of survival are greater."[23] In fear of uncontrolled new developments, the North Pacific Fishery Management Council decided in 2009 to ban all commercial fishing in a 200,000-square-mile Arctic area, from the Bering Strait to the disputed U.S.-Canadian maritime border. As a reshifting of fish stocks takes place, increased fishing oppor- tunities are likely to result in disputes over quotas and fishing areas. The U.S. Coast Guard (USCG) is already patrolling the Bering Sea border with Russia, which has been the source of some tension because of overfishing and boundary disputes. Norwegian and Russian cooperation on fishing in the Barents Sea has generally been promoted as a positive example of border cooperation, but incidents between the Norwegian Coast Guard and Russian trawlers have occurred from time to time, such as the arrest of the Russian trawler Sapphire II for illegal dumping of fish in waters around Svalbard in late September 2011. While the company owning the trawler was given a €57,000 fine, both Russian Foreign Minister Sergey Lavrov and Norwegian Foreign Minister Jonas Gahr Støre moved quickly to diffuse the issue and stress that there was "no conflict" between the countries regarding fisheries.[24] With increased fishing activity in the Arctic, such issues are again likely to develop. At the same time, increased activity demands increased capacity from the national coast guards, as a large part of search-and-rescue activity revolves around fishing vessels.

[*Page 7*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

Idealist approach to resolving arctic conflict through international institutions or economic interdependence does not hold up to

scrutiny

“The primary argument against the potential for conflict in the Arctic is that political leaders are appealing to international institutions to resolve disputes before they become militarized. A corollary to this argument is that, via the trappings of economic interdependence, Russia’s need for advanced technology to locate and exploit its potentially vast reserves of hydrocarbons will sufficiently weigh in Moscow’s political calculus to prevent Russia from taking militarized action against neighbors to defend its political-economic claims in the region. Given the reality of political objectives, actions, and intentions, coupled with the dearth of reliably interdependent economic ties, this chapter has exposed these “mitigating factors” against conflict as little more than wishful thinking.

While it is undeniable that the Arctic states are using international institutions focused on Arctic issues, they appear to do so out of political convenience—not out of a commitment to peaceful cooperation. The participating nations all actively pursue a combined environmental and safety agenda with their partners through the Arctic Council. Its charter, however, explicitly bans the organization from discussing issues related to military security, a point reinforced by the Ilulissat Declaration of the five Arctic states: that no legal enforcement regime other than the UNCLOS is needed in the region.

[*Page 88*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Conflict in Arctic more likely than not as scholars over-estimate impact of interdependence and international cooperation on resolving disputes

“Based on the methodology established for this analysis, it can be reasonably assessed that conflict in the Arctic is likely. To put this another way, with a score of 18 out of 24 possible points, there is a 75 percent chance that maritime disputes involving the United States and Russia will occur in the Arctic necessitating the show or use of force to achieve a political objective. It should be reiterated that this assessment is acknowledged to be an analytically subjective conclusion and that the intervals of measurement are notably coarse. The evidence presented in this analysis, however, supports this conclusion. Policy-makers should take care not to discount the physical indicators and declared policies of other Arctic nations when judging the seriousness of their intent to protect their various claims in the region. Advocates of a “Pax Arctica” involving regional cooperation ignore the more pragmatic factors underlying international relations and the actual limits of international institutions and economic incentives in restraining actors’ behavior in an anarchic system.

[*Page 103*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Disputes over Arctic shipping between Russia, U.S. and Canada likely by 2030 if not resolved

“Finally, in the longer term, the gradual opening of Arctic waterways to commercial traffic on a seasonal basis by 2030 will increase the need for persistent and pervasive constabulary patrols by all Arctic nations in order to regulate this activity. Not only will more ice-capable patrol vessels be required, but so too will be a robust logistics infrastructure, to include basing, transportation, supply, and communications. This third window for conflict in the Arctic will probably occur in the 2030 to 2045 time frame. The increase in commercial traffic activity will heighten tensions in U.S.-Canadian relations if a political compromise on the status of the Northwest Passage has not been reached, keeping in mind that the ultimate status of Russia’s Northeast Passage would be likewise affected. As Canada is extremely sensitive to matters of Arctic sovereignty and Russia is are unlikely to welcome unrestricted movement through its backyard, it should be expected that the same nationalist sentiment that erupted in the Sino-Japanese row over the disputed Senkaku/Diaoyu Islands would likewise be manifest in these cases as well, leading to a quick, and potentially intense, confrontation involving the United States, Russia, and Canada.

[*Page 108*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Arctic region could descend into chaos due to lack of clear governing structure to manage resource disputes

“Despite the melting icecap's potential to transform global shipping and energy markets, Arctic issues are largely ignored at senior levels in the U.S. State Department and the U.S. National Security Council. The most recent executive statement on the Arctic dates to 1994 and does not mention the retreating ice. But the Arctic's strategic location and immense resource wealth make it an important national interest. Although the melting Arctic holds great promise, it also poses grave dangers. The combination of new shipping routes, trillions of dollars in possible oil and gas resources, and a poorly defined picture of state ownership makes for a toxic brew.

The situation is especially dangerous because there are currently no overarching political or legal structures that can provide for the orderly development of the region or mediate political disagreements over Arctic resources or sea-lanes. The Arctic has always been frozen; as ice turns to water, it is not clear which rules should apply. The rapid melt is also rekindling numerous interstate rivalries and attracting energy-hungry newcomers, such as China, to the region. The Arctic powers are fast approaching diplomatic gridlock, and that could eventually lead to the sort of armed brinkmanship that plagues other territories, such as the desolate but resource-rich Spratly Islands,

where multiple states claim sovereignty but no clear picture of ownership exists.

Borgerson, Scott G. "***Arctic Meltdown: The Economic and Security Implications of Global Warming*** ." **Foreign Affairs**. Vol. 87, No. 2 (March/April 2008). [**More** (10 quotes)]

China becoming more aggressive in its pursuit of Arctic resources

China is taking concrete diplomatic steps to ensure that it becomes a player in the Arctic game and eventually will have what it regards as its fair share of access to Arctic resources and sea routes.

China's dependence on resources could force it to become more aggressive in its bid to gain access to Arctic resources

"Prudence and realism dictate that foreign policy plan and hope for the best but prepare for the worst. China is quite aware that its "size and rise to power status evoke jitters," and according to Linda Jakobson, Beijing has decided, for the time being at least, to "advocate cautious Arctic policies for fear of causing alarm and provoking countermea- sures among the Arctic states."[132] But this reticence and restraint on China's part will not likely last indefinitely. China is very heavily dependent on international shipping (energy imports and finished goods exports) for its economic, social, and political stability;[133] if and when the Arctic proves to be truly valuable for its natural resources and sea routes, Beijing will likely become much more assertive. The United States should be prepared for the possibility that Beijing could someday conclude that developments or situations in the Arctic threaten China's economic prosperity, and thus Chinese social stability and ultimately the political power of the Communist Party of China. At a minimum it is in the interest of the United States and the other A5 NATO democracies to maintain defen- sive capabilities for safeguarding the security of the Arctic region.

[*Page 38*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

China views coming resource struggle in Arctic as possibly leading to military conflict

"Popular glossy military magazines in China often beat the war drums about the likeli- hood of conflict breaking out in the Arctic. An article in the November 2010 issue of Dangdai haijun is a typical example:

> According to the "United Nations Convention on the Law of the Sea" currently in effect, the Arctic does not belong to any country. In addition to the five circum-Arctic countries Russia, the United States, Canada, Denmark, and Norway, many [other] countries have

> proclaimed partial sovereignty over the Arctic. At present there is no Arctic country which has clearly proven that its continental shelf extends into the Arctic, and because of this the Arctic is regarded as an “international area” and is supervised and managed by the Inter- national Seabed Authority. Some countries are contending for Arctic sovereignty, and this is tantamount to infringing upon the interests of the other countries of the world. In facing this real and quite unpredictable “scramble and battle for the Arctic” and the probability of some countries dividing up the [Arctic] melon with the aid of geographical advantage and military might, if peaceful means cannot produce the anticipated effects, war becomes the only method for resolving the issue. Based on this, it is not difficult for us to imagine that the probability of the future outbreak of war in the Arctic is very high, and that as soon as war breaks out, the United States, Russia, and Canada will be its main principals.

In Canada, more benign and rational assessments of potential trouble in the Arctic usually (but not always) prevail; there may be tension and friction in the Arctic in the future, but by and large Canadian commentators on Arctic affairs do not usually see conflict as a distinct possibility. The conclusions of Kyle D. Christensen of Canada’s National Defence Headquarters are typical: “There exists in China a distinct group of academics and officials trying to influence leaders to adopt a much more assertive stance in the Arctic than has traditionally been the case. This could ultimately bring China into disagreement with circumpolar states in a variety of issue areas, and alter security an sovereignty relationships in the circumpolar region.”

[*Page 6*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

China actively lobbying for inclusion in the Arctic Council to gain access to Arctic resources

“While the United States, Russia and several nations of the European Union have Arctic territory, China has none, and as a result, has been deploying its wealth and diplomatic clout to secure toeholds in the region.

“The Arctic has risen rapidly on China’s foreign policy agenda in the past two years,” said Linda Jakobson, East Asia program director at the Lowy Institute for International Policy in Sydney, Australia. So, she said, the Chinese are exploring “how they could get involved.”

In August, China sent its first ship across the Arctic to Europe and it is lobbying intensely for permanent observer status on the Arctic Council, the loose international body of eight Arctic nations that develops policy for the region, arguing that it is a “near Arctic state” and proclaiming that the Arctic is “the inherited wealth of all humankind,” in the words of China’s State Oceanic Administration.

To promote the council bid and improve relations with Arctic nations, its ministers visited Denmark, Sweden and Iceland this summer, offering lucrative trade deals. High-level diplomats have also visited Greenland, where Chinese companies are investing in a developing mining industry, with proposals to import Chinese work crews for construction.

Elisabeth Rosenthal. "***Race Is On as Ice Melt Reveals Arctic Treasures*** ." **The New York Times**. (September 19, 2012) [**More**]

China actively pursuing Arctic science and expanding relations with Arctic countries

"While Arctic coastal states will play a dominant role in the Arctic, non-Arctic states that benefit from Arctic hydrocarbons and ice-free shipping routes will also seek a role. China, in particular, has focused financial, scientific, and political capital in the Arctic. As the world's largest shipping nation, with 46 percent of gross domestic product40 derived from the shipping industry, China is aware that any changes to world shipping routes will have "a direct impact on [its]...economy and potential trade with respect to both imports and exports."41 China is concerned that "the advantage of the Arctic routes would substantially decrease if Russia were to unilaterally charge exorbitant service fees for ships passing through its EEZ waters"42 and thus is advocating strong international cooperation within multilateral governing structures. In response to future Arctic opportunities, China has built the world's largest non-nuclear-powered icebreaker, Xuelong (Snow Dragon), which has completed four scientific expeditions to the Arctic Circle to conduct oceanographic surveys and scientific research.43 In September 2010, the Polar Institute of China concluded an agreement on polar research cooperation with the Norwegian Polar Institute, to which China will contribute advanced instruments and laboratories, and will build a research center and a new ice- class research vessel.44 China has already engaged Canada in bilateral meetings to confront poten- tial issues that could arise from the changing Arctic environment; it is also eager to build relations with the Nordic countries in hopes of establishing cooperation between Chinese and Norwegian companies in extracting Arctic energy resources.

[*Page 40*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

US should ratify UNCLOS to be able to further check Chinas growing influence in the Arctic

"The United States should accede to UNCLOS. This would be difficult currently, because a small but obstreperous group of senators is holding up accession, a regrettable and un- fortunate situation

since the United States can ill afford to be marginalized or hampered and hobbled in Arctic affairs while other A5 states busily prepare extended-continental- shelf territorial claims. These senators should rethink their positions in light of China's recent and developing engagement in Arctic affairs and note that at least two Chinese commentators have concluded that continual American nonaccession will be detrimental to U.S. interests.[115]

As well, an American naval analyst has recently observed that "the failure of the United States to accede to UNCLOS gives China unchallenged diplomatic space to attempt to shape law of the sea in its favor."

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Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China**. China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

China and other countries may seek amendment of UNCLOS to allow them greater access to Arctic resources

"China, the European Union, or other member states could also attempt to amend UNCLOS in ways that could change the favorable extended continental shelf and deep seabed mining regimes, or give coastal states more control beyond their territorial seas and potentially obstruct the freedoms to navigate and to lay and maintain international cables. Without access to UNCLOS procedures, the United States loses the force of its objections and risks being a bystander as Member States effectively amend customary international law through UNCLOS amendments.[205]

In the years to come, will China continue to support a legal regime in the Arctic that excludes China from the vast majority of the Arctic's seafloor resources? And if China finds the UNCLOS seafloor regime constricting and employs its considerable influence and financial strength to lobby for offshore investment or for a new approach, will other states without Arctic coastlines follow suit? Calls for an Arctic treaty are not new,[206] and given China's interests, such an effort would hardly be surprising.[207] If such a movement were to arise, it is difficult to argue that the United States would be in a stronger position to resist change as an uncommitted outsider rather than a full-fledged member state.

[*Page 23*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic**. Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

China attempting to change intent of UNCLOS to get Arctic region declared the common heritage of mankind

“First and foremost, China harbors a deep sense of entitlement to arctic resources, sea-lanes, and governance. this entitlement relies on various justifications. as a Northern Hemisphere country that is affected by arctic warming, a permanent member of the UN security Council, and the world’s most populous state, China sees its role in arctic affairs as indispensable. Chinese rear admiral Yin Zhuo made this point in March 2010, proclaiming that “the arctic belongs to all the people around the world as no nation has sovereignty over it.”[85] similarly, in 2009 Hu Zhengyue, China’s assistant minister of foreign affairs, warned that arctic countries should “ensure a balance of coastal countries’ interests and the common interests of the international community.”[86] Hu, it seems, was advising the circumpolar states not to lock up for themselves the resources and sea-lanes of the arctic.

China further asserts its rights by employing the language of UNCLOS to argue that the arctic and its resources are the “common heritage of all humankind” and do not belong exclusively to the arctic five.[87] In reality, “common heritage” in UNCLOS refers to the high seas, designated by UNClos as the area that lies beyond EEZ boundaries. If the current territorial and continental-shelf claims of the circumpolar states are ultimately accepted as presented,[88] percent of the arctic seabed would likely fall under their combined sovereign EEZ jurisdictions, with the small “doughnut hole” in the center qualifying as the common heritage.88 since, however, most of the resource wealth in the arctic lies within these claims, China perpetuates the notion that the entire arctic ocean is the common heritage of humankind so as to expand its legal rights there.[89] this sort of “lawfare,” or misuse of the “law as a substitute for traditional military means to achieve an operational objective,” is an essential component of China’s strategy, enabling the PRC to circumvent its weaker status as a non-arctic state through asymmetrical means.[90]

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Rainwater, Shiloh. "***Race to the North: China’s arctic Strategy and Its Implications*** ." **Naval War College Review**. Vol. 66, No. 2 (Spring 2013): 62-82. [**More** (3 quotes)]

Numerous other non-arctic states are competing with China for space on the Arctic council

“Yet China faces a further obstacle to participation in arctic affairs, in the form of competition with other non-arctic states. Prominent among those countries vying for admission to the arctic Council as permanent observers are India, Brazil, Japan, South Korea, the European Union, and a number of individual european states. the growing arctic interests of these states demonstrate that the race to the High North has truly become global, adding to the complexity of arctic geopolitics. Notably, India, already a competitor with China in South Asia, has established a formidable arctic research program of its own, including a permanent research station in the Svalbard archipelago and numerous research expeditions.[79] but while the council may expand to admit a few of these states as observers, it is unlikely that many will gain seats, since present members are wary of seeing their own

influence diminished.[80] Moreover, China, it seems, is not highly favored for accession, as indicated by a January 2011 survey of public opinion in the eight arctic states that found that "China is the least attractive partner to all current arctic Council countries [save for Russia]."[81] these factors will tend to intensify Chinese relations with other non-arctic states as Beijing fights to have a say in arctic affairs.

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Rainwater, Shiloh. "***Race to the North: China's arctic Strategy and Its Implications*** ." **Naval War College Review**. Vol. 66, No. 2 (Spring 2013): 62-82. [**More** (3 quotes)]

China is looking to exploit mineral rich Arctic

"China's global resource strategy has led the PRC to the far corners of the earth, from Venezuelan oil fields to energy-rich Siberia. Now, as a consequence of accelerating climate change and the melting of the polar ice cap, China is increasingly looking to the arctic Circle for new resource-extraction and maritime-shipping opportunities. Current estimates as to when the arctic could be seasonally ice-free have varied greatly from as early as summer 2013 to as late as 2040; in any case, the arctic is evidently thawing more rapidly than most climate models initially predicted.[46] In august 2012, for example, the National Snow and Ice data Center observed that arctic sea-ice extent had reached the lowest level on record, prompting concerns about the exponential speed at which the polar ice is disappearing.[47] Chinese leaders are keenly aware of this trend and are making calculated preparations to exploit an ice-free arctic.

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Rainwater, Shiloh. "***Race to the North: China's arctic Strategy and Its Implications*** ." **Naval War College Review**. Vol. 66, No. 2 (Spring 2013): 62-82. [**More** (3 quotes)]

China has a substantial and committed effort to assert its influence over future of Arctic region

"American policy makers should be aware that China's recent interest in Arctic affairs is not an evanescent fancy or a passing political fad but a serious, new, incipient policy direction. China is taking concrete diplomatic steps to ensure that it becomes a player in the Arctic game and eventually will have what it regards as its fair share of access to Arctic resources and sea routes. China has already committed substantial human, institutional, and naval resources to its Arctic interests and will continue to do so, likely at an accelerated rate, in the future. The Polar Research Institute of China (Zhongguo Jidi Yanjiu Zhongxin), with a staff of 124 people headquartered in Shanghai, supervises three Chinese research stations in the Antarctic and one in the Arctic. It also manages the Chinese icebreaker Xuelong (Snow Dragon), a light, Ukraine-built, nonnuclear vessel with a displacement of twenty-one thousand tons, used in both Arctic and Antarctic scientific expeditions.96 Xuelong, the largest conventionally powered icebreaker in the world, reached eighty-eight degrees north latitude in

August 2010, and its helicopter took Chinese Arctic researchers to the North Pole on 20 August 2010, a Chinese first. The Arctic and Antarctic Administration (Guojia Haiyangju Jidi Kaocha Bangongshi), under the State Oceanic Administration, also manages Chinese scientific research activity in the Arctic.97 China currently plans to build its own smaller (eight thousand tons displacement) sister icebreaker to Xuelong, at a cost of U.S.$300 million, and to have it operational by 2013. “Between the two ships,” the New York Times observed in May 2010, “China will have larger and more modern icebreakers than either the United States or Canada.”98 Russia, for its part, has over a dozen heavy icebreakers, seven of them nuclear powered.

[*Page 32-33*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

Arctic resource disputes unlikely to lead to conflict

Despite the rhetoric, disputes over Arctic resources are unlikely to devolve into conflict as states have to date been operating in a cooperative manner and there are sufficient international forums and structures (including UNCLOS) in place to manage disputes if they should occur.

U.S. sees low level of military threat from disputes in Arctic

"There is no reason to believe that the Arctic region will be characterized by military conflict between and among Arctic and non-Arctic nations. The U.S. Department of Defense maintains that there is a "relatively low level of threat" in the Arctic region because it is "bounded by nation states that have not only publicly committed to working within a common framework of international law and diplomatic engagement, but also demonstrated ability and commitment to doing so over the last fifty years."[9]

The "relatively low level of threat" in the Arctic is reflected in the aforementioned Arctic policy documents. While these documents call for improvements in Arctic infrastructure, they do not call for any significant military buildup in the region. These policy documents also indicate that there is minimal overlap between U.S. national security interests in the Arctic and U.S. accession to UNCLOS.

[*Page 4*]

Groves, Steven. **Accession to Convention on the Law of the Sea Unnecessary to Advance Arctic Interests** . **Heritage Foundation**: Washington, D.C., June 26, 2014 (18p). [**More** (8 quotes)]

Existing security framework and economic incentives likely to defuse any conflict in the Arctic

"With an increasingly globalized world comes a globalized economy. Inherent in such an economy is a security element, which serves to deter states from actions that run contrary to the greater economic good. When coupled with the military deterrent provided by the US, it is all but inconceivable that Russia, or any Arctic state would engage in military activity in the region, which goes beyond a simple show of force.

This suggests that the existing security apparatus in place in the Arctic is sufficient to meet both current and future requirements. That apparatus is built around the sovereign authority of the Arctic Five states, and is bolstered by the Arctic Council. The Council provides not only a forum for mutual

discussion and understanding, but also encourages consistency in Arctic policy development and enforcement. Backing it up is the legislative framework of UNCLOS, which provides the legal backbone from which to seek resolution of maritime boundary disputes. The globalized economy provides an additional deterrent to irresponsible actors, primarily through the actions of risk-averse investors who will sell off investments and thus rob the actors of much needed capital.

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Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Despite rhetoric, existing governance and security framework in Arctic sufficient to prevent conflicts

"If one were to form an opinion about the risk of conflict stemming from a perceived 'scramble for the Arctic', such as is portrayed by media sources, and even a few well-respected academic writers, it would be understandable if the reader came away with an opinion that the Arctic is a powder-keg waiting to be ignited by greed-fuelled interests.

Based on the research presented here, it is hoped that a more measured opinion may be formed, which recognizes that while there are numerous sources for potential dispute in the region, there is also the recognition that Arctic stakeholders have much more to gain through cooperation than through confrontation. In spite of isolated moments of inflammatory rhetoric and grandstanding, the relationship between the key Arctic states and stakeholders has been marked by optimism and mutual cooperation. There is an incredible opportunity for governments, industries and indigenous peoples to all benefit from the changes occurring in the Arctic. While the current governance and security architecture can be improved upon to ensure that consistent and ade- quate legislation and enforcement mechanisms are in place, what is needed above all is continued cooperation and goodwill between all the parties that stand to gain from the opportunities presenting themselves in the High North.

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Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Despite rhetoric, Canada unlikely to resort to military action to protect Arctic claims

"While some media reports have attempted to link Canada and Russia's increased military focus on the Arctic as evidence of a desire for military confrontation over Arctic resources,[53] there is little in terms of strategic intent that would lend credibility to such claims. In Canada's case, it has long

perceived the need to demonstrate a tangible presence over the vast Arctic territory it claims as its own. The sheer scale of the territory in question, and the costs and logistics associated with maintaining even a modest presence in the Arctic, has historically led to Canada talking tough on Arctic sovereignty, but doing little by way of action. As the Arctic now becomes more accessible, Canada merely recognises the need to match its actions more closely with its rhetoric. If the Canadian government follows through with the majority of the initiatives mentioned above, it would only serve to reinforce Canada's Arctic sovereignty claims and be seen by its own public to be taking action on a highly topical issue. These actions will not destabilize the Arctic, provided that the Canadian government is clear and consistent in communicating its intent.

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Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Arctic tensions currently kept in check by agreement among arctic nations to abide by UNCLOS framework

"Just a half decade ago, the scramble for the Arctic looked as if it would play out quite differently. In 2007, Russia planted its flag on the North Pole's sea floor, and in the years that followed, other states also jock- eyed for position, ramping up their naval patrols and staking out ambitious sovereignty claims. Many observers—including me—predicted that without some sort of comprehensive set of regulations, the race for resources would inevitably end in conflict. "The Arctic powers are fast approaching diplomatic gridlock," I wrote in these pages in 2008, "and that could eventually lead to . . . armed brinkmanship."

But a funny thing happened on the way to Arctic anarchy. Rather than harden positions, the possibility of increased tensions has spurred the countries concerned to work out their differences peacefully. A shared interest in profit has trumped the instinct to compete over territory. Proving the pessimists wrong, the Arctic countries have given up on saber rattling and engaged in various impressive feats of cooperation. States have used the 1982 un Convention on the Law of the Sea (unclos)—even though the United States never ratified it—as a legal basis for settling maritime boundary disputes and enacting safety standards for commercial shipping. And in 2008, the five states with Arctic coasts—Canada, Denmark, Norway, Russia, and the United States—issued the Ilulissat Declaration, in which they promised to settle their overlapping claims in an orderly manner and expressed their support for unclos and the Arctic Council, the two international institutions most relevant to the region.

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Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

Arctic region presents excellent test case for international cooperation rather than a threat of superpower conflict

“Nonetheless, Russia’s gambit accelerated a media obsession with the Arctic. In the more than two years since Russia’s North Pole adventure—and against a backdrop of a retreating polar ice cap and rising temperatures[3]—journalists and scholars have come to describe the Arctic’s future in alarmist terms. These reports include warnings of “a race for control of the Arctic,”[4] and a “coming anarchy” in which states will “unilaterally grab” as much territory as possible to secure new sources of oil and natural gas.[5] Some describe the Arctic as the site of “an armed mad dash” and a potential source of a future armed conflict, likely involving the United States and Russia.[6] This troubling picture has generated calls for a new international agreement—an “Arctic Treaty”—to provide a comprehensive legal regime for the region.[7] In light of the above, it is easy to see why the casual observer would be left thinking that when it comes to the Arctic, we are operating in a legal vacuum.

But that is simply not the case. Indisputably, the Arctic poses many challenges, but it is not a twenty-first century incarnation of the Wild West. There are institutions and legal frameworks in place through which the challenges of Arctic governance and management can and should be addressed. As discussed below, the centerpiece of that framework is the 1982 United Nations Convention on the Law of the Sea (“UNCLOS” or “Convention”).[8] Moreover, within the existing governance structure, Russia’s track record with respect to the Arctic—perhaps in contrast to Russia’s recent record elsewhere—has arguably been more positive than not. As such, rather than fixating on the Arctic as a flashpoint for confrontation, it may be more useful to consider the Arctic as an opportunity for constructive engagement.

[*Page 226-227*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

Russia has consistently tried to downplay rhetoric of a looming conflict over resource shortages

“Finally, is there a “Russian question” looming behind all of these issues? Whether we choose to proceed by strengthening and extending the existing framework where we must, or to develop new solutions, will Russia choose to participate within that system? As noted at several points above, Russia, by and large, is already doing so. Moreover, Russian officials have been at pains to counteract the characterization of the Arctic described at the beginning of this article: the faulty notion of the Arctic as a future battleground between Russia and the West. For example, the Russian Foreign Ministry has publicly stated that discussion of “a possible military conflict for Arctic resources is baseless” and that the problems facing the region will be resolved “on the basis of international

law."[97] Even the provocative figure at the head of Russia's North Pole expedition has sought to downplay the situation, remarking that "[n]obody's going to war with anybody" and that while Russia will "defend [its] economic interests . . . a conflict in the near future" is unlikely.[98] Moreover, the United States has largely acknowledged that Russia is adhering to the applicable rule of law, in particular with respect to the extended continental shelf.[99] Simultaneously, Russia appears to be engaged with the international community when it comes to the Arctic: through the Arctic Council, through the IMO, and in bilateral and multilateral efforts with its fellow Arctic states.[100]

[*Page 248-249*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

Prospects for interstate conflict over oil and gas reserves in Arctic remains remote

"The main economic prizes in the Arctic are oil and gas and mineral resources. The primary reserves belong to Russia, and the major exploration activity also is theirs. Recent estimates from the U.S. Geological Survey are that 30% of the remaining world reserves of natural gas and some 10% of the oil are in the Arctic. To date, unresolved issues involving demarcation of sea beds under the UNCLOS are not a major issue in the pace of energy development; rather, the key factors are costs of development and the price cycle of oil and gas. Offshore projects are the most costly and environmentally dangerous, and most of the known reserves of oil and gas are within national Exclusive Economic Zones (EEZs), which extend 200 nautical miles from the coastline. Thus, immediate prospects for interstate conflict over oil and gas reserves appear small.

[*Page 13*]

Yalowitz, Kenneth S., James F. Collins, and Ross A. Virginia. **The Arctic Climate Change and Security Policy Conference: Final Report and Findings** . Institute of Arctic Studies, Dartmouth College: Hanover, New Hampshire, December 1–3, 2008 (36p). [**More** (3 quotes)]

U.S. can't secure claims to Arctic resources through CLCS as a non-party to UNCLOS

The United States cannot currently participate in the Commission on the Limits of the Continental Shelf, which oversees ocean delineation on the outer limits of the extended continental shelf (outer continental shelf). Even though it is collecting scientific evidence to support eventual claims off its Atlantic, Gulf, and Alaskan coasts, the United States, without becoming party to the convention, has no standing in the CLCS. This not only precludes it from making a submission claiming the sovereign rights over the resources of potentially more than one million square kilometers of the OCS, it also denies the United States any right to review or contest other claims that appear to be overly expansive, such as Russia's in the Arctic.

Assertions of legal rights to arctic resources have dubious legal standing while us remains outside of UNCLOS

"The inevitable market incentive to exploit Arctic resources already is experiencing growing pains. In 2008, a Las Vegas based company called Arctic Oil & Gas levied a claim to virtually all the seabed petroleum in the Arctic, which it estimates to be around 400 billion barrels of oil.[n331] While acknowledging that the vast petroleum deposits are the "common heritage of mankind," the firm nevertheless filed a claim with the UN for exclusive Arctic rights.[n332] Even in spite of American abstention from UNCLOS, Arctic Oil & Gas argues that the polar region needs a private "'lead manager' to organize a multinational consortium of oil companies to extract undersea resources responsibly and equitably.[n333]

Nevertheless, it is doubtful that anything will come of such claims given their lack of international recognition under UNCLOS. In the absence of the legal certainty that the Convention provides for sovereign rights over an extended continental shelf, it is unlikely that enough U.S. companies will be willing or able to secure the necessary financing to exploit Arctic resources, or to keep other countries from exploiting them.[n334]

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Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

US will have no capacity to challenge CLCS claims unless it is a full

member of UNCLOS

"The Convention provides institutional methods through which the other Arctic States are able to protect their rights under UNCLOS, which may well come at the expense of American interests. Instrumental bodies such as the ISA's executive body, the Council, will assume a highly influential role in the Arctic. In particular, the Council is responsible for promulgating the policies that would apply to Arctic mining. n335 The ability of the U.S. to play a part in the Arctic and protect against potentially inimical mining policies require participation in the Authority, and in the decisionmaking Council in particular. n336

The CLCS presents a similar problem. The CLCS process is kept secret, and only Member States may appoint commissioners to [*241] take part in the decision and review the data submitted by other countries. n337 Acceptance or rejection of a shelf proposal is final, and such a crucial decision may well depend on a variety of subjective factors, such as "the knowledge, the experience, and occasionally the bias of the scientist involved."

Without an American commissioner, the U.S. cannot evaluate the content or feasibility of continental shelf submissions set to be filed by the other Arctic States. The element of time also adds to the sense of urgency, since a State must wait ten years from the date of ratification before submitting a continental shelf claim to the CLCS.

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Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Seat on CLCS council valuable in that it allows US to take part in discussions and engage other participants

"A seat on the Continental Shelf Commission (CSC) is not an exercise in veto power as the author correctly pointed out. It is far better than that. It is a way to understand intimately and firsthand what other states on the Commission are thinking, planning, and implementing. n50 Without a seat the US has neither eyes nor ears. This means as a matter of practicality that informal networking, so essential in international law, is greatly restricted. Hence such a seat provides the government valuable strategic intelligence for little cost. The collective arguments the author puts forward against the seat are conservative and minimalist and perhaps even nonpurposive and deconstructionist. His arguments provide no substantive basis for not being on the Commission. Membership would not harm the US. It would provide a good deal of potential advantage. We believe that it would be better to have a representative at the table who would understand and report on the dynamics of the CSC instead of being excluded and having the government read about the CSC's works in the newspapers. Some of the most important [*60] marine resources are being exploited n51 and will be found in the future on the world's continental shelves. US industry is and will continue to be in the

capitalised forefront of these developments. A properly codified regulatory system contributed to by the US will be essential to protect US interests. Indeed, as interest and activities in the Arctic Ocean become more and more prevalent by the Russian Federation, Canada and others, the US risks losing valuable positions by not ratifying.

[*Page 59*]

Cartner, John A. C. and Edgar Gold, Q.C. "*Commentary in Reply to "Is it Time for the United States to Join the Law of the Sea Convention"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 1 (January 2011): 49-70. [**More** (7 quotes)]

By remaining outside of convention, US is unable to engage in disputes over Arctic claims within framework

"Related to the increased international activity and interest in the Arctic described above, the fact that the United States has signed but not yet ratified the United Nations Convention on the Law of the Sea[18] will become even more problematic with time and as more states call for international recognition of their Arctic claims (see Box 1.3). For example, the five Arctic coastal states—Canada, Russia, Norway, Denmark (based on its territory Greenland), and the United States—are in the process of preparing Arctic territorial claims for submission to the Commission on the Limits of the Continental Shelf. Russia's claims to the Lomonosov Ridge, if accepted, would grant Russia nearly one-half of the Arctic. By remaining outside of UNCLOS, the United States seriously compromises its ability to take part in negotiations regarding the claims of other nations.[19] UNCLOS provides a legal framework for the settlement of such disputes.

[*Page 25*]

Committee on National Security Implications of Climate Change for U.S. Naval Forces. **National Security Implications of Climate Change for U.S. Naval Forces** . National Research Council: Washington, D.C., 2011 (226p). [**More** (5 quotes)]

U.S. has no standing in CLCS until it ratifies convention

"The United States cannot currently participate in the Commission on the Limits of the Continental Shelf, which oversees ocean delineation on the outer limits of the extended continental shelf (outer continental shelf). Even though it is collecting scientific evidence to support eventual claims off its Atlantic, Gulf, and Alaskan coasts, the United States, without becoming party to the convention, has no standing in the CLCS. This not only precludes it from making a submission claiming the sov- ereign rights over the resources of potentially more than one million square kilometers of the OCS, it also denies the United States any right to review or contest other claims that appear to be overly expansive, such as Russia's in the Arctic. This is especially urgent this year, as the commission will review an influx of claims expected in May 2009, the deadline for twenty- six

states to make their submissions based on the procedural clock that began ticking when they ratified the convention. (The United States would have ten years to make its claim if it were to join the convention.)

[*Page 33-34*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. needs to be party to UNCLOS to defend its rights within the CLCS

"The Continental Shelf: There is an extensive continental margin beyond 200 miles off the coast of Alaska and elsewhere off the coast of the United States. As a party to the Convention, we will be able to submit the results of our scientific studies regarding the seaward limits of the continental margin to the Commission of experts established by the Convention. Once we are satisfied with the outcome of our exchanges with the Commission, we can exercise the right to declare limits that are final and binding on all parties to the Convention. This will increase the certainty of our control and the willingness of private capital to make the substantial investment required to explore and exploit areas as deemed suitable for development.

Moreover, as a party to the Convention, we acquire the right to nominate and participate in the election of members of the Commission, as well as the right to comment on both the procedure and the substance of the Commission's work. These rights are important because we have a major interest in influencing the review of continental margin claims around the world before they become final and binding, in order to ensure that reasonable claims are confirmed and made more secure, and that excessive claims do not limit our own access to the areas in question for economic, scientific, or other purposes. Mr. Chairman, the Canadian and Russian Governments have every right to seek to use the Commission to advance their interests. But Alaska is caught in the middle, and our capacity to protect our interests off Alaska and in the Arctic generally will be enhanced by getting on the inside and making sure our concerns are heeded.

[*Page 6-7*]

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (6 quotes)]

Adversaries using U.S. absence from UNCLOS to modify martime law in ways adverse to U.S. interests

As the pre-eminent global maritime power, the U.S. has significant interests in the global effect of the Convention's rules and their interpretation with many issues that of greater concern to us than to most other countries (for example, preserving freedom of navigation rights). Our adversaries view this as a weakness they can exploit and are shaping the course of the convention in ways adverse to U.S. interests while the U.S. remains on the sidelines, unable to participate in the discussion as a non-party.

U.S. adversaries are taking advantage of U.S. non-party status to UNCLOS to shape international laws in ways inimical to U.S. interests

"The fact that some countries that already belong to the convention and are trying to change it through reinterpreting the terms of the treaty shows that those states understand how to convert a struggle for power into a struggle to shape the law.

China, for example, is a party to the Law of the Sea, but denies that foreign warships have the right to enjoy high seas freedom and overflight in the East China Sea. Beijing is patiently but steadily pushing to change standard interpretations of international law, integrating into its maritime strategy elements of "legal warfare" and an effective public diplomacy campaign to capture world public opinion. By declining to become a member of the treaty, the U.S. has so far ceded the opportunity to influence and shape the constitution for the oceans, yielding the stage to China, North Korea and Iran to popularize their restrictive approach to navigational rights. This is akin to refusing to engage in debate on the future direction of the U.S. Constitution because one's political opponents have staked out objectionable positions on the issues and are engaged in "reinterpreting" its most fundamental provisions.

Kraska, James. "***Missing the Boat: Failure to join the Law of the Sea Convention harms U.S. interests*** ." **Armed Forces Journal**. (April 1, 2009) [**More**]

U.S. adversaries are using U.S. absence from UNCLOS to shape treaty in way adverse to U.S. interests

"Similarly, less friendly countries such as China, Iran, and North Korea have sought to impose control over the ocean out to 200 miles off their coastlines by establishing security zones. Both types

of proposed coastal-state regulations place at risk U.S. economic prosperity and national security by attempting to close off to U.S. ships and aircraft vast swaths of ocean, allowing coastal states at their whim to deny use of the global commons. These proposed restrictions by coastal states attempt to diminish or impair the right of freedom of navigation enjoyed by mariners for two millennia.

All of the countries mentioned above already belong to or have signed the convention, but are trying to change it through reinterpreting its terms. China, for example, is a party to the Law of the Sea, but denies that foreign warships have the right to enjoy high-seas freedom and overflight in the East China Sea. Beijing is patiently but steadily pushing to change standard interpretations of international law. By declining to become a member of the treaty, the United States has so far ceded the opportunity to influence and shape international norms, thereby yielding to states trying to popularize their restrictive approach to navigational rights.

South Carolina Sen. Jim DeMint, when leading the opposition to the treaty as it was being debated in 2007, said We know from international groups like the U.N. that many signers of these agreements do not act in the best interest of the United States or the world. He is correct, of course, but the United States' failure to ratify only empowers these states to set maritime rules without a U.S. seat at the table. DeMint's argument is akin to refusing to engage in debate on the future direction of the U.S. Constitution because one's political opponents have already staked out objectionable positions.

Kraska, James. "***High Seas Ditherers*** ." **Foreign Policy**. (February 13, 2009) [**More**]

U.S. interests are threatened by international NGOs and other actors that are shaping the future of UNCLOS without U.S. input

“The real threat to U.S. oceans interests is not the United Nations, but the relentless campaign by nongovernmental organizations (NGOs) such as Greenpeace in conjunction with certain coastal countries, including close U.S. allies such as Canada and Australia, to unilaterally impose maritime rules to restrict international shipping on the oceans and aircraft overflight of the seas for purported environmental reasons. For example, a group of Western European states pushed for a ban on single-hull tankers from a vast area of international waters in the Eastern Atlantic, and in 2006 the European Commission suggested in a report that the navigational freedoms in the Law of the Sea Convention should be revised to expand coastal state jurisdiction over transiting vessels.

John Bolton, former U.S. ambassador to the United Nations, describes this type of partnership between NGOs and some like-minded governments as norming ... the idea that the U.S. should base its decisions on some kind of international consensus, rather than making its decisions as a constitutional democracy. He adds, It is a way in which the Europeans and their left-wing friends here and elsewhere try and constrain U.S. sovereignty. The rules emerging from this process weaken the navigational freedoms the United States relies on to ensure submarines can transit through the world's choke points and ships serving as sea bases in coastal waters can launch military operations.

Kraska, James. "***High Seas Ditherers*** ." **Foreign Policy**. (February 13, 2009) [**More**]

U.S. has permanent veto over new amendments to the treaty but only after it has ratified it

“Article 316 of the convention has always required that most amendments be specifically ratified by a state before binding that state. The only exceptions to this requirement are for amendments to the Statute of the International Tribunal of the Law of the Sea, Annex VI, and for amendments relating to provisions on seabed mining. Amendments to Annex VI can only be adopted “without objection” per Article 313 or by consensus. In either case, the United States can block passage if necessary to obtain the advice and con- sent of the Senate. President Reagan’s specific objection regarding amendments to seabed-mining provisions was remedied by the interaction of the 1994 agreement and the convention. Convention Article 161, paragraph 8(d) requires consensus of the ISA council to adopt amendments to Part XI, which contains the seabed-mining provisions. Section 3, paragraph 15(a) of the annex to the 1994 agree- ment provides the United States a permanent seat on the council by virtue of being the largest economy on the date of entry into force of the convention. Together these sections effectively give the United States a “permanent veto” over binding amendments to the seabed provisions of the convention. Similar to concerns regarding distribu- tion of benefits to national liberation movements, the United States must join the convention and claim a seat on the ISA to enjoy these protections against unfavorable amendments. Failure to join the convention and participate in the ISA risks “poisoning” the conven- tion to U.S. accession by the addition of unacceptable amendments.

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Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

UNCLOS, like most international law, is imperfect and constantly evolving which is why U.S. needs to be engaged to direct it

“There are more than one hundred illegal, excessive coastal state claims worldwide that purport to impair vital navigation and over- flight rights and freedoms.122 Rejecting the Convention because it is violated by some states and applied imperfectly by others falls into the familiar trap made by the novice of international law— which is to reject international law because all nations do not adhere to all of its standards all of the time. Moreover, rejecting the Convention forgoes the opportunity to use international treaty law as a mechanism to influence change in the domestic laws—and the behavior —of noncompliant states. On the other hand, there is pressure to reshape interpretations of the Convention from the European Commission, vocal NGOs and some member states in ways that undermine freedom of the seas, undercutting national economic and security interests. The contest of ideas to shape future interpretations of the Convention is not unlike international political competition.

[*Page 566*]

Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

UNCLOS convention already forms basis for international maritime law but U.S. is left out of discussion on its direction

"Every year that goes by without the U.S. joining the Convention results in deepening our country's submission to ocean laws and practices determined by foreign governments without U.S. input. Our Navy and our ocean industries operate every day in a maritime environment that is increasingly dominated by foreign decision-making. In almost any other context, the Senate would be outraged at subjecting Americans to foreign controls without U.S. input.

What many observers fail to understand about Law of the Sea is that the Convention already forms the basis of maritime law regardless of whether the United States is a party. International decisions related to resource exploitation, navigation rights, and other matters will be made in the context of the Convention whether we join or not. Because of this, there is virtual unanimity in favor of this treaty among people who actually deal with oceans on a daily basis and invest their money in job-creating activities on the oceans.

By not joining the treaty, we are abetting Russian ambitions in the Arctic. We are making the job of our Navy more difficult, despite the longstanding and nearly unanimous pleas of Navy leaders that U.S. participation in Law of the Sea will help them maintain navigational rights more effectively and with less risk to the men and women they command. We are turning our backs on the requests of important American industries that use the oceans and must abide by rules established under this Convention. We are diminishing our chances for energy independence by making U.S. oil and gas exploration in international waters less likely. And we will not even be able to participate in the amendment process to this treaty, which is far more likely to impose new requirements on our Navy and ocean industries if the U.S. is absent.

Lugar, Richard. "***Statement from Richard Lugar: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)*** ." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More** (2 quotes)]

UNCLOS has force as customary international law but the US needs to be a party to guide its evolution

"By any measure, UNCLOS satisfies the criteria for creating new custom. As such, to the extent UNCLOS reflects customary law, the most obvious way to change customary law would be to amend UNCLOS itself. Although amending the treaty could be challenging, UNCLOS provides two processes for amending its general provisions, as well as a separate process for amending the deep

seabed mining provisions of the 1994 Agreement.77

UNCLOS' general provisions can be amended by two separate procedures. A simplified procedure provides that the Secretary General may circulate a request for an amendment and if within 12 months there is no objection, the amendment is adopted. If a party objects, the amendment is rejected.[78] Under the conference procedure, a party may propose an amendment and request an amendment conference. Convening the conference requires concurrence by half the state parties within twelve months of the request. After its adoption, an amendment's entry into force by either procedure requires ratification by two thirds of the state parties.[79]

Significantly, if the U.S. were a party to UNCLOS, any post-accession amendment would require signature by the President and ratification by the Senate.[80] According to the express terms of the treaty, the U.S. could not be involuntarily bound by post-accession changes to the Convention.[81]

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Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

Parties to UNCLOS can oppose amendments to ambiguous policies

"UNCLOS parties would have several options if they desired to clarify this point. The International Tribunal for the Law of the Sea (ITLOS) has competence to issue an advisory opinion on the provision's meaning.91 However, ITLOS lacks competence to try suspected pirates themselves.92 Despite calls to permit such trials through amendment to the statute of ITLOS or additional UNCLOS protocols,93 converting a judicial body initially designed to settle interpretive disputes among states relating to UNCLOS into a criminal tribunal remains unprecedented and impractical.94 UNCLOS article 105 would nonetheless preclude this possibility at ITLOS and other inter- national courts, such as the International Criminal Court, which also lack the mandate to hear piracy cases.95 Parties could alternatively amend UNCLOS to suit their needs through formal procedure by convening a consensus-seeking conference, or through simplified procedure, followed by adoption of an amendment and signature, ratification, or accession to it.96

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Kelley, Ryan P. "***UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime Piracy*** ." **Minnesota Law Review**. Vol. 95, No. 6 (June 1, 2011): 2285-2317. [**More** (4 quotes)]

Structure and effect of UNCLOS currently being developed by state practice and negotiations with the US as a bystander

“As with most comprehensive legal framework documents, UNCLOS includes many broadly worded provisions susceptible to differing interpretations. Not surprisingly, while many of UNCLOS' provisions reflect customary international law, contributed to the rise of significant international political and military rifts. For example, as of 1997, over forty coastal nations-including strategically significant nations such as India and China-have claimed the right to restrict the "innocent passage" of foreign warships through their territorial waters on the basis of prior notice, consent, and/or means of propulsion." Similarly, a minority of coastal states again including China have claimed and/or sought to enforce restrictions or prohibitions on foreign military activities, such as the collection of military intelligence or the conduct of military exercises, within their exclusive economic zones (EEZs). states likewise consider such restrictions contrary to UNCLOS . However, an adequate remedy is not readily available, as judicial and tribunal decisions have yet to definitively resolve these divergent positions. Instead, the relevant currency in the ongoing "negotiation" over the contours of UNCLOS is comprised of relevant state practice, such as diplomatic statements, naval operational assertions, domestic implementing legislation, and authoritative policy documents; institutional policy consensus from, for example, the differing interpretations of key provisions have The United States and a majority of UNCLOS International Law of the Sea Tribunal (ITLOS), the UNCLOS and the UNCLOS Commission on the Limits of the Continental Shelf (CLCS); 56 and the writings of international legal scholars.

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De Tolve, Robert C. "Rock". "***At What Cost? America's UNCLOS Allergy in the Time of "Lawfare"*** ." **Naval Law Review**. Vol. 61. (2012): 1-16. [**More** (8 quotes)]

China and Russia could exploit U.S. non-party status to renegotiate UNCLOS in ways adverse to its interests

“The example of China and Russia's flouting of the convention's norms also presents the possibility that the treaty could be renegotiated to become more favorable to those countries' interests. UNCLOS as currently written is extremely favorable to U.S. interests, codifying the rights of freedom of navigation and passage that are important to maintaining its global power status, according to Titley.

“The real strategic threat for us not being a [party to UNCLOS] is if anybody at some point wants to change the rules of the game … we're not going to have a seat at that table,” Titley said. UNCLOS “basically codifies up a world in which the U.S. is kind of the number one dog. And so now by not ratifying this, as the world changes, and maybe if that situation changes, we're not even going to be in the room when—if this ever gets looked at again. … It's frankly pretty hard to see that another [international legal] regime would be as friendly to U.S. interests as is UNCLOS. That's a real danger.”

Another key risk connected with the United States not being a party to the treaty is that the treaty itself is weakened by lack of U.S. participation, because it is important as a big coastal state and a major economy, according to Jensen.

Jenny Johnson. "***Who Owns the North Pole? Debate Heats Up as Climate Change Transforms Arctic*** ." **Bloomberg News**. (April 4, 2014) [**More**]

Failure to ratify UNCLOS is increasingly an untenable position, forcing US to accept law without having input on its development

"Simply stated, accession to the Convention and adherence to its procedure based on a prolongation of Alaska's continental shelf would greatly facilitate American claims to Arctic resources, providing uniformity, predictability, and legal security. Accession also would demonstrate solidarity within the international community, bolstering a faltering reputation, and allow UNCLOS to "function as originally conceived."[n369] Most important, ratification would give the U.S. a voice to assert its point of view and a recognized method to exercise jurisdiction within the Arctic.

Continuing to do nothing is an untenable position. It would be foolish and risky to assume that the U.S. can maintain ad infinitum the desultory and passive approach upon which it currently relies.[n370] With the everincreasing pressure from coastal States to augment their authority in a manner that would alter the balance of interests struck in the Convention,[n371] the United States "needs to be in the game, at the table."[n372] Thus, unless UNCLOS is ratified, or a separate Arctic convention is negotiated, the United States will remain tenuously wedged between Scylla and Charybdis, unable to assert a recognized claim of sovereignty, influence international maritime policy, or make substantive changes to parts of the Convention it finds troubling.

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Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

US stands only to gain ability to influence development of UNCLOS by becoming a party to the treaty

"Further, UNCLOS does not allow any reservations to the treaty other than those explicitly provided for when acceding to the Convention. n341 It is possible to amend the Convention, but only as a full Member State. n342 UNCLOS established a ten year prohibition on amending the Convention subsequent to its entry into force. n343 Since UNCLOS entered into force in 1994, a year after the date of the sixtieth ratification, n344 this moratorium expired on November 16, 2004. n345 Accordingly, only Canada, Denmark, Norway, and Russia currently are able to proffer amendments to UNCLOS regarding Arctic mining. But should any such amendment be ratified before America accedes to the Convention, the U.S. would not be able to avoid its application when signing.

The Senate's recalcitrance is based largely on a fear that the U.S. would be unable to play a dominant role within the Convention. Yet by refusing to ratify UNCLOS, the U.S. stands as one voice against the force of the entire Convention within the Arctic. Should [*242] the United States persist in its refusal to ratify UNCLOS, it will find itself in the same or weaker position if and when the CLCS recognizes the sovereign claims of other Arctic States that permit the exploitation of the pole's wealth. Indeed, regardless of American involvement, UNCLOS has established "a de facto regime governing the deep seabed, and U.S. interests are better served by active participation in the UNCLOS regime than by sitting on the sidelines."

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Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

UNCLOS will continue to change and adapt and US needs to be party to the treaty in order to help guide its evolution

"For most U.S. observers, however, U.S. participation in Convention institutions and meetings of States Parties can help shape the future direction of the law of the sea in ways favorable to U.S. commercial, fishing, environmental, and military interests. The law of the sea will inevitably change through a wide variety of mecha- nisms. Some proposals for change could be made from "within" the Convention system-perhaps by formal amendments, 63 or even potentially at meetings of States Parties.64 America's taking its place as a State Party to the Convention can help promote U.S. views. For example, its participation in the work of the ISA can help assure that the Authority does not attempt to stretch its mandate to impinge on what many assert to be the freedom to harvest deep-sea-vent living organisms, which are important resources in biotechnology.65 As a State Party, the U.S. would also have more leverage with respect to the Article 311 obligation that subsequent agreements between States Parties be compatible with the66 Convention.

[*Page 636-637*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

Ratification would give the US the ability to further amend and guide development of the treaty

"Among the benefits the U.S. will receive from UNCLOS membership is the ability to have a judge of U.S. nationality serve on the ITLOS and the right to participate in the amendment process of the

treaty as provided for in Article 312. The power to amend the treaty is vested in the parties 10 years after the treaty has entered into force.18 The 10-year anniversary was November 16, 2004. The U.S. would be entering the game just as amendments become possible. Admittedly, the question of amendment to such a comprehensive legal instrument is fraught with difficulties, but U.S. membership ensures that any future amendments will only be adopted when the U.S. is a full participant in the process.

[*Page 482*]

Schiffman, Howard S. "*U.S. Membership in UNCLOS: What Effects for the Marine Environment?*." **ILSA Journal of International and Comparative Law**. Vol. 11. (2004-2005): 477-484. [**More** (3 quotes)]

Completely unacceptable for US to be outside of UNCLOS as key amendments are being discussed

"As we come closer to the time when amendments to the Convention are contemplated, it is absolutely essential that we have a voice in that process. One of the basic principles I try to engrain in my officers is the idea that in any negotiation, the first person to get his ideas down in writing or, as we say, the first person to get the chalkboard, has a tremendous advantage. One forces others to work from one's own text and ideas. It is important to set the baseline and make others fight away from it. Well, I can say that I do not know how we can be first to the chalkboard if we do not even have a seat at the debate when these amendments come up, if they come up. In our current status as a nonparty, we will not be in the room. We will not have a seat, much less a voice.

Even decades ago, I do not think that this would have been an acceptable position for the United States, given our historic reliance on global and maritime commerce. Today, it is completely unacceptable. Ostriches, as they say, may bury their heads in the sand, but they are on land; they are not dependent upon water in a global maritime regime. On the other hand, if we try to bury our head and go it alone in our modern global maritime climate, we will drown.

[*Page 449*]

Baumgartner, William D. "*UNCLOS Needed for America's Security*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 445-451. [**More** (3 quotes)]

U.S. should formally accept UNCLOS treaty to fully take advantage of its benefits and regain its leadership role

"Currently, as a non-party, the United States is not bound by the various provisions of the UNCLOS. At the same time, it also constrains the US to take full advantage of the many benefits it offers and to avoid the increasing costs of being a non-party. In contemporary world, it is implausible

and unwise to think that the US can rely on military power alone to enforce its rights, particularly economic rights. Further, US certainly cannot have much influence over development of the law of the sea, stimulated by recent Arctic climate changes, by remaining outside the Convention. The evolving ocean order may be detrimental to the US national interests. By not acceding to the UNCLOS, the US is forgoing an opportunity to extend its sovereign rights over adjoining continental shelf, while simultaneously abdicating an opportunity to play a significant role in formal deliberations in the UNCLOS institutions. These shortcomings are further excerabated by the observed and potentail impacts of climate change in the Arctic region.

In this context, if we consider securing national interests as an outcome of the diplomatic bargain through inter-governmental negotiations concerning a particular ocean issue, then formal participation in the Convention processes is necessary for the US to remain at the helm of the ocean diplomacy in the contemporary world. Hence, it is imperative for the US to accede to the LOS convention, as it is a critical step toward advancing its national interests to ensure economic and strategic interests in ocean space. Imperatives of contemporary developments have given fresh impetus in the US in the direction of ratification of the LOS Convention. This section examines the factors and contemporary developments which have triggered the efforts to get consent of the US Senate to ratify LOS Convention.

[*Page 11-12*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

U.S. sidelined as IMO develops new global policies as they are based on UNCLOS

"The Coast Guard represents the United States at the International Maritime Organization (IMO), the specialized body through which international standards for ship safety, security, and environmental protection are developed and adopted. These standards are negotiated and implemented under the Law of Sea Convention's framework.

Consequently, we are becoming increasingly challenged in some of these negotiations because we are not a party to that framework. Moreover, the convention encourages international cooperation to enhance the safety and security of all ocean-going ships. The IMO is developing a mandatory Polar Code for Arctic shipping, and the Coast Guard is playing a key role in that effort.[8]

[*Page 55*]

Oliver, Dr. John T. and Steve G. Venckus. "***The U.N. Convention on the Law of the Sea: Now is the time to join*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 70, No. 2 (Summer 2013): 53-56. [**More** (4 quotes)]

U.S. non-party status to UNCLOS is hindering its ability to engage on international maritime issues

“Our non-party status is an obstacle that we must overcome in developing virtually any new multilateral maritime instrument. For example, the United States has long played a key role in the IMO to promote maritime safety and effciency and to protect the marine environment in the Arctic, but our leadership position is undermined by our current “outsider” status.

The United States has no “seat at the table” in matters concerning the convention, nor does it have a judge on the Law of the Sea Tribunal, or a decision maker or staff expert on the Commission on the Limits of the Continental Shelf that convenes to review and approve claims to extended continental shelves. Moreover, despite the fact that the 1994 Part XI Implementation Agreement guarantees the United States a permanent seat on the International Seabed Authority and an effective veto on all key decisions of that body, as a nonparty, we simply cannot play that critical role. Without joining the convention, we have no means to formally represent our signifcant maritime interests as a global power, and guide the discussion interpret- ing and developing the law of the sea in the Arctic.

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Oliver, Dr. John T. and Steve G. Venckus. "***The U.N. Convention on the Law of the Sea: Now is the time to join*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 70, No. 2 (Summer 2013): 53-56. [**More** (4 quotes)]

U.S. non-party status to UNCLOS complicates efforts at negotiating agreements at the IMO where most rules are based on UNCLOS

“The Convention recognizes that various UN subsidiary bodies may serve as competent international organizations for the further Conventional development of the law of the sea. IMO has always been the recognized competent international organization for maritime safety and marine environmental protection. It has now assumed a similar role in port facility and vessel security. Acceding to the Convention will enhance Coast Guard efforts to work in the international community through the International Maritime Organization, the International Labor Organization and other UN subsidiary bodies to improve our security measures and to project our maritime domain awareness, consistent with the Convention’s balance of states’ rights to the uses of the oceans. Specifically, we are working now at IMO to build upon the successes achieved by the United States in that body at the December 2002 diplomatic conference. As you know, that diplomatic conference resulted in the landmark amendments to the SOLAS Convention for vessel and port facility security contained in Chapter XI and the International Ship and Port Facility Security Code. We have on-going efforts in respect of Conference Resolution 10 to enhance our maritime domain awareness through Long Range Tracking of vessels bound for our ports and waters. These negotiations are taking place in the context of the overwhelming number of nations at IMO being parties to the Law of the Sea Convention. Because of this fact, the Law of the Sea Convention provides the framework for the

discussions and agreements. Although we have enjoyed success in the international security agreements so far, those negotiations have not always been easy. Further progress will not be as easy to achieve as our past successes. Frankly, the fact that the United States is not a party to the Law of the Sea Convention, when the overwhelming number of our international partners are parties, has occasionally put us in a difficult negotiating position at IMO. It is our judgment that accession to the Convention will put us in a stronger position at the IMO than we currently enjoy.

[*Page 5*]

Crowley, John E. "***Statement of Rear Admiral John E. Crowley Jr. on United Nations Convention on the Law of the Sea***." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

U.S. could be outvoted by other nations and UNCLOS amended adversely to its interests

"The lack of U.S. Influence: The 1994 Agreement requires that any ISA Assembly decisions concerning administrative, budgetary and financial matters must be based on recommendations by the ISA Council. While the Agreement effectively guarantees the United States a seat on the Council, it does not assure this country a veto. To the extent the Council operates on the basis of consensus, America may have what amounts to such leverage. But nothing prevents the Council from acting instead on the basis of majority rule – in which case, Mr. Reagan's concerns would still apply.

For example, the 1994 Agreement still allows the ISA to amend LOST without American consent. The UN Secretary General can convene a conference, at which the Assembly and Council can vote to accept an amendment to LOST. It then requires the approval of three-fourths of LOST's states parties to become final. As is often the case in UN settings, the United States could simply be outvoted.

[*Page 5*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. involvement in UNCLOS critical to prevent it from being modified adversely to our interests

"Protecting American Interests: Because we are the main global maritime power, our interests demand that we consider the global effect of the Convention's rules and their interpretations; there are a number of issues that are of greater concern to us than to most other countries. It is not prudent for us to sit idly by on the sidelines and rely on others to protect our global interests from the inside. For example, despite our close security relationship with most of its member states, there are

disturbing signs that the European Community may try to shift the Convention's balance in a sharply coastal direction in derogation of the freedom of navigation beyond the territorial sea and free transit of international straits.

[*Page 2*]

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (6 quotes)]

UNCLOS protects freedom of navigation rights but China and Iran are using U.S. non-party status to modify these rights to their advantage

"UNCLOS also guarantees the right to operate and conduct exercises in international waters beyond the territorial sea. Prior to the convention, many coastal states were insisting on the right to exercise complete sovereignty out to as far as 200 miles or more from their land territory. While the convention's provisions establish the right of coastal states to claim a 200-nm exclusive economic zone (EEZ), they may only exercise sovereign rights over economic activities, such as fishing, the exploration for and production of oil and gas from under the seabed, and the construction of artificial islands. Under the convention, coastal states may not restrict freedom of navigation within the EEZ, including military training exercises, law enforcement activities, and overflight.

These provisions are of great benefit to our national security and global mobility interests. In addition to the global reach of the U.S. Navy and Air Force, Coast Guard units patrol the Persian Gulf, the Caribbean Sea, the eastern Pacific Ocean, and other vital maritime areas. There is a disturbing movement among some coastal states to attempt to transform their EEZs into the equivalent of a territorial sea, in which they may limit critical navigational freedoms. For example, the U.S. Navy is concerned about apparent government attempts in China and Iran to assert excessive control over foreign operations within the exclusive economic zone. The United States must not sit on the sidelines while the international community is working out the nuances of how UNCLOS is to be interpreted and applied.

[*Page 7-8*]

Oliver, John T. "***A Window of Opportunity: The U.N. Convention on the Law of the Sea.*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 66, No. 3 (Summer 2009): 6-10. [**More** (5 quotes)]

Our adversaries can take advantage of US absence from the treaty to change the rules to their advantage

"Additionally, while convention or treaty-based international law is less subject to change and interpretation, it is not immune from change. Parties can collectively agree to change the rule-set in a treaty or adopt particular interpretations of its provisions, in accordance with the terms of the treaty. Given that over 160 nations are currently parties to the Convention, if the rule-set were to change, we might no longer be able to argue that the existing, favorable set of rules under the Convention reflects customary international law. We would be forced to either accept the new rule-set or act as a persistent objector, either of which would come with its own risks. Moreover, our continued status as a non-party allows States an enhanced ability to co-opt the existing text of the Convention and attempt to re-interpret its rules contrary to the original intent that we and other maritime powers helped to negotiate. It would be much more beneficial for the United States to lead the international community in this crucial area of international law from within the Convention, rather than from the outside.

[*Page 5*]

Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

China's argument with the U.S. over interpretation of UNCLOS is an example of how states can mold customary international law in ways inimical to U.S. interests

"One way to interpret the challenges emanating from the PRC is that Beijing resents a legal regime that appears to favor American security at the PRC's expense. Unable to change the words of UNCLOS, the PRC argues—laboriously, at times—to persuade the United States that the spirit of the law clearly supports Beijing's interpretation, even where the word of the law may be insufficiently precise.

Hence, Chinese and American analysts of UNCLOS dicker about the meaning of article 58(3), which reads: "In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part."[16] PRC analysts point to the "due regard" clause as evidence of the obligation of foreign states to abide the laws of coastal states and the right of coastal states to restrict military activities in the EEZs off their coasts. American analysts tend to view this conclusion as smuggling into the article a privilege that was explicitly rejected by the drafters of the convention.

It is conceivable, of course, that advocates writing on behalf of the PRC offer interpre- tations of UNCLOS that are in fact meant to reopen and extend negotiations about issues that have, apparently, been settled. By challenging the understanding of what is permissible in the EEZ, the Chinese analysts may be hoping that other states will follow suit, adjusting what would then be seen

as customary international law and hoping that the legal justifications they offer will likewise become the new norm. This, indeed, is precisely why some American proponents of UNCLOS argue that the United States must ratify the convention. For example, Rear Adm. Arthur E. Brooks, commander of the Seventeenth Coast Guard District, has said, “While reliance upon customary interna- tional law has served us well for many years, it does not adequately protect our interests. Customary international law is based on the evolving practice of States; it can and does erode over time. The Law of the Sea Convention provides the legal certainty and stabil- ity” that the admiral believes would assure U.S. interests for the long term.[17]

[*Page 113-114*]

Wachman, Alan M. "***Playing by or Playing with the Rules of UNCLOS?*** ." in Military Activities in the EEZ: A U.S.-China Dialogue on Security and International Law in the Maritime Commons, edited by **Dutton, Peter A**. U.S. Naval War College: Newport, Rhode Island, December 2010. [**More** (4 quotes)]

U.S. position as a leader has been damaged by non-participation

U.S. failure to ratify UNCLOS raises fundamental questions regarding not only the future of legal regimes applicable to the world's oceans, but also U.S. leadership in promoting international law and order.

Additionally, our partners lose confidence in the ability of the United States to make good on its word when we negotiate and sign treaties but don't ultimately become party to them, especially as in the case of UNCLOS where the U.S. negotiated aggressively to win valuable concessions and won them.

US failure to ratify UNCLOS is impeding the international cooperation necessary to address multinational threats like terrorism

"The events of the past quarter-century, and particularly the world-changing tragedies of September 2001, have made it more imperative than ever that the United States accept this convention. As the United States seeks a higher level of international cooperation in executing the fight against terror- ism, and as the U.S. Navy, Marine Corps, and Coast Guard look to enhanced levels of global maritime cooperation to safeguard critical interests held in common, the failure of the United States to become a party to the Convention is impeding U.S. strategies and programs. Indeed, the Navy and Coast Guard have taken leadership roles in advocating adoption.

If the United States has learned anything since 9/11, it is the importance of international cooperation and of having coalition partners in any significant endeavor—from disaster response and humanitarian relief, to peacemaking and peacekeeping, to warfighting. Free and unhampered use of the world's oceans is a necessary condition for the United States to form coalitions of like-minded nations and for the Navy to operate on and from the sea with coalition navies and pursue the Global Maritime Partnership Initiative (i.e., the 1000-ship navy) and work with the navies of other peace-loving nations.1 Part and parcel to this is for all nations concerned to have a common frame of reference for the legal regime of the oceans.

[*Page 51*]

Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

U.S. rejection of international agreements like UNCLOS only emboldens our adversaries to challenge our leadership

“U.S. presidents do not create and shape multilateral structures because they believe in global governance as an abstract philosophy. They do so because they want to advance the strategic and national security interests of the United States, which, for more than 65 years, have been tied up in the preservation and strengthening of a rules-based international order. These structures are not always perfect. When they are flawed, the tough process of ratification makes sure that problems are addressed. Unfortunately, however, doctrinal statements against the very idea of participation in multilateral organizations and agreements are now routinely undermining U.S. leadership overseas. This may have been an indulgence the United States could afford in the "unipolar" 1990s, but faced with a power transition in Asia, it is a strategic blunder that only emboldens those who long for the end of the U.S.-led international order.

Wright, Thomas. "***Outlaw of the Sea: The Senate Republicans' UNCLOS Blunder*** ." **Foreign Affairs**. (August 7, 2012) [**More**]

US being excluded from international maritime policy because it has failed to ratify UNCLOS

“The US is therefore increasingly not being allowed in the game because it mistakenly believes that its punched ticket from the last game is good for this one. Were the US to ratify UNCLOS 1982 it would be in the current global maritime game with no protest or recalcitrance from any other state on those grounds. It follows that US policy positions unrelated to ratification, as argued by the author, would have more wins and fewer losses with commensurate better understanding of how world trade works. For it is the good order of law which facilitates trade. And trade not ideology is the engine that powers the modern, interdependent world. As we are sure the author would agree, trade is more efficient when regulatory uncertainty is reduced. UNCLOS 1982, whatever its minor flaws may be, provides muchneeded order in ocean governance and management and removes many of the uncertainties that have existed since the Grotius-Selden debate almost three centuries ago. Indeed, as the author undoubtedly recognizes, the vast majority of global trade moves on the oceans. This is, without question, one of the principal reasons underlying the existence of UNCLOS 1982 and its predecessors. We ask and not rhetorically that if trade is not the fundamental basis for national security, then what is? Global trade will continue in the rest of the world with or without US participation. It will prosper for all states including the US with a predictable, global regulatory system such as UNCLOS 1982. It will suffer, however, when regulatory fragmentation through unilateral action of a state takes place.

[*Page 65-66*]

Cartner, John A. C. and Edgar Gold, Q.C. "*Commentary in Reply to “Is it Time for the United States to Join the Law of the Sea Convention”*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 1 (January 2011): 49-70. [**More** (7 quotes)]

US credibility and legitimacy suffers when it pushes for treaties like UNCLOS but then declines to ratify them

"This is exactly the problem with the U.S. position on UNCLOS and the disconnect between stated intentions and the ultimate failure to ratify. As John B. Bellinger III points out, treaty partners "lose confidence in the ability of the United States to make good on its word when we negotiate and sign treaties but don't ultimately become party to them."[48] Specifically what Mr. Bellinger is referring to is the loss of U.S. credibility, or in other words the rightness of actions. Furthermore, because the United States is so successful at negotiating treaties, when representatives push hard for and are in turn granted changes within the document (as is the case with the 1994 agreement on implementation), but then ultimately fail to accede, it is very frustrating for the other nations involved.[49] Again, this erodes U.S credibility and in turn legitimacy of action. With this in mind, the U.S. Senate must take the earliest opportunity to harvest this "low hanging fruit" and free PACOM from a barrier that detracts from shaping operations in the South China Sea (SCS).[50]

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Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

US viewed as hypocritical because it has not become a party to UNCLOS

"Formal membership prerogatives aside, given the conflation of UNCLOS and current customary law, U.S. membership in UNCLOS will reinforce customary law and give the U.S. a stronger basis to affect its development in the future. Ironically, U.S. isolationism from UNCLOS serves as the leading example for others who would selectively choose among UNCLOS provisions or even abandon it altogether, thereby eroding customary law. The U.S.' current posture undermines the very legal principles the U.S. professes to support.

Today, not surprisingly, some find inconsistency and even hypocrisy in the U.S. practice of referring others to the Convention's obligations without incurring reciprocal treaty obligations.[97] U.S. arguments on substantive issues are burdened with the stigma of unilateralism,[98] making it more difficult for states committed to the Convention's processes and multilateral framework to support underlying U.S. arguments even where there may be basis for substantive agreement.[99]

[*Page 18-19*]

Houck, James W. "***Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention*** ." **Penn State Journal of Law & International Affairs**. Vol. 1, No. 1 (April 2012): 1-22. [**More** (11 quotes)]

U.S. absence from UNCLOS hurts our leadership consistency and encourages others to flout existing standards

"Remaining outside LOSC is inconsistent with our principles, our national security strategy and our leadership in commerce and trade. Virtually every major ally of the U.S. is a party to LOSC, as are all other permanent members of the U.N. Security Council and all other Arctic nations. Our absence could provide an excuse for nations to selectively choose among Convention provisions or abandon it altogether, thereby eroding the navigational freedoms we enjoy today. Accession would enhance multilateral operations with our partners and demonstrate a clear commitment to the rule of law for the oceans. For example, under the Convention, warships are authorized to stop and board vessels if they are suspected to be without nationality or engaged in piracy. By joining LOSC, we would "lock in" these authorities as a matter of treaty law and thus strengthen our ability to conduct counter-piracy operations across the globe and provides an important tool to support counter-proliferation efforts, and maritime interdiction of terrorists and illegal traffickers tied to terrorism.

[*Page 3*]

Greenert, Jonathan. "***Statement of Admiral Jonathan Greenert: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Testimony before the U.S. Senate Committee on Foreign Relations, June 14, 2012. [**More** (2 quotes)]

US failure to ratify treaty modifications it demanded has undercut credibility in international negotiations

"During the UNCLOS negotiations, there was concern by the global community and the US for the greater good to avoid an oceanic tragedy of the commons.[n57] Thus a way had to be found to accommodate US interests even on seabed mineral extraction matters. As a result, negotiations continued for a number of years and resulted in a separate agreement responding fully to US objections.[n58] This agreement has now been accepted by 140 states but curiously and strangely not by the US for which it was designed![n59] This yet again illustrates the difficulty US negotiators have at critical international meetings when they achieve what is required. This problem moreover undercuts US credibility internationally as a reliable negotiating partner. The world's impression is that the US propounds, urges, uses its bully pulpit, negotiates strongly, and then fails to follow through. A tragedy of the commons may be more difficult to avoid than otherwise without the strong US leadership made possible by its following through with advice, consent, and ratification.

[*Page 62-63*]

Cartner, John A. C. and Edgar Gold, Q.C. "*Commentary in Reply to "Is it Time for the United States to Join the Law of the Sea Convention"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 1 (January 2011): 49-70. [**More** (7 quotes)]

U.S. has lost its leadership role and its credibility by non-adherence to UNCLOS and risks losing claims to valuable resources

"MOORE: Now, let's look for a moment at some of the cost of non-adherence. Non-adherence on a treaty like that, by the way, rather extraordinary. Now, let's look at the cost of non-adherence. The United States has gone from THE leader in the world in oceans policy -- and make no mistake, we were the leader throughout this process -- to simply observer status. The United States has no member on the Continental Shelf Commission making the rules and regulations for the shelf. Not surprisingly, Russia chose basically to go to the commission when the United States was not on it. No wonder it was the first one to go to the commission in its Arctic claim.

The United States does not participate in the international authority in making the rules and regulations for seabed mining. And if we don't join soon, we are at risk in losing all four of our mine sites, again, with the aggregate value of about 1 trillion (dollars) in cooper, nickel, cobalt and manganese. We've already lost one out of the four sites. Russia is out there with a site. India is with a site. China is with a site. Others are with a site. We're about ready to throw them away, because the United States is not adhering to the convention.

In addition to that, the United States is achieving a delay in development on the Continental Shelf oil and gas, because we have no stable legal regime until we join and demarcate the outer area of the boundary. The United States is harmed in its PSI initiative when states such as Malaysia refuse to join with us, because they say we're not a member. The United States is harmed potentially in relation to what we negotiated in losing it simply as a result of others being able to amend the treaty. And if we are not a party, their amendments will then become binding on the treaty on everyone in the world. Whereas, rather interestingly, if we are a party, they cannot amend for us in a way that will be binding on the United States, and the original treated we negotiated would be the one that would be applying to us.

In addition to that, we have difficulties with countries around the world that seek to harm United States' interests. Iran today, for example, says the U.S. has no right to go through Strait of Tehran in transit passage mode because we are, quote, "not a party to the Law of the Sea Convention."

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

U.S. failure to ratify treaties like UNCLOS directly responsible for the decline of American influence around the world

"The 1982 Convention on the Law of the Sea may seem an obscure agreement to nonexperts. That is not the case. The convention is a carefully negotiated international agreement numbering several hundred pages that covers a host of measurable national security, economic, and environmental issues of vital strategic importance to the United States. By remaining a nonparty to the convention, the United States not only forfeits these concrete interests but also undermines

something more intangible: the legitimacy of U.S. leadership and its international repu- tation. For example, American pleas for other nations to follow pollution and fishing agreements ring empty when the United States visibly rejects the Law of the Sea Convention. Remaining outside the convention also hurts its diplomatic hand in other international forums, as well as the perceptions of other states about U.S. commitments to multilateral solutions. As former Supreme Court justice Sandra Day O'Connor has noted, "The decision not to sign on to legal frameworks the rest of the world supports is central to the decline of American influence around the world."[27]

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Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

US non-party status to UNCLOS undermines is global leadership and complicates efforts to challenge excessive claims through its FON program

"The US is, of course, the world's sole superpower and its pre-eminent maritime power. Accordingly, the US clearly plays a leading role in global affairs. The US also perceives itself to be a world leader and is keen to project and promote this image and reality. The fact that the US is not a party to the Convention undermines that leadership role in the maritime sphere. Critically, when the United States comments on maritime issues of concern to it, such as regarding excessive maritime claims through the FON program or on the South China Sea disputes for instance, a frequently raised objection to Washington's interventions is that the US has not signed up to UNCLOS. This serves to compromise the credibility and authority of the US in global ocean affairs. US accession would therefore remove a somewhat irrelevant, but far from unimportant barrier to the United States playing a strong leadership role as the contemporary law of the sea. The counterpoint here is that by choosing not to participate the US is abdicating or at least undermining its credential to a leadership role in international ocean affairs. The rationale for ratification on this front alone is therefore, it is submitted, persuasive.

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Schofield, Clive and Ian Townsend-Gault. "*Time for the United States to Join the Party? Prospects for US Ratification of the United Nations Convention on the Law of the Sea*." **International Zeitschrift**. Vol. 8, No. 3 (December 2012): 1-6. [**More** (4 quotes)]

Testimony from international naval commanders affirms that U.S. absence from UNCLOS framework is undermining its ability to shape the international maritime order

"But this will change as these initiatives continue to reconfigure sea power itself. Consequently it is not surprising (but unfortunate) that the Cooperative Strategy failed to promote international law of the sea as the organizing principle and principal goal of U.S. maritime strategy. This glaring omission has been noted by numerous friends and allies, who time and again reminded the United States of the centrality of international law in their responses to the original thousand-ship-navy concept. Writing separately, naval commanders from France, Ghana, India, Portugal, and Spain all made reference to the importance of international maritime law in their comments on the thousand-ship navy published in 2006 by the Proceedings of the U.S. Naval Institute.[41] A year later, many of the same chiefs of service were asked to respond to Admiral Michael G. Mullen's plan for a new U.S. maritime strategy. Once again, international law was a prominent feature of their replies; the leaders of the naval forces of Brazil, Peru, Portugal, Colombia, Uruguay, Lebanon, and Spain urged the United States to ensure that maritime security is rooted in multilateral legal frameworks.[42] It is especially important that the vigorous expansion of maritime partnership integration propelled by international law be maintained. The maritime domain awareness provisions of the SOLAS Convention, the counterproliferation and counterterrorism elements of the SUA 2005 protocols, and PSI, with its informal nature, and Security Council action against piracy, constitute the greatest package of multilateral maritime-security commitments since the interwar period of the 1930s. The United States led each of these efforts, but there is a widespread perception that the American "brand" has suffered since and that the diplomatic influence of its friends and allies in Europe has diminished.[43] Meanwhile, that of China and Russia is expanding. The upshot is a degree of doubt about the ability of the West to shape the future direction of international maritime law toward a shared vision of the rule of law at sea. This means that we should be prepared to make even greater investments in cooperation, and the development of international maritime law and institutions, to realize the goals of the Cooperative Strategy.

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Kraska, James. "*Grasping the Influence of Law on Sea Power*." **Naval War College Review**. Vol. 62, No. 3 (Summer 2009): 113-135. [**More** (4 quotes)]

US delay in ratifying UNCLOS has had real economic and political costs in terms of lost opportunities and leadership credibility

"Further delay in U.S. accession to the Convention, of course, bears risks and costs for the United States. The Convention became open for amendment for the first time in November 2004. This means that our ability to participate in consideration of any such amendments will be limited. The work of the Commission on the Limits of the Continental Shelf is proceeding: and as a non-party to the Convention, the United States is not eligible to submit a claim for the delineation of its broad outer continental shelf, which could hamper efforts to develop the resources of the shelf. More generally, by staying outside the Convention, the United States risks calling into doubt its commitment to the balance of interests codified in the Convention for uses of the oceans. In the long run, this could serve to undermine the order and stability on the oceans fostered by the Convention,

to the detriment of U.S. interests and of all users of the oceans.

Kelly, Paul L. "***Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling*** ." **Global Offshore Drilling 2005 Conference**. (April 19, 2005) [**More**]

US is abdicating its global maritime leadership role by remaining outside of UNCLOS

"What is at stake is nothing less than the United States' position as the world's leading maritime power. Clearly, U.S. refusal to ratify this Convention, widely regarded as one of the most important international agreements ever negotiated, raises fundamental questions regarding not only the future of legal regimes applicable to the world's oceans, but also U.S. leadership in promoting international law and order. This, in turn, makes the United States little more than an outsider looking in at the most comprehensive maritime treaty ever written and perhaps most perniciously, unable to propose any future amendments and less able to effectively counter other states' proposed changes in treaty law that would be disadvantageous to the United States.[6]

In his remarks soon after assuming the post of Chief of Naval Operations, Admiral Mullen challenged the Navy "not to accept the status quo." On the 25th anniversary of the signing of the Law of the Sea Convention, the Navy and its Sea Service partners must take an even more prominent leadership role in mustering public support for this treaty—support so overwhelming that the Senate will be motivated to bring it to a floor vote. To do anything less would be to forgo a viable path to stability and safety at sea and cede the world's oceans to uncertainty and anarchy.

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Galdorisi, George. "***Treaty at a Crossroads*** ." **U.S. Naval Institute Proceedings**. (July 1, 2007) [**More**]

U.S. intransigence on ratifying UNCLOS after negotiating so hard for it on so many points has weakened our ability to negotiate other treaties

"For the United States to refuse to adhere to a Convention even after the rest of the world met every single one of our demands for changes to the Convention will severely impact the ability of the United States to negotiate international agreements. I believe this will have a particularly serious effect on our security interests, many of which depend on mobilizing our allies. Certainly, as a sovereign nation, we have every right to negotiate a treaty and then decide not to ratify, but in this instance, where we specified the changes necessary for United States support that were then agreed to by the rest of the world, even some of our closest friends have difficulty understanding our behavior in not moving forward to date. A failure to ratify at this point will have adverse effects for our

foreign relations with even some of our closest allies. We are the world's most powerful military power, but we still need the understanding and support of our friends – and we need to act with consistency and reliability in our foreign policy;

[*Page 4-5*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004)***." Testimony before the Senate Committee on Armed Services, April 8, 2004. [**More** (6 quotes)]

U.S. failure to ratify UNCLOS reflects an isolationist stance that is harming our efforts to cooperate with other countries

"Isolationism is not a strategy for victory against terrorism. The threat is global and our engagement must be global. That inevitably means that we must enhance our ability to influence other nations and to multiply United States actions through cooperative actions worldwide. If our country is viewed as simply turning inward and being unwilling to participate internationally despite agreements in which we have clearly served our interests, we will not facilitate such needed assistance from others. United States adherence to the Law of the Sea Convention will be carefully monitored by our allies, all of whom have been urging us to move forward, and it will have an impact on the climate in the war on terrorism, as well as other security and foreign policy objectives of the United States. The view that such Asoft@ considerations are unimportant is profoundly unrealistic. The Law of the Sea Convention is low hanging fruit that lets us send a clear message: America will support good international agreements, but it will stand firm against the bad ones. This differentiated message is crucial. If we are viewed as simply opposing all international agreements, no matter how favorable to the United States (as this one truly is), we will have far less ability to multiply our national interests through cooperative actions with others.

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Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004)***." Testimony before the Senate Committee on Armed Services, April 8, 2004. [**More** (6 quotes)]

U.S. leadership and credibility is gradually being eroded by its non party status to UNCLOS

"Finally, the linkage between the need for the U.S. to maintain a strong position to defend U.S. and allies interests and the need to ratify UNCLOS has been cited in previous war games with international players at the Naval War College, such as the recent Global Maritime Partnership Game. Players perceived a gradual erosion of U.S. influence among current and future maritime partners that may have negative effects on U.S. interests. The need for U.S. leadership to ratify UNCLOS is

warranted in order to prevent the erosion of U.S. influence among partners and in theaters of operation.

[*Page 32*]

Ducharme, Prof. Doug and Dr. Hank Brightman. **Global Shipping Game: Game Report** . U.S. Naval War College: Newport, RI, December 8-9, 2010 (73p). [**More** (3 quotes)]

U.S. Global leadership on maritime affairs would be abdicated by remaining outside of the convention

"The last point I would like to address is that of a resumption of a clear leadership role for the United States in international oceans policy affairs—an area where we have so much at stake.

As the preeminent global power in the 1990s and beyond, the United States is uniquely positioned to assume a more visible leadership role. The United States can lead the movement to the achievement of a widely accepted international order, regulating and safeguarding the diverse activities and interests regarding the world's oceans. The Convention affords us the opportunity to lead in a way that protects and promotes U.S. national security interests. To ensure a leadership role in this important arena, the United States must become a party to the Convention.

By remaining outside the Convention, our long-standing leadership role in international ocean affairs, and in fora such as the International Maritime Organization, would be further eroded. Moreover, as an outsider looking in, we would not be in a position to influence the Convention's further development and interpretation. In effect, as mentioned earlier, by refusing to become a Party to the Convention, the only way we could seek to influence changes in the LOS regime would be through unilateral action, and that could lead to further destabilization and increased international friction.

Schachte, William L. "*National Security: Customary international law and the Convention on the Law of the Sea*." **Georgetown International Environmental Law Review**. Vol. 8, No. 2 (Summer 1995). [**More** (6 quotes)]

U.S. non-party status to UNCLOS has hurt our leadership and foreign policy broadly

"By the continual erosion of our nation's oceans leadership, badly needed American jobs are lost. The consequences are also serious as to how we are viewed by other nations. When the United States achieves everything it requires in a Convention, including a tough revision meeting all of its objectives, not to adhere makes it more difficult for America to negotiate other agreements. Our friends are simply astounded that the nation which achieved more than any other through the Convention has still not joined. They conclude from the flimsy arguments they hear against the Convention that America has simply gone isolationist. As such, our non-adherence continues to harm

United States credibility and leadership in oceans matters and, more broadly, in our foreign policy. It is past time for Senate Advice and Consent.

Moore, John Norton. "***Restoring America's Oceans Leadership*** ." **Huffington Post**. (July 27, 2012) [**More**]

Failure to pass UNCLOS undermines U.S. leadership on other initiatives

"More difficult to measure than what would be gained from U.S. accession is the diplomatic blight on America's reputation for rejecting a carefully negotiated accord that enjoys overwhelming international consensus, one that has been adjusted specifically to meet the demands put forth by President Reagan two decades ago. Remaining outside the convention undermines U.S. credibility abroad and limits the ability of the United States to achieve its national security objectives. The treaty was negotiated over decades during which American delegations scored important victories. To the dismay of the rest of the world that negotiated the convention with the United States in good faith (and is now proceeding in making ocean policy and setting legal precedent in forums where U.S. influence is diminished), after fifteen years the Senate has yet to have an up or down vote.

[*Page 38*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

US contributions to maritime leadership increasingly seen as irrelevant because of its failure to ratify UNCLOS

"The above propositions can easily be illustrated. In terms of realpolitik, in a case or controversy before the court, in which one files a brief as amicus curiae, one has no standing except at the grace of the court. Even if that court chooses to read the brief, it may not be persuaded by it, and in some cases such briefs become useful to a party opponent. So it is with the US and UNCLOS 1982. On any matter being considered, the effectiveness of US leadership depends to a great extent on the other members of the global community. The US and the United Kingdom (UK) have long taken the lead in the development of maritime law and safe navigation. Most other states active in the maritime sector have been followers of this leadership. Although historically the UK has better exploited its role for at least two centuries, the importance of the US as a global leader in establishing maritime law has not been fully grasped by the US government since the 19th century. Without ratification of UNCLOS 1982, the US has even less maritime standing in the community of nations, n61 and its contributions will rapidly be marginalized or seen as irrelevant.

[*Page 65*]

Cartner, John A. C. and Edgar Gold, Q.C. "*Commentary in Reply to "Is it Time for the United States to Join the Law of the Sea Convention"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 1 (January 2011): 49-70. [**More** (7 quotes)]

US losing out on tangible opportunities to shape emerging maritime law and reclaim leadership role

"There are tangible costs for the United States in not being a party to the Law of the Sea Convention. Until 1998, the United States was entitled to provisional membership in the meetings of the States party to the Convention, but since then it can be present only as an observer. Its non-accession has had and continues to have real costs. It is ineligible to nominate members to the Law of the Sea Tribunal; it has forfeited (as of March 2007) the opportunity to nominate members to the Commission on the Limits of the Continental Shelf until the next election in 2012,58 and it cannot occupy its guaranteed seat on the Council of the Seabed Authority and the powerful Finance Committee. The marine scientific research institutions continue to suffer from long delays in gaining approval for research in foreign EEZs, which would be alleviated by the Convention's implied consent provisions were the United States a party.

Perhaps as damaging as the concrete benefits of the Convention previously discussed is the harm to the credibility of the United States in international relations by failing to accede to the Convention. After all, we laid out before the world in President Reagan's 1982 statements our objections to the Convention and what would be required for the United States to become a party. By adopting the 1994 Agreement, the international community gave us what we demanded as conditions for our accession, and now, thirteen years later, the United States has still not become a party.

[*Page 121*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

As a non party to UNCLOS, US lack's credibility as a maritime leader and when making claims to preserve its freedom of navigation rights

"Finally, there are numerous incentives for the United States to join the Convention and discontinue its exclusive reliance on customary international law.382 By becoming a member, the United States would be more credible when it invokes treaty provisions-for instance, when it is in a property "bilateral disagreement.' As a member of UNCLOS, the United States would be able to vote for individuals that would in fact sit on the Law of the Sea Tribunal to ensure that interpretation of the Convention is favorable to U.S. policy. As it relates to the freedom of the high seas, the United States would be able to curtail certain proposals that would adversely affect U.S. military or navigational interests.

The international community is on a fast track and is continuously changing directions. To maintain its economic dominance in the international community, the United States must join the Convention on the Law of the Sea.386 It is in the best economic, military, and environmental interests for the United States to join the Convention, and adherence to its guidelines would encourage others to join, resulting in more stability in the laws governing the ocean.

[*Page 791-792*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

U.S. accession to UNCLOS critical to making progress on many other maritime agreements

"The United States is party to many international agreements - including conventions pertaining to vessel safety, environmental protection and fisheries management - which are based directly on the LOS framework. Those United States representatives who participate in the negotiation of these agreements are among the strongest advocates for accession to the LOS Convention.

For example, the Coast Guard, which has played a lead role in developing international agreements on maritime safety, security and environmental protection at the International Maritime Organization (IMO), and also participates in fisheries negotiations, told our Commission that: "[A] failure to accede to the Convention materially detracts from United States credibility when we seek to advance our various ocean interests based upon Convention principles. Also, as a non-party, we risk losing our ability to influence international oceans policy by leaving important questions of implementation and interpretation to others who may not share our views." In testimony before our Commission, then-Commandant Admiral James Loy, and more recently the current Commandant, Admiral Thomas Collins, both strongly supported United States accession to the LOS Convention.

Watkins, James. "***Statement of Admiral James D. Watkins: Senate Advice and Consent to the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (2 quotes)]

U.S. adversaries are using its absence from UNCLOS to push excessive maritime claims

China and Iran challenging U.S. operations because of its non-party status to UNCLOS

"If adherence to the Convention made no difference perhaps this would simply be another lesson that strident political debate can sometimes harm the nation, as with the isolationist rhetoric of the America First Movement before World War II. But sadly the over quarter-century of United States non-adherence is severely harming the Nation. On a daily basis adversaries such as Iran use American non-adherence to assert that our Navy does not enjoy the protections of the Convention. China uses our non-party status to challenge our naval presence in the South China Sea and the Yellow Sea. We are unable to participate fully in the most important institutions for engaging on oceans law today, such as the annual meeting of States Parties to the Convention and the Commission on the Limits of the Continental Shelf. By not taking our seat on the Council of the ISA we lose our veto over any distributions. By not adhering we also lose our ability to block potentially damaging amendments to the Convention.

Moore, John Norton. "***Restoring America's Oceans Leadership*** ." **Huffington Post**. (July 27, 2012) [**More**]

U.S. lacks standing to challenge Iranian and Chinese excessive claims as a non-party to UNCLOS

"However, as a non-Party to UNCLOS, the United States lacks standing to challenge other nations' excessive claims in the Arctic citing the provisions of the Convention. The same is true in other regions of the world. China, for example, continues to pursue an aggressive posture in the South China Sea and routinely criticizes the United States for not being a Party to UNCLOS—"the U.S. insists that China must base its [South China Sea] claims solely on the 1982 UNCLOS although the U.S. itself has not ratified it."[60] Similarly, when Iran signed UNCLOS in 1982, it filed a declaration indicating, inter alia, that "only states parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein, [including] the right of Transit passage through straits used for internation- al navigation."[61] Thus, Iran argues that the United States does not enjoy a right of transit passage through the Strait of Hormuz because that right is contractual in nature. Joining the Convention would put the United States on solid legal ground to conclusively "put to bed" these assertions.

[*Page 774*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

U.S. ability to challenge excessive claims weakened by its non-party status to UNCLOS

"The Convention also allows us to exercise high seas freedoms in foreign exclusive economic zones, including conducting military activities without coastal state interference. And this is important---the single most contentious issue in oceans law and policy today is the attempt by some foreign coastal States to treat the exclusive economic zone – or EEZ — like a territorial sea. The Convention makes clear that coastal States enjoy resource rights within the EEZ, but they do not enjoy and may not assert full sovereignty within the EEZ.

Because we are not a Party to the Law of the Sea Convention today, we must assert that our navigation and overflight rights and high seas freedoms are based upon customary international law. However, that approach plays directly into the hands of those foreign coastal States that want to move beyond the Convention. They too cite customary international law as the basis for their developing claims of coastal State sovereignty in the EEZ and in international straits.

We need to lock in the navigation and overflight rights and high seas freedoms contained in the Convention while we can. Then, acting from within the Convention, we can exercise effective leadership, and in conjunction with our freedom of navigation program, ensure that those rights and freedoms are not whittled away by foreign States.

[*Page 4-5*]

Walsh, Patrick M. "***Statement of Admiral Patrick M. Walsh: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (4 quotes)]

UNCLOS would help protect U.S. naval freedoms against growing number of excessive claims

"Naval Mobility. A seventh factor that underlay the new United States position on the Convention was the global security environment, specifically the increased importance of the oceans connecting the nation, its allies, and its major interests. Diminishing access to overseas bases, the many parts of the world that require naval presence because of continuing instability, and the growing maritime power of many developing nations with apparent regional ambitions pointed to the increasing importance for the United States of naval mobility. An essential element of such mobility is assurance

that sea and air lanes of communication will remain open as a matter of international legal right—not at the sufferance of coastal and island nations along the route or in the area of operations.[38]

In the last two decades there had been a remarkable number of naval confron tations and boundary demarcation or fishing disputes: from 1974 to 1990, at least thirty-seven major demarcation disputes, fifteen noteworthy fishing disagreements, and thirty-one naval conflicts. Eighty-three percent of all US. military responses from 1946 to 1991 had involved naval forces, about half of them solely naval ones. Since the 1986 Goldwater-Nichols Act, with its emphasis on joint operations, fewer operations have been exclusively naval in character, but an even higher proportion—95 percent—have involved naval units. Additionally, the focus of these efforts has overwhelmingly been in littoral waters. In all 270 instances of the employment of naval forces in crisis response from 1946 to 1991, they were used not to counter other naval forces but rather to oppose threats on land. The naval forces therefore had to operate in coastal waters, not the high seas, to project power from the sea onto the land."

[*Page 32-33*]

Galdorisi, George. "***The United States and the Law of the Sea: Changing Interests and New Imperatives*** ." **Naval War College Review**. XLIX, No. 4 (Autumn 1996): 23-43. [**More** (6 quotes)]

States pushing excessive claims against the U.S. because of its non-party status, accession would help U.S. counter these

"Notwithstanding the fact that the navigational freedoms and transit rights we currently enjoy are embodied in customary international law, as a party to the Convention, the United States would, however, be in a stronger leadership position to assert its rights to use the oceans for navigation and overflight. For example, in making excessive claims, some coastal states contend that the navigational and overflight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it. By becoming a party to the Convention we can deprive those states of this argument. This is not to suggest that countries' attempts to restrict navigation will cease once the United States becomes a party to the Law of the Sea Convention. Coastal states make excessive claims for a variety of reasons— because they believe such claims to be in their national interest; because they feed domestics politics; and, because they believe they can enforce those claims or that other nations will, for lack of resources and capability, acquiesce in those claims. The Administration believes, however, that with the United States as a party, fewer states are likely to view such claims as sustainable. As a party, our diplomatic and operational challenges to excessive claims will carry greater weight.

[*Page 7-8*]

Mullen, Michael G. "***Statement of Admiral Michael G. Mullen: On the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

Underdeveloped Law of the Sea regime is encouraging countries to enforce their excessive maritime claims with military force

"Maritime disputes of this sort, also involving the use or threatened use of military force, have surfaced in other parts of the world, including the Sea of Japan, the Celebes Sea, the South Atlantic, and the Eastern Mediterranean. In these and other such cases, adjacent states have announced claims to large swaths of ocean (and the seabed below) that are also claimed in whole or in part by other nearby countries. The countries involved cite various provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to justify their claims—provisions that in some cases seem to contradict one another.

Because the legal machinery for adjudicating offshore boundary disputes remains underdeveloped, and because many states are reluctant to cede authority over these matters to as-yet untested international courts and agencies, most dispu- tants have refused to abandon any of their claims. This makes resolution of the quarrels especially difficult.

What makes these disputes so dangerous, however, is the apparent willingness of many claimants to employ military means in demarking their offshore ter- ritories and demonstrating their resolve to keep them. This is evident, for example, in both the East and South China Seas, where China has repeatedly deployed its naval vessels in an aggressive fashion to assert its claims to the contested islands and chase off ships from all the other claimants. In response, Japan, Vietnam, and the Philippines have also employed their navies in a muscular manner, clearly aiming to show that they will not be intimidated by Bei- jing. Although shots have rarely been fired in these encounters, the ships often sail very close to each other and engage in menacing maneuvers of one sort or another, compounding the risk of accidental escalation.

[*Page 27*]

Klare, Michael T. "*The Growing Threat of Maritime Conflict*." **Current History**. Vol. 112, No. 750 (January 2013): 26-32. [**More** (4 quotes)]

Ratifying UNCLOS would give U.S. more tools to challenge excessive claims

"More effective engagement with respect to security incidents and concerns resulting from illegal oceans claims by others. Examples include the new law of the People's Republic of China (PRC) providing that Chinese civil and military authorities must approve all survey activities within the 200 mile economic zone; the PRC harassment of the Navy's ocean survey ship, the USNS Bowditch, by Chinese military patrol aircraft and ships when the Bowditch was 60 miles off the coast; the earlier EP-3 surveillance aircraft harassment; Peruvian challenges to U.S. transport aircraft in the exclusive economic zone, including one aircraft shot down and a second incident in which two U.S. C-130s had to alter their flight plan around a claimed 650 mile Peruvian "flight information area"; the North

Korean 50-mile “security zone” claim; the Iranian excessive base line claims in the Persian/Arabian Gulf; the Libyan “line of death”; and the Brazilian claim to control warship navigation in the economic zone;

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Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

China is using excessive EEZ claims to deny U.S. access

China views its excessive regulatory claims over the EEZ as an important component of its ability to conduct asymmetric maritime warfare and deny U.S. access to the Asia-Pacific region.

China executing a lawfare campaign against U.S. navy with excessive EEZ claims

“Political and legal activity publicized by international civil society and transnational organizations may be used to bring pressure against a potential adversary. China seeks to leverage international organizations and willing national governments in its lawfare campaign. The Department of Defense reports, for example, that the assertion of claims and rights in the maritime domain could enhance the perceived legitimacy of coercive Chinese operations at sea.[79] From the Chinese perspective, the global nature of international politics and the proliferation of international laws and regu- lations serve to make this form of legal warfare more effective than in the past.[80]

In terms of maritime strategy, China’s legal warfare is a resourceful anti-access or sea denial strategy. Sea denial is employed by inferior continental navies to deny maritime powers the ability to exercise command of the sea and thereby limit their influence over events on land.[81] Employment of submarine mines is an example of a traditional sea denial strategy. China seeks to create “strategic depth” to the Chinese mainland by denying access of its EEZ to warships and aircraft of the United States, Japan and other coun- tries in the region. The strategy of the People’s Liberation Army (Navy) (PLA(N)) set forth in a recent Chinese defense white paper is directed at the “gradual extension of strategic depth for offshore defensive operations” and for “enhancing its capabilities in inte- grated maritime operations and nuclear counterattacks.”[82]

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

U.S. freedom of operations under continual and increasing challenge by a more aggressive China

“Access and use of the global commons, particularly the sea and the air space, is a core element of U.S. military and commercial power. In times of war, control of the commons may be ensured by

mil- itary means. In peacetime it is sought through international law and diplomacy and through limited military responses when the rules govern- ing use of the commons are breached. In some cases, a peacetime incident may quickly result in a reaffirmation of traditional freedoms of the sea. In others, a more concerted effort, combining diplomacy with demonstration, is needed to return to adherence to inter- national norms. This latter combination appears to be the case regarding China and the South China Sea. As noted recently by Patrick Cronin and Paul Giarra:

> Chinese assertiveness over its region is growing as fast as China's wealth and perceived power trajectory. Beijing's unwelcome intent appears to give notice that China is opt- ing out of the Global Commons.[1]

Though not a new phenomenon, China's increasingly assertive activities in the South China Sea are drawing concern that the country is seeking regional hegemony at the expense of its neighbors in Southeast Asia as well as the United States, Japan, and South Korea.

[*Page 66-67*]

Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

Multiple examples of Chinese excessive naval claims that run afoul of UNCLOS

"Multiple examples of Chinese excessive naval claims that run afoul of UNCLOS Efforts to extend China's control over the South China Sea run afoul of UNCLOS. Examples of China's legal overreach include:

- Claiming that military aircraft do not have the right of overflight over the Exclusive Economic Zone: overflight of the EEZ is specifically recognized by the convention, and military surveillance is not limited
- Interfering with U.S. government vessels operating beyond the 12-mile territorial sea, notably Chinese interference with the USNS Impeccable and USNS Bowditch because they were "moving about in China's Exclusive Economic Zone"
- Claiming that uninhabitable rocks in the Paracels and Spratleys are habitable so that China can claim they are islands with their own 200-nm EEZ, and engaging in military operations to take possession of the rocks from other countries.

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Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

China's excessive claims run counter to its global economic

ambitions and its own territorial defense strategy

“Attributing motives to Chinese actions is difficult under the best of circumstances. In the South China Sea, it is even more so. Chairman of the Joint Chiefs of Staff Admiral Mike Mullen recently said that China’s “heavy investments of late in modern, expeditionary maritime and air capabilities seem oddly out of step with their stated goal of territorial defense,” while Secretary of Defense Robert Gates accused China’s top military officers of not following the same policy as senior political leaders who have worked to develop other aspects of the U.S.-China relationship.[6]

As a large and increasingly industrial state, China is concerned with matters of access to strategic and critical materials, especially oil and gas and industrial minerals. In the short term, China may give its regional interests highest priority. As it grows as a global economic power, however, it will find that freedom of navigation and over- flight worldwide are essential to its security.

Increasing dependence on sea lanes for imports of oil and minerals and access to export markets will push for a shift of priority on global mobility over control of the regional sea. A key reason for China to support UNCLOS is the “transit passage” provisions that assure the unimpeded passage of commercial vessels and the warships that are increasingly called on to escort them through the Straits of Singapore and Malacca, the Strait of Hormuz, and other chokepoints through which its critical imports flow.

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Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

China's excessive claims are a threat to the global commons and China's own role

“In attempting to increase its control and extend its authority throughout the South China Sea by applying domestic legislation to international waters, China has created a con- flict both with its neighbors and with UNCLOS. China’s claims are not just a threat to navigation in the South China Sea. They are a threat to the global commons and to in- ternational law that was developed to protect the rights of both coastal states and distant-waters states in those regions.

China’s efforts to enclose the local commons are short-sighted. It is growing into the role of a global power with its own interests in access and use of the global commons. In fact, the balance between coastal interests and distant- water concerns may now be in the process of tipping toward the latter. Gail Harris, writing in The Diplomat, stated: “Chinese strategists now also believe in order to protect their economic development they must maintain the security of their sea lines of communications, something that requires a navy capable of operating well beyond coastal waters.”[9]

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Caitlyn L. Antrim and Captain George Galdorisi, U.S. Navy (Retired). "***Creeping Jurisdiction Must Stop*** ." **U.S. Naval Institute Proceedings**. (April 1, 2011) [**More**]

China has adopted prior notification requirements that are at odds with UNCLOS and U.S. policy

"Dating back to its 1958 Declaration on the Territorial Sea until present day, China maintains the right to restrict the authority of foreign naval vessels to enter its territorial seas. In the 1958 declaration the Chinese government stated, "No foreign vessels for military use and no foreign aircraft may enter China's territorial sea and the air space above it without the permission of the Government of the People's Republic of China."14 In two separate pieces of domestic legislation: the Maritime Traffic Safety Law of the People's Republic of China,15 and the Law on the Territorial Sea and Contiguous Zone,16 the Chinese restated and reaffirmed their requirement on foreign military vessels to obtain the permission of the government prior to entry into its territorial seas. The Chinese position, however, is at odds with the Convention and U.S. interpretation of UNCLOS. Although UNCLOS places restrictions on ships exercising their right of transit passage, the treaty does not place any requirement for military vessels to obtain permission to enter the territorial seas of the coastal state.17 The United States, therefore, does not recognize China's prior notification requirement.

[*Page 5-6*]

Thomson, Andrew J. **Keeping the Routine, Routine: The Operational Risks of Challenging Chinese Excessive Maritime Claims** . Naval War College: Newport, RI, February 9, 2004 (24p). [**More** (6 quotes)]

China using excessive claims to its Exclusive Economic Zone as a way of constraining U.S. freedom of navigation

"Such activity impairing the right of overflight of the EEZ is an element of China’s campaign to reshape its EEZ away from an area of limited jurisdiction focused on resource management and exploitation and toward an area of quasi-sovereign ocean and air- space. The goal of this “legal warfare” (or “lawfare”)75 is to renego- tiate the essential bargain of the Convention through a patient, persistent effort at reinterpretation.76

China views its excessive regulatory claims over the EEZ as an important component of its ability to conduct asymmetric mari- time warfare. In 2006, the U.S. Department of Defense reported to Congress that, through an orchestrated program of scholarly arti- cles and symposia, China sought to shift scholarly opinion and the view of national governments away from interpretations of the Law of the Sea that favor freedom of the seas.77

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Kraska, James. "***The Law of the Sea Convention: A National Security Success -- Global Strategic Mobility through the Rule of Law*** ." **George Washington International Law Review**. Vol. 39, No. 1 (2007): 543-572. [**More** (16 quotes)]

China's aggressive claims have no basis in customary international law or UNCLOS

"The United States and China, on the other hand, do not share a common interest in freedom of navigation and overflight. On the contrary, the PRC's views on the legality of military activities in the EEZ are diametrically opposed to the views of the United States. China argues that military activities in their EEZ, such as U.S. Sensitive Reconnaissance Operations (SRO) and other SMS operations, are hostile acts and therefore violate the "peaceful purposes" provisions of UNCLOS Articles 88, 141 and 301. Beijing additionally argues that such operations impair state security interests and damage China's sovereign rights and jurisdiction in the EEZ. Accordingly, China insists that it has a right to impose restrictions on military activities in the EEZ, including prohibiting surveillance and reconnaissance operations as well as other military marine data collection activities. China's claims have no basis in customary international law or UNCLOS and are not supported by state practice.42

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Pedrozo, Raul. "*The U.S.-China Incidents at Sea Agreement: A Recipe for Disaster*." **Journal of National Security Law and Policy**. Vol. 6. (2012): 207-226. [**More** (4 quotes)]

U.S. non-party status to UNCLOS is undermining ability to conduct maritime interdiction operations

The U.S. relies on maritime interdiction operations for homeland security, counter-piracy, and crime control. However, during bi-lateral negotiations, several nations have, in the past, questioned our authority to contest certain of their excessive maritime claims simply because we have yet to ratify the treaty. Becoming a party to the Convention will enhance our ability to conduct such interdiction operations and to refute excessive maritime claims.

Remaining outside of UNCLOS regime restricts U.S. counter-piracy options

"The convention provides two essential and immediate components for responding to piracy off the coast of Somalia. First, the convention permits any state to arrest pirates, seize pirate vessels, and prosecute pirates in the courts of the interdicting naval authority. Second, and equally important, the convention protects the sovereign rights of ocean-going states that participate in antipiracy naval operations in the territorial seas of failed states such as Somalia. This is critical for build- ing international naval flotillas for combating the growing pirate problem in the Indian Ocean.

[*Page 33*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

US naval capacity to conduct maritime interdiction or intelligence operations at risk from excessive claims and lawfare

"The ability to operate freely at sea is among the most important enablers of joint and interagency operations ...."[72] Therefore, sustainable access to key regional sea lines of communication directly impacts the efficacy of nearly every maritime mission set in the U.S. arsenal. Especially affected are those missions conducted in the littoral and near shore waters up to 200 nautical miles from shore. This is because the near shore environment represents a primary operating area for critical "sea basing, amphibious, expeditionary and intelligence collection operations."[73] Intelligence collection is particularly important given the U.S. national security establishment's continuous need for a broad range of operational indicators. As was seen during the Cold War, the ability to collect intelligence within foreign EEZ's can contribute to a state of "enforced transparency" between potential adversaries, as well as serve a forcing function of encouraging candor and good faith in military and political dealings.[74] In addition to intelligence collection, other enduring maritime

mission sets-many of a constabulary nature, such as maritime interdiction in support of counter piracy, counter narcotics, and Proliferation Security Initiative-also stand to be adversely impacted to the extent coastal nations engage in EEZ "securitization lawfare.,"[75] Also, any limiter on DoD's ability to sustain and refine the aforementioned maritime mission sets ultimately constrains Congress' ability to efficiently allocate national security procurement resources and optimize return on that investment. For example, the U.S. Congress has invested heavily in littoral and near shore naval platforms, authorizing over $12 billion through fiscal year 2011 for construction of next generation littoral combat ships.[76] Similarly, it authorized $1.3 billion from fiscal years 2006 through 2010 for DoD training of foreign military and maritime security forces. United States to sustain homeland defense as well as theater security cooperation missions in waters adjacent to partner nations, UNCLOS "securitization" claims will constitute a continuing planning restraint maritime missions in the near shore environment.

[*Page 14-15*]

De Tolve, Robert C. "Rock". "***At What Cost? America's UNCLOS Allergy in the Time of "Lawfare"*** ." **Naval Law Review**. Vol. 61. (2012): 1-16. [**More** (8 quotes)]

U.S. absence from UNCLOS hurts our leadership consistency and encourages others to flout existing standards

"Remaining outside LOSC is inconsistent with our principles, our national security strategy and our leadership in commerce and trade. Virtually every major ally of the U.S. is a party to LOSC, as are all other permanent members of the U.N. Security Council and all other Arctic nations. Our absence could provide an excuse for nations to selectively choose among Convention provisions or abandon it altogether, thereby eroding the navigational freedoms we enjoy today. Accession would enhance multilateral operations with our partners and demonstrate a clear commitment to the rule of law for the oceans. For example, under the Convention, warships are authorized to stop and board vessels if they are suspected to be without nationality or engaged in piracy. By joining LOSC, we would "lock in" these authorities as a matter of treaty law and thus strengthen our ability to conduct counter-piracy operations across the globe and provides an important tool to support counter-proliferation efforts, and maritime interdiction of terrorists and illegal traffickers tied to terrorism.

[*Page 3*]

Greenert, Jonathan. "***Statement of Admiral Jonathan Greenert: The Law of the Sea Convention: Perspectives from the U.S. Military*** ." Testimony before the Testimony before the U.S. Senate Committee on Foreign Relations, June 14, 2012. [**More** (2 quotes)]

Over a hundred excessive claims currently, some of which are directly complicating counter narcotics operations

"We will stabilize the outer permissible limit of the territorial sea of other nations at 12 nautical miles." We will gain the leverage to combat effectively excessive territorial sea claims and other excessive claims. At present, there are over a hundred excessive claims throughout the world.' These are notjust rogue states making these claims. Many, including those pertaining to the continental shelf, are from friendly nations or nations with whom we need principled, cooperative relationships. Our status as a nonparty to the Law of the Sea Convention hobbles our efforts to address these claims in an effective manner.

Specifically, I point out the counternarcotics area. There are excessive territorial sea claims that cause significant operational impediments for us on a daily basis. Our status as a nonparty makes it difficult for us to achieve effective operational agreements with those nations that have claims of territorial seas of up to two hundred nautical miles.

[*Page 447*]

Baumgartner, William D. "*UNCLOS Needed for America's Security*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 445-451. [**More** (3 quotes)]

U.S. ratification of UNCLOS would support U.S. rights to conduct maritime interdiction operations

"The Coast Guard and other U.S. military forces already rely heavily on the elemental navigation freedoms codified in the Law of the Sea Convention. These protections allow the use of the world's oceans to meet changing national security requirements. The Convention limits a nation's territorial sea to no more than 12 nautical miles, beyond which all nations enjoy a high seas navigation regime that includes the freedom to engage in law enforcement activities. The Convention codifies the right to operate freely beyond a nation's territorial sea and protects this right by limiting excessive maritime claims that often have the effect of creating maritime safe havens for drug traffickers and other criminals. In fiscal year 2003, the Coast Guard maritime interdiction operations occurring on international waters resulted in the seizure of over 135,000 pounds of cocaine, 56 vessels, and 207 arrests. In keeping with our aggressive international crime control strategy, most of these seizures took place on distant maritime transit routes far from our shores. However, during bi-lateral negotiations, several nations have, in the past, questioned our authority to contest certain of their excessive maritime claims simply because we have yet to ratify the treaty. Becoming a party to the Convention will enhance our ability to conduct such interdiction operations and to refute excessive maritime claims. Rather than only basing our law enforcement operations on customary international law, the United States should become a conspicuous and leading party to the treaty that codifies these important navigational rights.

[*Page 3*]

Crowley, John E. "***Statement of Rear Admiral John E. Crowley Jr. on United Nations Convention on the Law of the Sea***." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (3 quotes)]

U.S. failure to ratify UNCLOS complicates U.S. efforts to get other nations to cooperate on anti-piracy initiatives

"The continued failure to ratify LOSC will not prohibit the United States from taking action against piracy. The United States conducts counter-piracy operations today despite its reluctance to ratify LOSC. The U.S. Navy and Coast Guard often execute such operations using the legal authorities granted under the 1988 Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention) – to which the United States is a party.[15] Regardless, U.S. Navy and Coast Guard officials continually argue that LOSC adds legitimacy to counter-piracy efforts. In an era of hybrid threats in the maritime domain, this added legitimacy will make it easier for the United States to cooperate with international partners in this area.

[*Page 3*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention**. **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. ratification of UNCLOS is key to protecting existing counter-piracy operations

"Ratifying LOSC will also enhance U.S. counter-piracy efforts by improving America's ability to shape the legal authorities the international community relies on to combat piracy, especially in instances where existing agreements do not account for advancements in technology. The United States, for example, relies increasingly on remote sensing systems and a fleet of low- and high-altitude remotely piloted vehicles to provide persistent surveillance where the United States lacks a sustained maritime presence. These technologies may help U.S. maritime officials track piracy activities and facilitate a faster response. However, as one analyst notes, use of these technologies may not be clearly protected within existing international maritime treaties, including LOSC: "[R]emote sensing from satellites and high-flying surveillance aircraft have for decades undertaken maritime scientific research and surveys in others['] EEZs without the permission – or even the advance knowledge – required by the 1982 UNCLOS."[16] As the United States continues to field remotely piloted or semi-autonomous vehicles and sensors – including maritime ones – it will need to be prepared to challenge efforts to constrain or prohibit their use.

[*Page 3*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention**. **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. ratification of UNCLOS would bolster counter-piracy efforts

Ratifying LOSC will also enhance U.S. counter-piracy efforts by improving America's ability to shape the legal authorities the international community relies on to combat piracy, especially in instances where existing agreements do not account for advancements in technology.

UNCLOS imposes burden on states to curtail piracy and facilitates their doing so

"Not only does the Convention provide a clear definition of piracy and basis for capture and prosecution of pirates, it also imposes an affirmative obligation upon parties to make efforts to curtail piracy.[144] Critics of the Convention argue that it actually impedes the United States' ability to chase and capture pirates because a ship must cease pursuit if the ship it is chasing enters its own or a third state's territorial waters.[145] They assert that this provision provides pirates with a safe haven to retreat to undeterred, and that the Convention prevents non-territorial state ships from pursuing the pirates.[146] This is troubling largely because of the strong presence of Somali pirates.[147] For example, under this provision, Somali pirates can attack ships and if they risk getting captured, rush back into their own state's territorial waters where they would be safe. Somalia, a nation plagued by its own problems of lawlessness and poverty, is in no position to apprehend these criminals.[148] In such a circumstance, however, the United States can assert that Article 100 of Part VII of the Convention, which imposes upon member parties the duty to cooperate in the repression of piracy, gives it the authority to continue pursuit.[149] Somalia is a party to the Convention and where it cannot assist in apprehending and trying pirates, it must cooperate with others who can. This includes permitting states that are working to repress piracy by pursuing pirates to do so within Somalia's territorial waters.[150] Furthermore, a December 2008 United Nations Security Council resolution called upon states to actively assist in combating piracy off of the coast of Somalia and gives them the authority to "undertake all necessary measures 'appropriate in Somalia' " in furtherance of this end for a period of one year.[151] In April of 2010, the United Nations Security Council adopted a resolution that calls upon states to criminalize piracy under their domestic law and consider prosecution of and imprisonment of apprehended Somali pirates.[152] This resolution also seeks a report from the Secretary General of the United Nations to present options for purposes of "prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia."[153] Given this explicit guidance to counter piracy coupled with the Convention's anti-piracy provisions, criticism that the Convention would preclude apprehending pirates does not hold up.

[*Page 382-384*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the***

Sea Treaty ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. ratification of UNCLOS is key to protecting existing counter-piracy operations

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Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

Remaining outside of UNCLOS regime restricts U.S. counter-piracy options

"The convention provides two essential and immediate components for responding to piracy off the coast of Somalia. First, the convention permits any state to arrest pirates, seize pirate vessels, and prosecute pirates in the courts of the interdicting naval authority. Second, and equally important, the convention protects the sovereign rights of ocean-going states that participate in antipiracy naval operations in the territorial seas of failed states such as Somalia. This is critical for build- ing international naval flotillas for combating the growing pirate problem in the Indian Ocean.

[*Page 33*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. ratification of UNCLOS will not be detrimental

All of the objections to UNCLOS have been answered through the past two decades of debate and study or the significant modifications to the treaty the U.S. demanded and won in 1994. In addition, the worst fears of opponents have not come to pass as the U.S. has already accepted UNCLOS as both customary law and as a guideline for domestic policy and has affirmed its committment to UNCLOS through multiple subsequent multilateral agreements.

U.S. would not be exposing itself to liability for environmental damage in international courts by ratifying UNCLOS

Opponents argue that UNCLOS's provisions calling for states to reduce pollution through "best practicable means" could be used as a "backdoor" to force environmental treaties on the U.S. However, legal scholars and State Department officials have concluded that the convention only binds the United States to act in accordance with its own laws or appropriately ratified international agreements and cannot be used as a “back door” to compel enforcement of international agreements the Senate has not ratified. Additionally, the use of this mechanism is unlikely since the United States already complies with or exceeds the environmental standards set out in UNCLOS. The greater risk to the U.S. from lawsuits would come if the United States were to try to claim the resources on its extended continental shelf or on the deep seabed without becoming party to the Law of the Sea Convention.

State Department legal team analyzed Law of the Sea treaty and found there was nothing in treaty that would force U.S. policy on climate change

“But some, like Sen. James Risch (R-ID), have posited that ratification would compromise our sovereignty by forcing the United States to abide by other treaties and impose overly restrictive environmental regulations. Insinuating that ratification of Law of the Sea could force the United States to join other international agreements on climate change or other environmental protections, Sen. Risch told Secretary of State Hillary Clinton at a Foreign Relations Committee hearing last month that the Law of the Sea treaty had “Kyoto written all over it,” a reference to the Kyoto Protocol, the international agreement linked to the U.N. Framework Convention on Climate Change.

In response, Secretary Clinton cited the State Department legal team, saying, “there is nothing in the [Law of the Sea Convention] that commits the United States to implement any commitments on greenhouse gases under any regime, and it contains no obligation to implement any particular climate change policies.”

While Sen. Risch and his allies would likely disagree with such claims, they cannot deny that diplomats such as Secretary Clinton are the very people who would establish the U.S. position. So whose opinion should carry more weight: protectionist fear mongers or actual diplomats and policymakers?

Michael Conathan. "***Conservatives Disregard Traditional Allies to Oppose the Law of the Sea*** ." **Think Progress**. (June 13, 2012) [**More**]

UNCLOS will be utilized as basis for environmental laws and claims regardless of whether US is a party but US can only guide it if accedes to the treaty

“Bill Eichbaum, vice president, Marine and Arctic Policy, at the World Wildlife Fund, said that such a scenario would be easier to grapple with as a member of the Convention.

“In terms of the environmental communities, the fact is today, under the Treaty, there is a regime for managing claims for deep seabed mining,” he said. “Countries and companies are pursuing those claims and going forward, and the United States is [not pres- ent] for managing that system.

“One of the things we believe is that the United States tends to be, as compared with most other countries, a pretty good environmental steward. And, so, if the United States was at the table helping to set the standards, helping to set the regulatory scheme, it would probably be, from an environmental perspective, better than it is likely to be with the United States not at the table,” he said.

“What many observers fail to understand about Law of the Sea is that the Convention already forms the basis of maritime law regardless of whether the United States is a party,” Lugar said in opening remarks at the May hearings. “International decisions related to resource exploitation, navigation rights and other mat- ters will be made in the context of the Convention, whether we join or not. Because of this, there is virtual unanimity in favor of this treaty among people who actually deal with oceans on a daily basis and invest their money in job-creating activities on the oceans.”

[*Page 19*]

Daisy R. Khalifa. "***Point/Counterpoint*** ." **Sea Power**. (July 1, 2012) [**More**]

Convention will not act as a backdoor for other environmental agreements Senate has not ratified

“It is true that Articles 194 and Part XV, section 5 require states to take “all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source” and “adopt laws and regulations to prevent, reduce and control pollution of the marine environment from” the land and atmosphere under their jurisdiction. Convention provisions also call for states to reduce pollution by “the best practicable means at their disposal and in accordance with their capabilities” and to “endeavor to establish global and regional rules” to prevent and control pollution. The majority opinion holds that these provisions of the convention only bind the United States to act in accordance with its own laws or appropriately ratified international agreements and cannot be used as a “back door” to compel enforcement of international agreements the Senate has not ratified.

[*Page 47*]

Borgerson, Scott G. The National Interest and the Law of the Sea . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. environmental standards already meet or exceed those set by UNCLOS

"Fundamental differences on environmental policy have also been raised as objections to UNCLOS. Opponents see UNCLOS as a 'back door' for environmental activists to circumvent the U.S. Congress on international environmental law.[70] Alternatively, accession might encourage foreign governments to bring action against the United States for environmental transgressions under the treaty's mandatory dispute resolution protocol.[71]

Use of the outlined dispute resolution process against the United States seems unlikely, though, since the United States already complies with or exceeds the environmental standards set out in UNCLOS.[72] Further, provisions meant to protect the sustainability of the world's oceans are of global concern[73] and benefit U.S. ocean-based industries.[74] Even while it complies with the substance of the environmental provisions, the United States may be seen as a block to global environmental action until it actually ratifies UNCLOS.[75]

[*Page 362-363*]

Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

U.S. would not be forced to accept environmental laws it hasn't already agreed to (ex. Kyoto Protocol) as a party to UNCLOS

"Another concern, as voiced by U.S. Senator James Risch of Idaho, is that ratification of UNCLOS could be grounds for ratifying the Kyoto Protocol on Climate Change and all other conventions drafted by international bodies.[26] Legal advisor John Bellinger in the first Bush administration commented that Section 222 of UNCLOS encompasses applicable international rules and standards, and if the United States does not ratify Kyoto or other conventions, these treaties are not applicable to the United States.[27] This logic does not satisfy U.S. senators like Risch.[28]

Senator Mike Lee of Utah took this argument one step further. He hypothesized that the Assembly could take the position in the future that UNCLOS ties the United States into a climate change regime like the Kyoto Protocol. Secretary Clinton disagreed and stated that the United States had no obligation to accept anything decided by the Assembly on climate change. Should this thinking—that in ratifying UNCLOS, the United Nations can call for blanket application of other international laws—

become an eventuality, the United States can simply withdraw from UNCLOS. This could be something agreed by all in advance of the ratification.

[*Page 142*]

Bonner, Patrick J. "***Neo-Isolationists Scuttle UNCLOS*** ." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 135-146. [**More** (6 quotes)]

U.S. under greater risk of being subjected to environmental lawsuits by remaining outside of the treaty than by becoming a party to UNCLOS

"Finally, as I have noted previously, those who are rightly concerned about international litigation against the United States should be much more concerned about subjecting the United States and U.S. businesses to international claims if the United States were to try to claim the resources on its extended continental shelf or on the deep seabed without becoming party to the Law of the Sea Convention. In my view, the risk of environmental litigation against the United States if it joins the Convention is low. The risk of international litigation against the United States if it were unilaterally to claim the resources on its extended continental shelf or on the deep seabed, without becoming party to the Convention, is much higher.

[*Page 11*]

Bellinger, John B. "***Testimony of John B. Bellinger III: On Law of The Sea Convention (June 14, 2012)*** ." Testimony before the June 14, 2012, June 14, 2012. [**More** (5 quotes)]

States would not have jurisdiction under UNCLOS to bring climate change claims

"Can we then bring a climate change case within the dispute settlement proce- dures of Part XV of the LOSC? There are several problems, but jurisdiction is the most significant. Compulsory jurisdiction under Part XV of the LOSC is residual, in the sense that it defers to other options the parties may have cho- sen. A multilateral or bilateral agreement which provides for unilateral resort to a procedure with a binding outcome will exclude Part XV (Art. 282). The parties to a dispute may also agree ad hoc on some other peaceful means of settlement (Art. 281), and Part XV will then apply only if no settlement is reached and the parties have not agreed to exclude recourse to Part XV. The Convention further provides (Art. 284) that one party to a dispute may invite the other to agree to conciliation instead of any other Part XV procedures. These Articles of the Convention have so far proved to be the main obstacles to jurisdiction under Part XV. They pose the obvious question of how LOSC dispute settlement interacts with the dispute settlement provisions of the UNFCCC and the Kyoto Protocol.

[*Page 837*]

Boyle, Alan. "*Law of the Sea Perspectives on Climate Change*." **The International Journal of Marine and Coastal Law**. Vol. 27. (2012): 831-838. [**More** (3 quotes)]

U.S. ratification of UNCLOS will not create a "backdoor" for environmental groups to force regulations on the U.S.

The terms of the Convention do not require Parties to comply with other international environmental treaties. With respect to land-based sources and pollution through the atmosphere, Part XII, Section 5 of the Convention requires Parties at most to adopt laws and regulations to prevent, reduce and control marine pollution, but in doing so, parties are required only to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures." This does not impose an obligation to comply with Kyoto or any other environmental treaty or standard, including treaties to which the U.S. is not a party.

Convention will not act as a backdoor for other environmental agreements Senate has not ratified

"It is true that Articles 194 and Part XV, section 5 require states to take "all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source" and "adopt laws and regulations to prevent, reduce and control pollution of the marine environment from" the land and atmosphere under their jurisdiction. Convention provisions also call for states to reduce pollution by "the best practicable means at their disposal and in accordance with their capabilities" and to "endeavor to establish global and regional rules" to prevent and control pollution. The majority opinion holds that these provisions of the convention only bind the United States to act in accordance with its own laws or appropriately ratified international agreements and cannot be used as a "back door" to compel enforcement of international agreements the Senate has not ratified.

[*Page 47*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Ratifying UNCLOS would not subject U.S. to increased environmental liability or act as a back door for the Kyoto agreement

"Environmental Obligations/Environmental Disputes. Some have argued that the Convention might obligate the U.S. to comply with international environmental agreements (such as the Kyoto Protocol) to which the U.S. is not a party, or subject the U.S. to mandatory dispute resolution for marine pollution (such as atmospheric pollution or pollution from land-based sources). I share the

concerns of some critics of the Convention about the goals of some groups to embroil the U.S. in international litigation. As the State Department Legal Adviser during the Bush Administration, I witnessed first-hand the efforts of many groups hostile to U.S. counter-terrorism actions to wage "lawfare" against the United States. In my view, however, joining the Law of the Sea Convention does not subject the United States to significant new legal risks, especially when compared to the benefits of joining the Convention.

The terms of the Convention do not require Parties to comply with other international environmental treaties. With respect to land-based sources and pollution through the atmosphere, Part XII, Section 5 of the Convention requires Parties at most to adopt laws and regulations to prevent, reduce and control marine pollution, but in doing so, parties are required only to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures." This does not impose an obligation to comply with Kyoto or any other environmental treaty or standard, including treaties to which the U.S. is not a party.

In addition, the U.S. would not be subject to dispute resolution for allegedly violating the Kyoto protocol or any other environmental treaty, including agreements governing pollution from land-based sources. The Convention's dispute settlement system applies only to disputes "concerning the interpretation or application" of the Convention itself, not to the alleged violation of other treaties. Articles 297 and 298 of the Convention further exclude certain potentially sensitive disputes from dispute settlement.

[*Page 10-11*]

Bellinger, John B. "***Testimony of John B. Bellinger III: On Law of The Sea Convention (June 14, 2012)*** ." Testimony before the June 14, 2012, June 14, 2012. [**More** (5 quotes)]

UNCLOS will not impose Kyoto obligations on parties that have not ratified it

"The argument that Kyoto sets a standard for giving effect to LOSC Part XII is even less useful against developing States, or against developed States that are not parties to Kyoto. Developing States parties to Kyoto have no obliga- tion to reduce GHG emissions, even if, like India and China, they are large emitters of CO2. They will still be in compliance with Kyoto even if their CO2 emissions have greatly increased since 1997. They would not be in breach of LOSC Articles 192 and 194 if Kyoto defines the content of those Articles. With regard to the US, which is not a party to Kyoto or LOSC, it might be argued that it is bound by customary law to apply internationally agreed stan- dards on CO2 reductions in order to give effect to their obligation to protect the marine environment and other States from pollution. But the obvious dif- ficulty is that developed State parties to Kyoto have different percentage reduc- tions targets, and in some cases they are permitted to increase emissions. Taking Kyoto as a standard of diligence for non-parties simply begs the ques- tion—what standard and for whom?

[*Page 835*]

Boyle, Alan. "*Law of the Sea Perspectives on Climate Change*." **The International Journal of Marine and Coastal Law**. Vol. 27. (2012): 831-838. [**More** (3 quotes)]

Language in implementing advice and consent resolution limits self executability of UNCLOS tribunal decisions

"One particularly noteworthy issue is how the Advice and Consent Resolution treats the domestic enforceability of the Seabed Dispute Chamber's rulings. The text of the Convention explicitly provides for the domestic enforceability of Chamber decisions. According to Article 39 of Annex VI of the Convention, "decisions ofthe Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought." Justice Stevens, who concurred with the majority in Medellin, cited Article 39 as an example of a treaty text that "necessarily incorporates international judgments into domestic law."[85] Yet Article 39 is non-self-executing under the Senate's Advice and Consent Resolution, a position that is reinforced by another Resolution provision directed specifically at the decisions of this Chamber. This latter provision also calls for implementing legislation:

> The United States declares, pursuant to [A]rticle 39 of Annex VI, that decisions of the Seabed Disputes Chamber shall be enforceable in the territory of the United States only in accordance with procedures established by implementing legislation and that such decisions shall be subject to such legal and factual review as is constitutionally required [86] and without precedential effect in any court of the United States.

Were an effort made to enforce a decision of the Seabed Disputes Chamber in U.S. court prior to implementing legislation, would the "clear" text of Article 39, which Justice Stevens believed points to its self-executing status, prevail? Or would a court defer to the Advice and Consent Resolution's call for implementing legislation? What obstacles might be posed by the "constitutionally required" reviews of Chamber decisions, to which the Resolution refers? U.S. courts regularly enforce the decisions of commercial arbitral tribunals, but in theory any international tribunal proceeding might lead to a result that presented constitutional due process problems and that hence could not be enforced in U.S. court.[87] Those who dislike the prospect of domestic enforcement of Convention provisions also may, in light of Medellin, seek to add language to the Advice and Consent Resolution specifying that Chamber decisions do not create U.S. private rights or private causes of action. Thus, even if the "clear" language of the Convention text were to lead a court to conclude that Article 39 of Annex VI of the Convention was self-executing, such additional language in the Resolution might present another bar to the enforcement of chamber decisions in U.S. courts.

[*Page 47-48*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

U.S. already abides by UNCLOS as a matter of customary international law and domestic policy

Even though U.S. has not ratified UNCLOS, it still has committed itself to abiding by its principles in two ways: through numerous policy statements and laws drafted in accordance with UNCLOS and committing the U.S. to abiding by it; and due to the fact that the Law of the Sea has become customary international law.

Even without ratification, UNCLOS has already achieved binding customary international law status in the US

"Perhaps the most dangerous threat to American sovereignty in the Arctic is the enforceability of UNCLOS as part of American law, either as positive treaty based domestic law or customary international law. While the reach of the Convention may be debated under both headings to some extent, it cannot help but affect the United States' Arctic designs.

Although still pending ratification, at times UNCLOS may be assigned virtually the same legal status as if it were a properly ratified treaty, albeit in a roundabout and piecemeal fashion. If President Reagan's culling UNCLOS for acceptable provisions bound the United States to a majority of the Convention's provisions, then President Clinton committed the United States to the remainder, including the amended Part XI mining regime, by signing the Convention in 1994 in spite of an obstinate Senate.

The court in United States v. Royal Caribbean Cruises bore this out, holding that UNCLOS "carried the weight of law from the date of its submission by ... President [Clinton] to the Senate."[n348] In finding that the Convention applied to an oil spill within U.S. waters, the court reasoned that the United States was obliged to honor the agreement to which the executive branch has tentatively made the United States a party, and that the submission of the treaty alone to the Senate was indicative of the America's "ultimate intention" to be bound by the Convention.[n349] Following this line of reasoning, albeit to somewhat of an illogical extreme, the Supremacy Clause would place UNCLOS atop the hierarchy of domestic laws in spite of nonratification.

Even acknowledging the suspect reasoning of this theory, emphasis still will fall to customary practice to determine the extent of U.S. presence in the Arctic, which could well lead to unsatisfying results. Indeed, America's ambiguous relationship to UNCLOS has done little to affect the Convention's operation, its actions actually facilitating its application as binding customary law.

[*Page 242-243*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium*

Naturali Jure." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

U.S. has committed to abiding by UNCLOS framework in the Arctic both formally and informally

"In spite of the fact that the United States has not formally adopted UNCLOS, the applicability of the Convention's Articles governing sovereignty over the continental shelf to the United States-namely Articles 76 through 85-is for several reasons not seriously in dispute. First, many writers contend that Article 76 has become a defacto part of customary international law because of its wide adoption-either via ratification of the Convention itself or via unilateral laws modeled after the Convention.[47]

Second, the United States has repeatedly demonstrated its intent to be bound by the provisions of UNCLOS not relating to Part XI, which prohibits mining on the deep-sea beds. For instance, after refusing to sign the treaty in 1983, President Reagan announced his intention that the United States nevertheless act in accordance with UNCLOS.[48] Although it never reached a floor vote, President Clinton referred UNCLOS to the Senate Committee on Foreign Relations in 1994.[49] The Bush administration similarly pushed for ratification of the Convention, likely because it found "that the Convention's navigational and national security benefits far outweigh any costs to the U.S."[50] UNCLOS has found similar support in the decisions of the federal courts.[51]

[*Page 313-314*]

Larkin, John E. D. "*UNCLOS and the Balance of Environmental and Economic Resources in the Arctic*." **Georgetown International Environmental Law Review**. Vol. 22. (2010): 307-336. [**More** (5 quotes)]

Despite U.S. non-party status to UNCLOS, all three branches of government have already accepted it as law of the land

"Yet despite its problems, over the course of the years the Convention has gained support from the legislative, executive, and judicial branches of the U.S. Government. Indeed, UNCLOS has served as "the cornerstone of U.S. oceans policy since 1983."[n314] In 1980, anticipating both the mass appeal of UNCLOS and the potential conflict with American interests, Congress passed the Deep Seabed Hard Mineral Resources Act [n315] in order to establish a provisional regime that advanced the interests of the mining industry.[n316] The Act is still in force, having been reauthorized by Congress in 1986, four years after UNCLOS was available for signing.[n317]

Even after refusing to sign the Convention, Reagan issued an Ocean Policy Statement in 1983

announcing that the United States "accepted, and would act in accordance with, the Convention's balance of interests relating to traditional uses of the oceans everything but deep seabed mining." [n318] In an executive order several years later, Reagan further elaborated that the United States would maintain a territorial sea of twelve nautical miles in compliance with UNCLOS, and that negotiations would remain open to develop a deep seabed mining regime.[n319] Faced with an obstinate Senate that refused UNCLOS in 1994, after the amended Convention was submitted for ratification, President Clinton issued a similar proclamation recognizing a contiguous zone consistent with UNCLOS in 1999.[n320]

Finally, U.S. domestic case law also reflects an intention to refrain from action that would be antithetical to the purposes of UNCLOS.[n321] Indeed, many federal court cases consider and apply provisions of the Convention, considering it an expression of customary international law at minimum.

[*Page 238-239*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

US already acts according to the convention without accruing its benefits -- it is time for US to resume leadership role

"In conclusion, the United States is currently in a situation where we operate outside of a treaty that we were largely responsible for negotiating through which we obtained all our stated objectives, and that has been joined over 160 other nations, including virtually all of our allies and key partners. We conduct our actions consistent with many of its terms, which we regard as customary international law, but we do not obtain the benefits of the Convention available only to parties. Now more than ever, the United States must be a leader in preserving the rights, freedoms, and uses of the oceans that enable us to protect our vital security interests in the maritime domain around the globe. The diminishing group of countries outside the Convention includes land-locked nations such as Uzbekistan, Tajikistan, Afghanistan, and Bhutan, as well as rogue nations such as North Korea and Iran. To best protect our vital national security interests in the years to come, now is the time for the United States to lock-in a stable legal framework for the maritime domain, and send a clear message to other nations in the PACOM AOR that the maritime freedoms codified in the Convention are worth preserving and the Convention's rule of law is worth upholding.

[*Page 7*]

Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

UNCLOS is already established law -- U.S. only stands to benefit from participation

“MOORE: Let me just turn it around as well. I find rather interesting the notion that the argument is made that, well, it's all customary international law. Why do you need to sign? If it is already customary international law and binding on the United States, why shouldn't we go ahead and sign? What's the harm? In fact, one of the greatest errors in the series of arguments is even if every one of these arguments were true, which take one little, you know, bits and pieces of this thing and make an argument against it, even if they were all true, they miss the aggregate of the overall benefit for the United States of America. And by staying out, nothing that they are concerned about will stop. We just simply will be non-empowered.

For example, the International Seabed Authority is not going to go away. It's out there. If we've turned it all over to the United Nations so far, which is nonsense, it's already done. It will not go away. There are 153 countries and the European Union. So these are really nonsense arguments that are being made.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

U.S. has more to gain than lose from accession to the convention especially since in just about every maritime realm, the U.S. is already abiding by the convention

“As the nation with the world’s largest navy, an extensive coastline and a continental shelf with enormous oil and gas reserves, and substantial commercial shipping interests, the United States certainly has much more to gain than lose from joining the Law of the Sea Convention. In my view, it is most unfortunate that a small but vocal minority – armed with a series of flawed arguments – has imposed upon the United States a delay that is contrary to our interests. Nevertheless, I am convinced this will change and am confident that the United States Senate will approve the Convention in due course.

In the meantime, the United States will continue to abide by the Convention and work within its framework. Even as we remain outside the Convention, the Legal Adviser’s Office confronts law of the sea issues on a daily basis. For example, we work at the International Maritime Organization and in regional fora to protect the marine environment by elaborating rules for reducing vessel source pollution, ocean dumping, and other sources of marine pollution. We recently achieved U.S. ratification of a treaty – “MARPOL Annex VI” – aimed at limiting air pollution from ships and a protocol limiting land-based sources of marine pollution in the Caribbean Region. A global treaty on ocean dumping – the “London Protocol” -- awaits action by the full Senate. At home, we coordinate with the Department of Justice to ensure that prosecutions involving foreign flag vessels are consistent with the marine pollution chapter of the Convention, and we scrutinize legislative proposals from both the

Executive Branch and the Congress to ensure that U.S. marine pollution jurisdiction is applied and enforced in accordance with law of the sea rules.

We also negotiate maritime boundary treaties with our neighbors in line with the provisions of the Convention. Most people think the United States has only two neighbors – Canada and Mexico – but by virtue of our island possessions, we actually have over thirty instances in which U.S. maritime claims overlap with those of another country. Less than half of them have been resolved. Some involve disagreements about how much effect to give to islands in determining a maritime boundary. In the case of the Beaufort Sea, Canada argues that the existing treaty establishing the land boundary between Alaska and Canada also determines the maritime boundary. Our office is also assisting a State Department-led Task Force to determine the outer limits of the U.S. continental shelf beyond 200 nautical miles. The U.S. Coast Guard icebreaker Healy has recently conducted several cruises in the Arctic Ocean, including one that mapped areas of the Chukchi Borderland where the U.S. shelf may extend more than 600 miles from shore.

U.S. and international efforts to combat terrorism and proliferation have also generated law-of-the-sea-related issues. Consistent with the Convention, we fashion shipboarding agreements to promote the maritime interdiction aspects of the Proliferation Security Initiative. And we bring law of the sea equities into the elaboration of treaties on suppression of criminal acts at sea. In fact, the U.S. Senate has just given its advice and consent to ratification of two protocols that supplement the convention that addresses suppression of unlawful acts at sea – the 2005 so-called “SUA Protocol” and the 2005 “Fixed Platforms” Protocol.

[*Page 8*]

Bellinger, John B. **The United States and the Law of the Sea Convention** . Institute for Legal Research: Berkeley, CA, 2008 (12p). [**More** (6 quotes)]

UNCLOS similar to Geneva Law of the Sea which has achieved status of customary international law and the U.S. has agreed to treat it as such

“The United States did not sign UNCLOS,[76] but remains a party to Geneva LOS.[77] UNCLOS superseded the Geneva LOS conventions as to parties of both treaties.78 Those parties include the major players in the fight against maritime piracy. Somalia, Kenya, Seychelles, Yemen, Denmark, France, Germany, the United Kingdom, China, India, and Japan are all parties to UNCLOS.[79] Indeed, UNCLOS currently has 160 state parties,[80] a sufficiently large proportion of all states for it to constitute a codification of customary international law.[81] Additionally, submission for ratification gives UNCLOS force as between the United States and other state parties, and the United States has stated its intention to respect the rules of UNCLOS on “navigation and other matters.”[82]

[*Page 2296-2297*]

Kelley, Ryan P. "***UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime Piracy*** ." **Minnesota Law Review**. Vol. 95, No. 6 (June 1, 2011): 2285-2317. [**More** (4 quotes)]

Current US arctic policy directive, initiated by President Bush, is to abide by UNCLOS until US is able to ratify it

"As previously discussed, less than two weeks before President George W. Bush left the White House, the Bush Administration issued a Presidential Directive asserting that "[t]he United States is an Arctic nation."[268] The Directive declares that "[t]he United States has broad and fundamental national security interests in the Arctic region and is prepared to operate either independently or in conjunction with other states to safeguard these interests."[269] In addition to asserting "lawful claims of United States sovereignty, sovereign rights, and jurisdiction in the Arctic region,"[270] the Directive encourages U.S. agencies to "[tlake all actions necessary to establish the outer limit of the continental shelf appertaining to the United States, in the Arctic and in other regions, to the fullest extent permitted under international law."

The terms of the Directive essentially instruct the United States to abide by UNCLOS and map the U.S. continental seabed in order to submit an extended continental shelf claim to the CLCS.[272] In fact, when President Bush issued the Directive, he expressly called on the U.S. Senate to ratify UNCLOS, explaining that UNCLOS offers "[tihe most effective way to achieve international recognition and legal certainty for our extended continental shelf."[273] Succeeding Vice President Biden as Senate Foreign Relations Committee Chairman, Senator John Kerry also said he would advocate for ratification of UNCLOS[274] and would like to bring the Convention to a vote this year.[275] As explained by Kerry, "'[i]n order to guarantee secure borders ... and protect our marine resources, we must become full partners with the other Arctic nations and ratify the U.N. Convention on the Law of the Sea."'[276] Secretary of State Hillary Clinton also endorses the UNCLOS and stated during her confirmation hearings that ratifying the Convention would be a priority.

[*Page 541-542*]

Wilder, Meagan P. "*Who Gets the Oil?: Arctic Energy Exploration in Uncertain Waters and the Need for Universal Ratification of the United Nations Convention on the Law of the Sea*." **Houston Journal of International Law**. Vol. 32, No. 2 (2009-2010): 505-544. [**More** (8 quotes)]

U.S. military already constrained by UNCLOS restrictions since Reagan's 1983 Executive Order

"Military Operations. U.S. military forces are already legally bound to follow the provisions of convention by virtue of President Reagan's 1983 Statement on Ocean Policy; therefore, joining the convention will impose no additional restrictions on U.S. military operations. Since the completion of

the 1994 agreement, there has been unanimous support for joining the convention by uniformed and civilian national security leaders, including the chairman and Joint Chiefs of Staff, the combatant commanders, and the comman- dant of the Coast Guard. The public record documenting historical and current support by national security leaders is overwhelming.[32] The most recent testimony of Deputy Secretary of Defense Gordon England succinctly captures this support:

> "President Bush, Secretary Gates, the Joint Chiefs of Staff, the Military Department Secretaries, the Combatant Commanders, the Commandant of the Coast Guard and I urge the Committee to give its approval for U.S. accession to the Law of the Sea Convention and ratification of the 1994 Agreement. The United States needs to join the Law of the Sea Convention, and join it now, to take full advantage of the many benefits it offers, to mitigate the increasing costs of being on the outside, and to support the global mobility of our armed forces and the sus- tainment of our combat forces overseas."[33]

[*Page 42*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. has already agreed to limiting the continental shelf in 1964 Convention

"Ultimately, the Convention settled on an outer limit for the continental shelf of 200 miles,[38] which satisfied many geographically disadvantaged states (those that do have a naturally wide shelf), but also allowed special considerations for states with naturally broad shelves by granting them a potentially deeper shelf of up to 350 miles instead of the standard 200.[39] With the exception of the special considerations, Convention provisions limiting the continental shelf echoed those in the 1964 Convention on the Continental Shelf which set the limit as 200 miles and gave coastal states exclusive rights over its continental shelf.[40] The United States is a party to the 1964 Convention on the Continental Shelf and thus bound by these limits.[41] However, if the United States qualifies for the special considerations provided for in the Convention for states with naturally broader shelves, it has the potential to increase its continental shelf.[42]

[*Page 365-366*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. response to Russian Arctic claims relies on UNCLOS provisions

even though U.S. has yet to ratify treaty

"In August 2007, Russian scientists descended 4,261 meters (13,976 feet) beneath sea level at the North Pole, using two dual-manned submers- ibles, Mir-1 and Mir-2.18 The mission had two purposes: first, to collect samples of soil from the seabed directly beneath the North Pole, which is within the claims that Russia submitted to the commission and along the Lomonosov Ridge; and second, to place a one meter tall titanium Russian Federation flag, creating nationalist symbolism behind Russia's claim and reinforcing its dedication to being a major power, both scientifically and economically, in the Arctic region.

Because of the suddenness of the claim by Russia, four other countries with a potential stake (Denmark, Norway, the United States, and Canada), and one without a stake (Japan), have submitted written responses to the Commission. Denmark and Canada have both refused to offer an opinion immediately after Russia's submission, citing the necessity of additional and more specific data.[19] The remaining countries, the United States, Norway, and Japan,[20] have offered negative responses. Norway, having submitted a claim in November 2006 (beyond their 200 nautical mile EEZ) that does not overlap with Russia's claim, was most concerned with overlapping claims along mutual borders, a "maritime dispute" that has not yet been settled and which could be problematic for both countries.[21] The United States submitted a detailed response, using scientific data to support a position that neither the Alpha-Mendeleev or the Lomonosov Ridges are part of any state's continental shelf, but are rather independent features consisting of magma or freestanding formations. The official U.S. position advised:

> The integrity of the Convention and the process for establishing the outer limit of the continental shelf beyond 200 nautical miles ultimately depends on adherence to legal criteria and whether the geological criteria and interpretations applied are accepted as valid by the weight of informed scientific opinion. A broad scientific consensus of the relevant experts... is critical to the credibility of the Commission and the Convention.[22]

This statement suggests that the United States would like the convention and commission to look strongly and carefully at the evidence presented by Russia before determining any course of action. It also indicates that the United States is first deferring to the standards established in UNCLOS for dispute settlement, despite not being a signatory to the agreement.

[*Page 29-30*]

Carlson, Jon D., Christopher Hubach, Joseph Long, Kellen Minteer, and Shane Young. "*Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims*." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 21-43. [**More** (5 quotes)]

Ratification of UNCLOS is a win/win proposition for U.S. since we already have adopted convention practices into our laws

"Joining is a win/win proposition. We will not have to change U.S. laws or practices, or give up rights, and we will benefit in a variety of ways. The United States already acts in accordance with the Convention for a number of reasons:

- First, as noted, we are party to a group of 1958 treaties that contain many of the same provisions as the Convention.
- Second, the United States heavily influenced the content of the 1982 Convention, based on U.S. law, policy, and practice.
- Finally, the treaty has been the cornerstone of U.S. oceans policy since 1983, when President Reagan instructed the Executive Branch to act in accordance with the Convention's provisions with the exception of deep seabed mining.

Thus, we are in the advantageous position in the case of this treaty that U.S. adherence to its terms is already time-tested and works well.

[*Page 4*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

U.S. has already committed to UNCLOS framework in Arctic by signing 2008 Illulissat Declaration but will remain outside of conversation until party to UNCLOS

"The legal regime applicable in the Arctic is the customary international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). While the United States has not ratified UNCLOS, it considers the convention's navigation and jurisdiction provisions to be binding international law. The convention advances and protects the national security, environmental, and economic interests of all nations, including the United States, codifying the navigational rights and freedoms that are critical to American military and commercial vessels. It also secures economic rights to offshore natural resources.[26] Article 76 of the convention allows nations to claim jurisdiction past their exclusive economic zones on the basis of undersea features that are considered extensions of the continental shelf, if a structure is geologically similar to a nation's continental landmass.[27] In May 2008 five of the Arctic nations adopted the Illulissat Declaration, which acknowledges that "the Law of the Sea is the relevant legal framework in the Arctic" and that there is "no need to develop a new comprehensive international legal regime to govern the Arctic," committing the signatories to an "orderly settlement of any possible overlapping claims."[28]

Currently there are overlapping, unresolved maritime boundary claims between the United States and Canada, Canada and Denmark, Denmark and Norway, and Norway and Russia. At this time, none of these disputed boundary claims pose a threat to global stability. While the United States and Canada

disagree on the location of the maritime boundary in and northward of the Beaufort Sea, the United States considers Canada a close ally, and the dispute does not jeopardize this relationship.[29] Unfortunately, the United States is the only Arctic nation that has not joined UNCLOS, despite support from President Barack Obama and the Bush and Clinton administrations. Because the Illulissat Declaration recognizes the law of the sea as the framework for deciding issues of Arctic territoriality, the United States will likely find itself at a disadvantage when critical Arctic conversations occur.[30]

[*Page 40*]

Titley, Rear Admiral David W., U.S. Navy, and Courtney C. St. John. "***Arctic Security Considerations and the U.S. Navy's Roadmap for the Arctic*** ." **Naval War College Review**. Vol. 63, No. 2 (Spring 2010): 35-48. [**More** (3 quotes)]

U.S. has already been abiding by provisions of UNCLOS for last two decades

"We also should remember that the United States already has been abiding by the Law of the Sea Convention since President Reagan's 1983 Statement of Oceans Policy. In addition, the United States is a party to the 1958 Convention on the Territorial Sea and Contiguous Zone, a predecessor to the Law of the Sea Convention. Many of the provisions of the 1958 Convention are less advantageous to the United States than comparable provisions in the Law of the Sea Convention.

Given that the United States has been abiding by all but one provision of the Treaty for the last 21 years and that we are already a party to a less advantageous international agreement on ocean law, dire predictions about the hazards to our sovereignty of joining the Law of the Sea Convention ring particularly hollow.

Lugar, Richard. "***The Law of the Sea Convention: The Case for Senate Action*** . Presented at "*Conference on the Law of the Sea*", **Brookings Institution**: Washington, D.C., May 4, 2004. [**More** (5 quotes)]

UNCLOS already enjoys global consensus among coastal states and reflects values and interests of US government

"UNCLOS provides the overarching framework governing international ocean affairs. The Convention is one of the most wide-ranging, comprehensive international Conventions and, together with its associated agreements[3], covers or touches on virtually all marine activities. UNCLOS has, moreover, achieved broad acceptance from the international community. At the time of writing the Convention boasted 164 parties, comprising 163 States plus the European Union. When it is recalled that there are 'only' 155 coastal States in the world, the near-comprehensive uptake of UNCLOS is

underscored.

Indeed, despite being a non-party itself, the US nonetheless accepts that key aspects of UNCLOS, such as the maritime jurisdictional and boundary delimitation provisions, are declaratory of customary international law and conducts its policy accordingly.[4] In terms of international law and international relations, US accession to the Convention would therefore consolidate and reinforce the oceans policy and practice pursued by successive administrations of both political persuasions in the US.

[*Page 1-2*]

Schofield, Clive and Ian Townsend-Gault. "*Time for the United States to Join the Party? Prospects for US Ratification of the United Nations Convention on the Law of the Sea*." **International Zeitschrift**. Vol. 8, No. 3 (December 2012): 1-6. [**More** (4 quotes)]

U.S. law and practice are already in sync with the convention and would not need to change further

"U.S. law and practice are already generally compatible with the Convention. Except [with respect to the enforcement of certain deep seabed mining decisions, which would be necessary at some point after U.S. accession], the United States does not need to enact new legislation to supplement or modify existing U.S. law, whether related to protection of the marine environment, human health, safety, maritime security, the conservation of natural resources, or other topics within the scope of the Convention. The United States, as a party, would be able to implement the Convention through existing laws, regulations, and practices (including enforcement practices), which are consistent with the Convention and which would not need to change in order for the United States to meet its Convention obligations….[t]he Convention would not create private rights of action or other enforceable rights in U.S. courts, apart from its provisions regarding privileges and immunities to be accorded to the Convention's institutions.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

U.S. already bound to many of the demands of UNCLOS through 1958 convention that contains no "escape clause"

"Paradoxically, the critics seem not to have noticed that the less protective 1958 Conventions already binding on the United States, unlike the 1982 Convention, contain no denunciation clause. Unless the United States adheres to the 1982 Convention, which would automatically supercede our obligations under the 1958 Conventions, we would be faced with substantial uncertainty about revision or withdrawal from the 1958 Conventions. Under the 1958 Conventions, a request for

revision of the Conventions would simply be referred to the United Nations General Assembly, which would then “decide upon the steps, if any, to be taken in respect of such requests.” And, in the absence of a denunciation clause in the 1958 Conventions, it would be unclear under international law whether the United States would be able to lawfully withdraw at all from these Conventions. In sharp contrast, not only will adherence to the 1982 Convention automatically supercede outmoded United States obligations under the 1958 Conventions, but the 1982 Convention does contain a denunciation clause. Under Article 317 of the Convention the United States may leave the Convention after one year following a simple denunciation. Thus, if the horribles espoused by the critics were to occur, the United States could simply denounce the Convention and withdraw;

[*Page 23*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

U.S. will inevitably be forced to accept terms of UNCLOS without accruing any of its benefits unless it ratifies

“Some critics seem also to act as though United States non-adherence would prevent the Convention from coming into effect, that we can engage in further renegotiation, or that we can simply ignore the Convention in our relations with other nations. None of these assumptions is true. The 1982 Convention is in force for 145 nations and is today the basic legal regime for the world’s oceans. For example, whether or not the United States adheres to the Convention, the Seabed Authority will remain in place. The only difference will be that the United States will gratuitously deprive itself of its deep seabed mining industry and our ability to control the rules and regulations, amendments and any distribution of revenues to states parties in the actions of the Authority. And following a major renegotiation at United States insistence before the Convention went into force (a renegotiation that met all United States conditions established by President Reagan for United States acceptance) there is zero possibility of further renegotiation. Any amendments from this point forward can only come from the participation of states parties using normal Convention provisions for amendment. Similarly, whether or not we are a party to the Convention, when the United States seeks to mobilize its allies around an important initiative such as the Proliferation Security Initiative, it will quickly find, as it has, that our allies will insist on compliance with the Convention provisions;

[*Page 24-25*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Critics of UNCLOS ignore that many of its provisions have already

been accepted in 1958 convention and that every President since Reagan has accepted it as policy

“The United States has long been party to the four 1958 Geneva Conventions on the Law of the Sea, many of whose provisions are copied and elaborated upon in the 1982 Law of the Sea Convention. It is puzzling that a few commentators maintain that dire consequences would flow from Senate acceptance of texts that are no different from those already contained in the Geneva Conventions and other treaties to which we are party.

It is also puzzling that a few commentators maintain that dire consequences would flow from Senate acceptance of texts that President Reagan publicly committed the United States to respect. President Reagan formally declared that “the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.” [2]

[*Page 2*]

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (6 quotes)]

US naval operations already regulated by several treaties and organizations that formed the basis of UNCLOS

“UNCLOS relies for these purposes on dozens of such conventions, but this article will focus on five that are particularly significant and wide-ranging: the International Convention for the Safety of Life at Sea (the SOLAS Convention); the InternationalManagement Code for the SafeOperation of Ships and for Pollution Prevention (ISM Code); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention); the International Convention for the Prevention of Pollution from Ships (MARPOL Convention); and the International Ship and Port Facility Security Code (ISPS Code).

Before turning to the specifics, however, a few background topics need to be discussed. The first of these is the "organization that has probably had the most substantial direct effect on the law of the sea"-the International Maritime Organization. 39 The IMOis the "United Nations' specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships."40 The convention establishing the IMOwas adopted in 1948 and came into effect in 1958; the IMO's first meeting was held in 1959.Most of its work is done in committees, including the Maritime Safety Committee, the Marine Environment Protection Committee, and the Legal Committee. These bodies identify needs for new conventions or for amendments to existing ones. All of the important conventions to be discussed in this section were adopted under the auspices of the IMO, which today oversees the process of keeping these conventions abreast of developments in maritime and related industries.

[*Page 84*]

Norris, CDR Andrew J. "***The "Other" Law of the Sea*** ." **Naval War College Review**. Vol. 64, No. 3 (Summer 2011): 78-97. [**More** (4 quotes)]

U.S. courts have already recognized UNCLOS as reflecting customary international law in United States v. Alaska

“Ratified by 160 states, UNCLOS is accepted and followed around the world.[168] Even though the United States is not a party to the treaty, U.S. case law adopts and acquiesces to the provisions of UNCLOS and treats them as customary international law.[169] For example, in United States v. Alaska, the government noted that the United States “has not ratified [UNCLOS], but has recognized that its baseline provisions reflect customary international law.”[170] Given this apparent acceptance of UNCLOS principles, perhaps over time the United States will lose the ability to claim it is not a party to UNCLOS because of the power of acquiescence.[171]

[*Page 672*]

Smith, Angelle C. "***Note: Frozen Assets: Ownership of Arctic Mineral Rights Must be Resolved to Prevent the Really Cold War*** ." **George Washington International Law Review**. Vol. 41, No. 3 (2011): 651-680. [**More** (5 quotes)]

Current U.S. implementation plan for the Arctic recognizes the Law of the Sea as the governing framework

“**Promote International Law and Freedom of the Seas**

Objective: The United States will continue to promote freedom of the seas and global mobility of maritime and aviation interests for all nations in accordance with international law. The United States will promote and conduct such activities in the Arctic region as appropriate.

Next Steps: The United States will exercise internationally recognized navigation and overflight rights, including transit passage through international straits, innocent passage through territorial seas, and the conduct of routine operations on, over, and under foreign exclusive economic zones, as reflected in the Law of the Sea Convention. Toward this end, the U.S. Government will, as appropriate:

- Conduct routine Arctic maritime exercises, operations, and transits consistent with international law.
- Inform the Arctic Council, International Maritime Organization, tribal organizations, and other interested governments of U.S. activities conducted.
- Engage the private commercial shipping and aviation sectors and involve stakeholders and

experts in academia and non-governmental organizations to promote the rights and responsibilities of freedom of navigation and overflight in the Arctic region.
- Promote the global mobility of vessels and aircraft throughout the Arctic region by developing strong relationships and engaging in dialogue with international partners, especially Arctic states.
- Continue to document U.S. diplomatic communications in the Digest of U.S. Practice in International Law published by the Department of State.
- Continue to document the Department of Defense report on fiscal year freedom of navigation operations and other related activities conducted by U.S. Armed Forces
- Continue to deliver strategic communications at appropriate opportunities to reflect U.S. objections to unlawful restrictions in the Arctic on the rights, freedoms, and uses of the sea and airspace recognized under international law.
- Continue to encourage excessive maritime claims to be rescinded or otherwise reformed to comply with international law.

Measuring Progress: Progress will be measured through the continued preservation of the freedoms of navigation and overflight and other rights and uses of the seas consistent with customary international law as reflected in the Law of the Sea Convention throughout the Arctic region, including the Northwest Passage and Northern Sea Route.

[*Page 9-10*]

National Security Council. **Implementation Plan for The National Strategy for the Arctic Region** . The White House: Washington, D.C., January 31, 2014 (32p). [**More** (3 quotes)]

U.S. Arctic strategy implementation plan includes submitting claims to extended continental shelf through UNCLOS

“**Delineate the Outer Limit of the U.S. Extended Continental Shelf**

Objective: Develop the U.S. submission in support of delineating the outer limit of the U.S. Extended Continental Shelf in the Arctic.

Next Steps: Continue to conduct activities in support of the United States’ Extended Continental Shelf (ECS) in the Arctic, including:

- Process and interpret the seismic data, refine the base of slope, and develop a geologic framework for the U.S. ECS in the Arctic Ocean and Bering Sea through 2015.

- Complete the analyses and documentation necessary to delineate the outer limits of the U.S. ECS in the Arctic Ocean and Bering Sea through 2016.

Measuring Progress: Progress toward delineation of the outer limit of the U.S. continental shelf in the Arctic will be measured by the completion of the U.S. Extended Continental Shelf Task Force analysis, preparation of the necessary documentation, and submission of a well-supported

delineation of the U.S. Extended Continental Shelf in the Arctic and elsewhere in accordance with the Convention on the Law of the Sea.

Lead Agency: Department of State
Supporting Agencies: Department of Commerce (National Oceanic and Atmospheric Administration), Department of Defense, Department of Homeland Security, Department of the Interior (United States Geological Survey)

[*Page 29-30*]

National Security Council. **Implementation Plan for The National Strategy for the Arctic Region** . The White House: Washington, D.C., January 31, 2014 (32p). [**More** (3 quotes)]

U.S. has already accepted "common heritage of mankind" principle in previous agreements and domestic law

U.S. already bound by "Common Heritage of Mankind" principle through customary international law

"However, the United States is likely already bound by the "common heritage of mankind" doctrine under principles of customary law.61 Customary law is generally thought of as widespread systematic practice that is backed by opinio juris, or the belief that one is acting in accordance with legal obligation.62 Because these are not objectively measureable qualities, customary law is not always easy to identify. The Convention, including its provisions regarding the "common heritage of mankind" principle, is considered to represent the customary law of the seas, supported in part by its widespread ratification.63 Under general principles of international law, customary law is binding on all states, including the United States. 64 The United States, thus, is bound by those provisions of the Convention that are deemed customary law, which likely include the "common heritage of mankind" principle.

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Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. codified principle of "Common Heritage of Mankind" into Deep Seabed Hard Mineral Resources Act in anticipation of UNCLOS

"Additionally, the United States explicitly acknowledges the "common heritage of mankind" principle in its passage of the Deep Seabed Hard Mineral Resources Act.[65] The Deep Seabed Hard Mineral Resources Act notes that deep seabed minerals are the "common heritage of mankind" and establishes a temporary framework for the responsible and respectful mining of the deep seabed taking into account the interests of other nations.[66] That the Deep Seabed Hard Mineral Resources Act was intended as a temporary framework until the Convention could be agreed upon and ratified[67] further supports the United States' willingness to embrace the "common heritage of mankind," and ultimately the Convention which incorporates this principle.

[*Page 369-370*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the***

Sea Treaty ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

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Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

The 1994 Agreement explicitly dealt with and resolved concerns U.S. had with ratifying UNCLOS

In 1994, the U.S. and other developed nations lobbied and won a number of significant concessions and amendments to UNCLOS that addressed the concerns that previous administrations had with the treaty, including provisions over tech transfer and resource sharing.

Treaty modifications in 1994 addressed national security concerns over technology transfer provisions

"U.S. Technological Advantage. It is true that the 1982 form of the convention mandated private technology transfer detrimental to U.S. national security and economic interests. That was one of the factors specifically cited when President Reagan rejected the convention. Article 144 of the convention does encourage technology transfer, calls for parties to "cooperate in promoting the transfer of technology and scientific knowledge," and remains in force following the adoption of the 1994 agreement but does not mandate technology transfer. Such transfer, mandated by Annex III Article 5 of the convention, was eliminated by section 5 of the annex to the 1994 agreement. Additional protection against national security damage through technology transfer is provided by Article 302 of the convention: "[N]othing in this Convention shall be deemed to require a State Party, in the fulfillment of its obligations under this Convention, to supply information the disclosure of which is contrary to the essential interests of its security."

[*Page 43-44*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

The 1994 agreement explicitly resolved issues that Reagan administration had with UNCLOS

"[MYTH]: *The 1994 Agreement does not even pretend to amend the Convention; it merely establishes controlling interpretive provisions.*[21] This is nonsensical. The Convention could only have been formally "amended" if it had already entered into force. The 1994 Agreement was negotiated separately to ensure that the Convention did not enter into force with Part XI in its flawed state. The 1994 Agreement made explicit, legally binding changes to the Convention and has the same legal effect as if it were an amendment to the instrument itself.[22]

A letter signed by all living former legal advisers to the U.S. Department of State, representing both Republican and Democratic administrations, confirms the legally binding nature of the changes to the Convention effected by the 1994 Agreement. Their letter states, “The Reagan Administration’s objection to the LOS Convention, as expressed in 1982 and 1983, was limited to the deep seabed mining regime. The 1994 Implementing Agreement that revised this regime, in our opinion, satisfactorily resolved that objection and has binding legal effect in its modification of the LOS Convention.”[23]

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Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

The 1994 agreement resolved U.S. concerns over deep seabed mining

“[MYTH]: *The problems identified by President Reagan in 1983 were not remedied by the 1994 Agreement relating to deep seabed mining*.[24] Not true—in fact, each objection has been addressed. Among other things, the 1994 Agreement:

- Provides for access by American industry to deep seabed minerals on the basis of nondiscriminatory and reasonable terms and conditions.[25]
- Overhauls the decision-making rules to accord the United States critical influence, including veto power over the most important future decisions that would affect U.S. interests and, in other cases, requires two-thirds majorities that will enable the United States to protect its interests by putting together small blocking minorities.[26]
- Restructures the regime to comport with free market principles, including the elimination of the earlier mandatory technology transfer provisions and all production controls.[27]

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Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

All issues with Deep Seabed Mining identified by President Reagan in 1983 have been remedied in subsequent 1994 agreement

“*MYTH: The problems identified by President Reagan in 1983 were not remedied by the 1994 Agreement relating to deep seabed mining.* Each objection has been addressed. Among other things, the 1994 Agreement:

- provides for access by U.S. industry to deep seabed minerals on the basis

- of non-discriminatory and reasonable terms and conditions;
- overhauls the decision-making rules to accord the United States critical influence, including veto power over the most important future decisions that would affect U.S. interests and, in other cases, requires supermajorities that will enable us to protect our interests by putting together small blocking minorities;
- restructures the regime to comport with free-market principles, including the elimination of the earlier mandatory technology transfer provisions and all production controls.

[*Page 10-11*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

1994 agreement removed obligations of member states to transfer technology or share revenue

"The United States has not ratified UNCLOS because it initially objected to part XI of the treaty, as did many other developed nations.[110] The objections to part XI were based on economic and security concerns.[111] Part XI recognized the region of seabed and ocean floor beyond the jurisdiction of any state to be the common heritage of humankind.[112] Part XI, therefore, requires states to share the financial benefits[113] from activities within the region as well as the related technology.[114] In response to the objections to these provisions, the U.N. General Assembly adopted a resolution to encourage the United States and other objecting states to ratify UNCLOS.[115] This resolution, known as the Agreement Relating to the Implementation of Part XI of the U.N. Convention on the Law of the Sea of 10 December 1982, allows countries to ratify UNCLOS without being bound to part XI.[116] Given that the United States may ratify UNCLOS without part XI, the benefits to the development of offshore wind power are one of the many reasons for the United States to ratify UNCLOS.[117]

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Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

The 1994 agreement removed the most odious parts of UNCLOS related to management of the deep seabed

"The changes set forth in the 1994 Agreement meet our goal of guaranteed access by U.S. industry to deep seabed minerals on the basis of reasonable terms and conditions. The Agreement overhauls the decision making procedures of Part XI to accord the United States, and others with

major economic interests at stake, decisive influence over future decisions on possible deep seabed mining. The United States is guaranteed a seat on the critical decision-making body; no substantive obligation can be imposed on the United States, and no amendment can be adopted, without its consent.

The Agreement restructures the deep seabed mining regime along free-market principles. It scales back the structure of the organization to administer the mining regime and links the activation and operation of institutions to the actual development of concrete interest in seabed mining. The International Seabed Authority has no regulatory role other than administering the mining regime, and no ability to levy taxes.

A future decision, which the United States and other investors could block, is required before the organization's potential operating arm (the Enterprise) may be activated, and any activities on its part are subject to the same Convention requirements as other commercial enterprises. States have no obligation to finance the Enterprise, and subsidies inconsistent with GATT/WTO are prohibited. Of particular importance, the Agreement eliminates all requirements for mandatory transfer of technology and production controls that were contained in the original version of Part XI.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

Key Reagan opponent of UNCLOS now concedes 1994 amendments have resolved remaining issues

"Ken Adelman, an active member of the Reagan Administration's efforts to persuade allies that they should not support the Convention in 1982, now supports ratification, explaining that the changes made through the Part XI Agreement have responded properly to the concerns they had raised in the early 1980s:

> Scraped away are virtually all the barnacles we denounced during our 1982 ''scuttle diplomacy.'' There's no bar to private firms mining the minerals. No mandatory technology transfer. No decision-making without U.S. participation. Indeed, the U.S. gets a permanent seat on the decision-making body, and thus has veto power. There's no bar to future qualified mining firms, and no gigantic LOS institution for wannabe bureaucrats.
>
> The seabed mining regime reflects free-market principles. It offers compa- nies the legal certainty needed for large-scale, long-term investments; protects existing claims of U.S. firms; and reinforces international law on territorial waterways. It locks in U.S. offshore economic rights as it expands our rights over resources in a 200-mile exclusive economic zone, 200-mile continental shelf, and in a shelf beyond 200 miles off Alaska.

Van Dyke, Jon M. "***U.S. Accession to the Law of the Sea Convention*** ." **Ocean Yearbook**. Vol. 22. (2008): 47-59. [**More** (5 quotes)]

1994 Agreement gave U.S. Permanent seat in Council of international seabed authority with significant ability to affect votes

"Perhaps the most significant change for the United States concerned decision-making within the International Seabed Authority. Article 161 of the Convention established a sophisticated decision-making procedure calling for different levels of enhanced majorities depending on the type of decision being made. Section 3 of the Part XI Agreement restructured this procedure by establishing a system of ''chambered voting'' within the Seabed Authority's governing Council, to protect minority interests while at the same time allowing majority rule under a one-nation one-vote system. This approach was originally advocated by the Nixon Administration in 1970 when it outlined a system of decision-making for the body that eventually became the International Seabed Authority.

As modified in 1994, the Council, which is the main decision-making body of the International Seabed Authority, now consists of 35 members and has four distinct ''chambers'' of nations representing different interest groups. One chamber consists of four of the nations with the world's largest economies, with a specific seat allocated to the United States (if it ratifies the Convention) and one reserved for an Eastern European nation. The second chamber consists of four of the nations that have made the largest investments in deep seabed mining. The third chamber includes four of the nations that are net exporters of the minerals to be mined from the sea floor, including at least two developing countries that rely heavily on the income from these minerals. And the fourth chamber consists of all the other developing nations that are elected to the Council. All questions of substance must be adopted by a two-thirds majority of the entire Council and cannot be opposed by a majority in any of the chambers. In other words, each chamber can veto any decision and block action. Certain key decisions can be made only if there is ''consensus'' of the entire Council.

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Van Dyke, Jon M. "***U.S. Accession to the Law of the Sea Convention*** ." **Ocean Yearbook**. Vol. 22. (2008): 47-59. [**More** (5 quotes)]

1994 agreement removed all of the disputed components of the original deep seabed mingling provisions to the benefit of the developed world

"Eventually a compromise was formed that, understandably, recognized certain political and economic realities by giving more power to the wealthier nations and securing the rights of private and intellectual property over redistribution. The United States and Russia were given permanent seats on the Council without being specifically named.

An amendment to Article 161 of the Convention under Section Three of the Agreement's Annex facilitates this permanent seat without actually naming the United States as its occupant: "The Council shall consist of . . . the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product." Russia, another industrialized State, is virtually guaranteed a seat on the Council as well, by the requirement that chamber (a) include the "State from the Eastern European region having the largest economy in that region in terms of gross domestic product."[104]

A Finance Committee was created, consisting of the five largest contributors to the ISA budget, which would effectively give these nations veto power over any of the Councils decisions.[105] The Committee would remain in effect until the ISA became "cost- effective."[106] And a consensus of the Committee was required to approve "any decision by the Council or Assembly with budgetary implications."[107]

But most importantly, the teeth of the Enterprise were effectively removed. The changes to the treaty in Annex III of UNCLOS regarding the rules of prospecting, exploration, and exploitation completely remove any obligation to freely share information or technology with the Enterprise.

"[Annex III] removes the requirement that parties contracting with the Authority agree to make methods and technology available to the Authority. The Agreement instead provides that the Authority may request cooperation from contracting parties."[108] It only requires it share those willingly, perhaps at a fair market price. "The Agreement also makes clear that contractors entering into joint venture agreements with the Enterprise are under no obligation to finance any part of the Enterprise's mining operation."[109]

With these changes. UNCLOS better reflects the political and economic realities of today's world. Although these compromises might have put most of the ISA's power in the hands of the developed world, they have also created an agreement the whole world can live with.

[*Page 53-54*]

Brittingham, Bryon C. "***Does the World Really Need New Space Law?*** ." **Oregon Review of International Law**. Vol. 12, No. 1 (2010): 31-54. [**More** (3 quotes)]

1994 Part XI Agreement effectively gave U.S veto authority over budget allocation of the International Seabed Authority

"Another change affecting decision-making was the establishment of a Finance Committee, made up of representatives of 15 countries, which has the power to control the budget of the International Seabed Authority. The United States, if it ratifies the Convention, would have a guaranteed seat on the Finance Committee, as one of the five largest financial contributors to the Authority which are automatically elected to the Committee. Because decisions of the Committee on substance must be

made by consensus, the United States (along with the other members of the Committee) will effectively have a veto on the budget of the International Seabed Authority. This change was important in the Clinton Administration's decision to support ratification of the 1982 Convention.

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Van Dyke, Jon M. "***U.S. Accession to the Law of the Sea Convention*** ." **Ocean Yearbook**. Vol. 22. (2008): 47-59. [**More** (5 quotes)]

Concerns about non-binding nature of 1994 Agreement have no basis in reality

"The argument that perhaps the renegotiation of PartXI won't be binding after all and that we will be stuck with the old Part XI. This argument, of course, is flatly at odds with Article 2 of the renegotiation agreement which provides "[i]n the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail." It is at odds with the experience of the United States from 1994 through 1998 when we participated in the Authority on a provisional basis. It is at odds with the practice of the International Seabed Authority toward nations which had adhered to the Law of the Sea Convention before the renegotiation in treating them as fully bound by the renegotiation agreement. It is further at odds with the practice of the Authority in establishing a chambered voting system, a Finance Committee, and mining contracts, all of which are based on the renegotiation agreement. And it is at odds with the official Compendium of Basic Documents: The Law of the Sea published in 2001 by the Seabed Authority that not only has an extensive section rewriting Part XI to fully take account of the renegotiation, but which begins this section by noting: "[i]n the event of any inconsistency between the Agreement and Part XI, the provisions of the Agreement shall prevail."[20] To my knowledge, not a single nation in the world has advanced this argument asserted by critics. More importantly, on an issue of such importance, the United States would have not only the legal right to leave the Convention, but given our insistence on the renegotiation we would be expected to exercise our denunciation right under Article 317, should a serious effort be made to set aside the renegotiation of Part XI. This argument, then, simply throws up another horrible without noting that the alternative recommended, not moving forward with adherence, will immediately have continuing substantial costs for the United States, which, unlike the imagined horrible, are neither contingent nor imaginary;

[*Page 28*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

1994 agreement fixed the previous objections to the mining regime by applying free market principles

“In 1994, more than 100 nations adopted a set of rules governing deep seabed mining. The 1994 agreement applies free market principles to deep seabed mining, establishing a mechanism for vesting title in minerals in the entity that recovers them from the ocean floor. The agreement establishes an International Seabed Authority (ISA) with responsibility for supervising this process. The ISA is an independent international organization— not a part of the United Nations.

It is governed by a Council (with principal executive authority) and an Assembly (which gives final approval to regulations and budgets). As a party to the Convention, the United States would be a permanent member of the Council and have the ability, under relevant voting rules, to block most substantive decisions of the Authority, including any decisions with financial or budgetary implications and any decisions to adopt rules, regulations, or procedures relating to the deep seabed mining regime.

The 1994 agreement also recognized the longstanding view that the deep ocean floor is part of the global commons and beyond the reach of national jurisdiction. The agreement addresses in full all concerns identified by President Reagan a decade earlier. Technology transfer requirements—a principal objection in 1982—were deleted from the agreement.

The 1994 agreement is a legally binding modification of Part XI the Law of the Sea Convention.

[*Page 7*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

Revenue sharing agreements in UNCLOS are not a reason to reject the treaty

Royalties U.S. has to pay on mineral and hydrocarbon worth it given the extraordinary benefits U.S. would gain

"Regarding the third concern, the taxation on resource extraction in exclusive economic zones amounts to just over 2 percent on average, a price that mining and hydrocarbon companies have signaled they are willing to pay as the world's energy markets hunger for new resources and prices of commodities climb. As for revenue redistribution, opponents too often overlook the fact that following renegotiation of the Law of the Sea, the United States is guaranteed the only permanent veto on how funds are distributed. It is also exempt from any future amendments to the treaty without Senate approval. In other words, the United States would enjoy a position of unequaled privilege, not unfair treatment, within UNCLOS.

Ernest Z. Bower and Gregory Poling. "***Advancing the National Interests of the United States: Ratification of the Law of the Sea*** ." **Southeast Asia from the Corner of 18th & K Streets**. (May 25, 2012) [**More**]

Revenue sharing arrangement of UNCLOS is insignificant compared to value of resources and was negotiated with support of oil and gas industry

"Granted, as UNCLOS critics are quick to point out, access to the ECS under UNCLOS is contingent upon payment of royalties to the Interna- tional Seabed Authority (ISBA) for oil and gas development beyond 200 nautical miles (nm).[26] However, the royalty framework is relatively insignifi- cant compared to the fee-sharing arrangements for overseas oil and gas development and the enormous economic benefits anticipated from off- shore resource development. Revenue sharing does not begin until the 6th year of production of a particular well or site, starts at 1% of the value of production and increases 1% per year. By the 12th year and remaining years thereafter, the royalty is 7% of the value of production, paid either in kind or in dollars.[27] During the 1970s, these revenue sharing provisions were negotiated in consultation with the U.S. oil and gas industry.

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Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

U.S. foreign aid could be used to offset any required transfers to states, eliminating any tax burden

“Payments are to be distributed by the ISBA to States Parties of UNCLOS in accordance with Article 82(4) on the basis of equitable criteria that take into account economic development factors. Of note, this distribution is distinct from the distribution of revenues generated from deep seabed mining operations under Part XI of the Convention. As a State Party to UNCLOS, the United States would have a permanent seat in the ISBA to ensure both kinds of distributions are made in ways acceptable to the United States—Section 3(15) of the Annex to the IA guarantees the United States a seat on the ISBA Council in perpetuity.[28] Any ISBA decision regarding revenue sharing must be approved by the Council.[29] Additionally, if distributions are made to a country that is already receiving U.S. foreign aid, the United States could offset aid to that country by the amount of distributions paid by the ISBA, in essence eliminating any increase financial burden to the American taxpayers.

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Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Modest revenue sharing system in UNCLOS will not pose any burden on extracting industries and is in U.S. best interests

“The Convention provides a reasonable compromise between the vast majority of nations whose continental margins are less than 200 miles and those few, including the U.S., whose continental shelf extends beyond 200 miles, with a modest obligation to share revenues from successful minerals development seaward of 200 miles. Payment begins in year six of production at the rate of one percent and is structured to increase at the rate of one percent per year to a maximum of seven percent. Our understanding is that this royalty should not result in any additional cost to industry. Considering the significant resource potential of the broad U.S. continental shelf, as well as U.S. companies’ participation in exploration on the continental shelves of other countries, on balance the package contained in the Convention, including the modest revenue sharing provision, clearly serves U.S. interests.

[*Page 3*]

Kelly, Paul L. "***Statement of Paul L. Kelly: On the United Nations Convention on the Law of the Sea*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (6 quotes)]

Resource sharing provisions in the convention are neither unique nor particularly ornerous

"Third, it might be argued that the United States should not join the Convention because we would have to pay a contribution based on a percentage of oil/gas production beyond 200 miles from shore. However, the revenue-sharing provisions of the Convention are reasonable. The United States has one of the broadest shelves in the world. Roughly 14% of our shelf is beyond 200 miles, and off Alaska it extends north to 600 miles. The revenue-sharing provision was instrumental in achieving guaranteed U.S. rights to these large areas. It is important to note that this revenue-sharing obligation does not apply to areas within 200 nautical miles and thus does not affect current revenues produced from the U.S. Outer Continental Shelf. Most important, this provision was developed by the United States in close cooperation with representatives of the U.S. oil and gas industry. The industry supports this provision. Finally, with a guaranteed seat on the Finance Committee of the International Seabed Authority, we would have an absolute veto over the distribution of all revenues generated from this revenue-sharing provision.

[*Page 10-11*]

Taft, William H. "***Statement of William H. Taft IV: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention (October 21, 2003)*** ." Testimony before the Senate Foreign Relations Committee, October 21, 2003. [**More** (4 quotes)]

Oil and gas industries have concluded revenue sharing agreement in UNCLOS is a fair price to pay considering advantages

"Is there a cost involved in exploring this far frontier? The Convention provides a reasonable compromise between the vast majority of nations whose continental margins are less than 200 miles and those few, including the U.S., whose continental shelf extends beyond 200 miles, with a modest obligation to share revenues from successful minerals development seaward of 200 miles. Payment begins in year six of production at the rate of one percent and is structured to increase at the rate of one percent per year to a maximum of seven percent. Our understanding is that this royalty should not result in any additional cost to industry. Considering the significant resource potential of the broad U.S. continental shelf, as well as U.S. companies' participation in exploration on the continental shelves of other countries, on balance the package contained in the Convention, including the modest revenue sharing provision, clearly serves U.S. interests.

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Kelly, Paul L. "***Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling*** ." **Global Offshore Drilling 2005 Conference**. (April 19, 2005) [**More**]

Oil and gas companies regularly pay royalty payments to foreign governments to extract resources, UNCLOS royalties are no different

"Opponents of the Convention often cite its imposition of royalties on ECS production as an important reason to reject the Convention. Under the Convention, parties must make payments to the ISA based on the value of resources extracted from sites on their extended continental shelves. Production companies would be able to keep the entire value of production at each site for the first five years, subject to any licensing fees imposed by the U.S. Government. Payments to the Seabed Authority would begin at 1% of the value of production in the 6th year of exploitation at a site and rise 1% per year to a maximum of 7% in the 12th year and following years. These royalty rates were negotiated by the U.S. Government with extensive input from U.S. oil and natural gas interests. As oil and natural gas companies have recognized, the royalties are reasonable in view of the immense value of the resources that would be made subject to the United States' exclusive sovereign jurisdiction. The oil and natural gas companies – and the U.S. Treasury – would be able to retain much more than the U.S. would be required to pay to the Seabed Authority. Notwithstanding the required payments to the Seabed Authority, joining the Convention would be overwhelmingly beneficial to U.S. economy and the U.S. Treasury.

[*Page 5*]

Donohue, Thomas J. "***Statement of Thomas J. Donohue: The Law of the Sea Convention: Perspectives from Business and Industry*** ." Testimony before the Senate Foreign Relations Committee, June 28, 2012. [**More** (7 quotes)]

U.S. can only respond to concerns over ISA royalty payments if it is party to UNCLOS

"Caitlyn Antrim, executive director of the Rule of Law Committee for the Oceans, a nonpartisan educational group whose purpose is to inform public discourse regarding U.S. interests in accession to the Convention, expanded further on the history of the revenue-sharing issue. She said it is based on a package deal proposed in 1970 by then-President Richard M. Nixon in which a moderate royalty payment from sea-floor energy and mineral exploitation beyond the 200-meter "isobath" would be shared between the coastal state and the rest of world in return for recognition of the coastal state's jurisdiction over minerals to the outer edge of the con- tinental margin and assured access for private develop- ers to minerals on the deep ocean floor.

"Over the course of the conference, negotiators reduced the area subject to revenue-sharing by moving the inner boundary of the region out to 200 nautical miles," Antrim said. "The concept of sharing royalties from development of seabed resources beyond national boundaries has been endorsed by every president since Nixon, including President Reagan. The Convention is critical because industry will not invest billions of dollars without the international recognition of claims and

title to recovered minerals it provides.

“The Convention also guarantees the U.S. a permanent seat on the council of the International Seabed Authority, the organization created to recognize min- ing claims beyond the continental margin, with veto power over rules and regulations, amendments and distribution plans for royalty payments,” she said. “The Authority will receive royalty payments whether or not the U.S. is a party, but the U.S. will only be able to exercise its veto over how those funds are distributed if we join the Convention.”

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Daisy R. Khalifa. "***Law of the Sea Goes Public*** ." **Seapower**. (June 1, 2012) [**More**]

U.S. developed the UNCLOS royalty scheme under the Nixon administration with the full backing of the oil and gas industry

“These arguments have proven a successful rallying point for UNCLOS opponents and a potential political millstone for senators who might otherwise be inclined to support the convention. The arguments have retained force despite the fact that the United States itself originally conceived the royalty plan under the Nixon Administration, with the full support of U.S. industry—support that has remained consistent across nearly four decades. Royalties were proposed as a modest concession in return for agreement on the U.S.-sponsored extended continental shelf regime.[138] Indeed, most of the oil and gas that may be recovered would be in the first six years and thus would not ever be subject to royalty payments. The “UN-style bureaucracy” argument has also endured despite the fact that opponents have presented no evidence that the ISA is either inefficient, overstaffed, or corrupt at any time throughout the nearly 19 years since its founding in 1994.

[*Page 11-12*]

Houck, James W. **The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic** . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Royalty payments are graduated over time and are unopposed by resource extraction interests in the U.S.

“Some opponents of ratification have objected to the Convention’s provisions concerning revenue sharing of proceeds from the outer continental shelf. Under the Convention, no payments are owed for the first five years of production (which are typically the most productive). Beginning in year six, payments equal to 1 percent of the value of production at the site, increasing 1 percent each year to a maximum of 7 percent, are owed to the International Seabed Authority.

Significantly, the U.S. oil and gas industry, which would likely make these payments, does not

oppose the Convention's revenue sharing provisions. After noting "the significant resource potential of the broad U.S. continental shelf,'' Paul Kelly of Rowan Industries, representing the American Petroleum Institute and other major industry groups, told the Senate Foreign Relations Committee in October 2003 that "on balance the package contained in the Convention, including the modest revenue sharing provision, clearly serves U.S. interests.''

[*Page 5*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

As a party to UNCLOS, U.S. would be able to prevent revenues from being redistributed to non-desirable actors

The U.S. safeguard against such transfers becomes operative through the interaction of the convention and the 1994 agreement. Convention Article 161, paragraph 8(d) requires consensus of the ISA council to distribute economic benefits, pursuant to Article 162. Section 3, paragraph 15(a) of the annex to the 1994 agreement provides the United States a permanent seat on the council by virtue of being the largest economy on the date of entry into force of the convention. Together these sections effectively give the United States a "permanent veto" over distribution of economic benefits, hence preventing funds from being channeled to potential terrorist groups or other organizations likely to act counter to U.S. national security interests.

Even if ISA gives money to national liberation movements, U.S. could exercise its permanent veto to stop it

"**A less prevalent but important minority opinion related to national security holds that** the convention was developed with the participation of national liberation movements and these movements are allowed to participate as observers in the International Seabed Authority. Additionally, provisions of the convention that allow t**he distribution of ISA revenue to "peoples who have not attained full independence or other self-governing status" could be used to fund national liberation movements**. President Reagan cited such provisions as a specific reason for rejecting the convention, since they allowed the possibility of channeling funds to groups the United States identified as terrorist organizations. While it is true that Article 156 of the convention allowed national liberation movements to sign the Final Act of the Third Conference on the Law of Sea and to participate as observers at the ISA, this observer status conveys no authority or voting rights and is equivalent to the status such movements are already granted in the UN General Assembly. It is also true that the ISA could possibly decide to distribute economic benefits to such movements if revenue becomes available in the future. **The U.S. safeguard against such transfers becomes operative through the interaction of the convention and the 1994 agreement.** Convention Article 161, paragraph 8(d) requires consensus of the ISA council to distribute economic benefits, pursuant to Article 162. Section 3, paragraph 15(a) of the annex to the 1994 agreement provides the United States a permanent seat on the council by virtue of being the largest economy on the date of entry into force of the convention. **Together these sections effectively give the United States a "permanent veto" over distribution of economic benefits, hence preventing funds from being channeled to potential terrorist groups or other organizations likely to act counter to U.S. national security interests. Notably, the United States is the only nation with access to such a "permanent veto," which is only available upon joining the convention.** Accordingly, President Reagan's concern regarding potential distribution of funds contrary to national security interests remains valid until the United States joins the convention.

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. has absolute veto rights over preventing royalties from being distributed to undesirable actors

"One of the ISA's key functions is to redistribute royalties generated from resource production on the outer continental shelf to other countries. Treaty opponents have suggested the ISA could agree to a distribution formula that would pay out royalties to U.S. enemies.

True, the treaty does contain revenue-sharing provisions. Companies are allowed to operate royalty free for the first five years of production, then are subject to payments to the ISA of 1 percent of production value beginning in year six and increasing 1 percent per year after that, maxing out at 7 percent in year 12. But this is where opponents' trumped-up fears about paying terrorists parts ways with reality.

As Secretary Clinton pointed out at the Foreign Relations Committee hearing, the treaty specifically provides the United States with a permanent seat on the ISA council, a key decision-making body, effectively giving us veto power over how distribution would occur.

Yes, as the Heritage Foundation reports, final decisions would be made by the ISA's general assembly. But the assembly would only be voting on policies the council recommended unanimously, meaning we could block any proposal from even getting to a vote at the general assembly. This de facto veto power means the United States would always be able to prevent royalties from being distributed to countries we have designated as state sponsors of terrorism.

To put this in terms treaty opponents can better understand, it would be as if every senator on the Foreign Relations Committee had to approve the Law of the Sea treaty before it could be considered by the full Senate for ratification. Under those circumstances, would the treaty ever see a ratification vote?

Ask Sen. Risch. Then think about how likely it would be for the United States to approve a payment formula that would send cash to Somalia or the Palestine Liberation Organization. It's just not going to happen.

Michael Conathan. "***Conservatives Disregard Traditional Allies to Oppose the Law of the Sea*** ." **Think Progress**. (June 13, 2012) [**More**]

U.S. needs to ratify UNCLOS to be able to counter regional blocs with ISA

“In addition, critics of the Convention argue that by ratifying the Convention, the United States would set the wrong precedent by subjecting itself to the authority of international organizations created by the Convention, i.e., the ISA and the Commission.105 Because the decision- making process in these organizations usually requires a majority vote, the United States would have to face “regional, economic, or political blocs that coordinate their votes to support outcomes counter to U.S. interests.”106 However, if the United States ratifies the Convention, it would permit the United States to nominate members for such bodies. As a result, the United States would either have veto power or would have to get concurring votes to prevent an adverse decision.107 Moreover, having American representation in the bodies created by the Convention would ensure that the Convention is interpreted and applied in a manner consistent with United States’ interests.

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Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Revenue sharing agreements in UNCLOS are not the same as a tax

Opponents argue that by ratifying UNCLOS, the United Nations would be given the first opportunity to tax U.S. citizens. However, this is a misunderstanding of the royalties structure within UNCLOS. The International Seabed Authority requires royalty payments from all companies engaged in seabed mining in areas that do not belong to any country and are therefore under the management of the ISA. These payments are a small fraction of the revenue and similar to payments U.S. companies already pay around the world to governments for resource concessions.

UNCLOS stipulates modest fees on resource extraction industries but does not represent new taxing authority

> *Myth: The convention gives the United Nations its first opportunity to levy taxes.*

False--the convention does not provide for or authorize taxation of individuals or corporations. It does include modest revenue sharing provisions for oil and gas activities on the continental shelf beyond 200 miles after the first five years of production and certain fees for deep seabed mining operations. The oil and gas fees are less than the royalties paid to foreign countries for drilling off their coasts and none of the revenues go to the United Nations. These de minimus revenues, which average between two and four percent over the projected life of a well, were a small price to pay for enlarging the U.S. continental shelf by 15 percent, an area larger than the state of California. This is one of the reasons the U.S. oil and gas industry so strongly supports the convention. With respect to deep seabed mining, U.S. companies that apply for deep seabed mining licenses would pay their fees directly to the ISA; no implementing legislation would be necessary. United States consent-that is, its veto would be applicable-would be required for any transfer of such revenues. Yet because the United States is a non-party, U.S. companies currently lack the ability to engage in deep seabed mining under domestic authority alone. By ratifying the treaty, our firms will have this ability which will open up new revenue opportunities when deep seabed mining becomes economically viable. The alternative is no deep seabed mining for U.S. firms, except through other nations that are convention parties. When the Interior Department charges royalties to U.S. oil companies for the development of oil and gas from our continental shelf, it is not exercising a "taxing power," rather it is selling access to an asset. Similarly, royalties paid for these rights are not a "tax" on U.S. taxpayers any more than such royalties paid by U.S. miners to Chile or Indonesia to mine resources there are such a "tax." Perhaps most importantly, until the United States accedes to the convention, it will not be able to exercise its veto over distribution of revenues from every other nation in the world generated by these provisions. And when we do accede, we not only have veto rights over distribution of revenues from U.S. mines, but from all other seabed mines as well. As such, these provisions greatly expand U.S. influence over financial aid decisions.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

UNCLOS does not impose a tax but a royalty scheme that comes with unprecedented U.S. control over administration

"*Myth: Ratifying the treaty will create a tax on US businesses.* Fact: Wrong. The treaty creates U.S. property rights for vast mineral and oil wealth. The ISA simply grants permits to countries to mine and drill for resources thereby giving companies and countries title – something vital to the very foundation of property rights. One cannot hold a property right if one does not first have title. Once title is granted and resource development takes place, certain Reagan amendments go into effect. Ronald Reagan fought for certain mineral rights for the U.S. and he got them in the 1994 amendments to the treaty. That's why Reagan's former Chief of Staff, James Baker, supports ratifying the LOTS. Just as with any other resource development project, there is a royalty schedule: no royalty payments of any kind for the first five years of resource development and after five years the royalties cap at 7%. Right now, Russia, China and 161 other countries are eligible to exploit global resources, enrich their nations, fill the ISA coffers with royalties, and then direct ISA expenditures around the world. Once the U.S. ratifies the treaty, we would be granted 100% veto power as to how all ISA resources from all countries are allocated. That is why Condoleezza Rice endorses the treaty – the U.S. pays up to 7% for just our country, but we get veto power over 100% of the ISA coffers for every royalty from every country. That means zero global mineral and oil wealth payments from anywhere in the world going to rouge states. The only way the U.S. can accomplish this is by ratifying the Law of the Sea Treaty and taking our seat at the ISA.

Andrew Langer. "***The Case for Ratification of the Law of the Sea Treaty*** ." **Real Clear Politics**. (November 28, 2012) [**More**]

UNCLOS does not establish tax on corporations or individuals, only a modest revenue sharing agreement for mineral/energy extraction in international waters

"*[MYTH]: The Convention gives the UN its first opportunity to levy taxes.* The Convention does not provide for or authorize taxation of individuals or corporations. It does include revenue sharing provisions for oil/gas activities on the continental shelf beyond 200 miles and administrative fees for deep seabed mining operations. The amounts involved are modest in relation to the total economic benefits, and none of the revenues would go to the United Nations or be subject to its control. U.S. consent would be required for any expenditure of such revenues. With respect to deep seabed mining, because the United States is a non-party, U.S. companies currently lack the practical ability to engage in such mining under U.S. authority. Becoming a Party will give our firms such ability and

will open up new revenue opportunities for them when deep seabed mining becomes economically viable. The alternative is no deep seabed mining for U.S. firms, except through other nations under the Convention. These minimal costs are worth it.

[*Page 11*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Royalty payments in UNCLOS are neither unique nor burdensome which is why the oil and gas industry views them as a bargain and favors UNCLOS ratification

"If the words "United Nations" are a red flag to some, the concept of a foreign entity taxing a U.S. corporation is anathema. This is what some, including Senator Risch, see in UNCLOS. He argues that since 1776, the United States has never ceded its authority to tax anyone else.[29] As Secretary Clinton pointed out, UNCLOS is a royalty agreement related to drilling and extraction in areas beyond 200 nautical miles from a coast.[30] She has stated that U.S. companies already pay royalties to at least one commission—the Inter- national Telecommunication Union—so a precedent exists.[31] U.S. oil and gas companies routinely pay royalties to foreign nations based on profits made from the materials pumped or extracted in these countries. Another leading isolationist, Senator James Inhofe of Oklahoma, argued that the royalties were taxes paid to a foreign entity. The Chairman of the Committee, Senator John Kerry, responded that President Reagan renegotiated this issue "with the oil companies and gas companies at the table" and they all agreed to the royalties. He also pointed out that the UNCLOS royalties were far less than the royalties paid in the Gulf of Mexico. Indeed, while certain isolationists may object to these royalties, those who would be paying them—the Exxons, Shells and Lockheed Martins—support UNCLOS. These companies realize that 93 percent of some profit is much better than 100 percent of nothing, as they are wary of drilling on the Continental Shelf since the United States has not ratified UNCLOS.

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Bonner, Patrick J. "***Neo-Isolationists Scuttle UNCLOS*** ." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 135-146. [**More** (6 quotes)]

UNCLOS in no way would authorize United Nations to levy taxes on U.S. citizens

[MYTH] The Convention gives the UN its first opportunity to levy taxes.

The Convention does not provide for or authorize taxation of individuals or corporations. There are revenue sharing provisions for oil/gas activities on the continental shelf beyond 200 miles and administrative fees for deep seabed mining operations. The amounts involved are modest in relation to the total economic benefits, and none of the revenues would go to the United Nations or be subject to its control. U.S. consent would be required for any expenditure of such revenues.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

International seabed authority will have no ability to levy taxes and is limited to managing deep seabed mining

[MYTH] The International Seabed Authority has the power to regulate seven-tenths of the earth's surface, impose international taxes, etc.

- The Convention addresses seven-tenths of the earth's surface. However, the International Seabed Authority (ISA) does not.
- The authority of the ISA is limited to administering mining of minerals in areas of the deep seabed beyond national jurisdiction, generally more than 200 miles from the shore of any country. At present, and in the foreseeable future, such deep seabed mining is economically unfeasible. The ISA has no other role and has no general regulatory authority over the uses of the oceans, including freedom of navigation and overflight.
- The ISA has no authority or ability to levy taxes.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

U.S. ratification of UNCLOS would in no way allow U.N. to levy taxes

Myth: The Convention gives the UN its first opportunity to levy taxes.

Reality: Although the Convention was negotiated under UN auspices, it is separate from the UN and its institutions are not UN bodies. Further, there are no taxes of any kind on individuals or corporations or others. Concerning oil/gas production within 200 nautical miles of shore, the United States gets exclusive sovereign rights to seabed resources within the largest such area in the world. There are no finance-related requirements in the EEZ. Concerning oil/gas production beyond 200 nautical miles of shore, the United States is one of a group of countries potentially entitled to extensive continental shelf beyond its EEZ. Countries that benefit from an Extended Continental Shelf

have no requirements for the first five years of production at a site; in the sixth year of production, they are to make payments equal to 1% of production, increasing by 1% a year until capped at 7% in the twelfth year of production. If the United States were to pay royalties, it would be because U.S. oil and gas companies are engaged in successful production
16 beyond 200 nautical miles. But if the United States does not become a party, U.S. companies will likely not be willing or able to engage in oil/gas activities in such areas, as I explained earlier.

Concerning mineral activities in the deep seabed, which is beyond U.S. jurisdiction, an interested company would pay an application fee for the administrative expenses of processing the application. Any amount that did not get used for processing the application would be returned to the applicant. The Convention does not set forth any royalty requirements for production; the United States would need to agree to establish any such requirements.

In no event would any payments go to the UN, but rather would be distributed to countries in accordance with a formula to which the United States would have to agree.

[*Page 15-16*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Bush administration carefully considered risk that ratifying UNCLOS would impose a new tax and concluded that it would not and was resolutely in our best interest regardless

"U.N. "Taxes"/Royalty Payments. Some have objected that the U.S. would be obligated to pay fees to the International Seabed Authority -- which some have inaccurately called "U.N. taxes" -- if the U.S. were to join the Convention and allow resource development on its extended continental shelf. Some have suggested that these fees could result in the loss of billions of dollars to the U.S. Treasury. The Bush Administration carefully considered these concerns and concluded that the licensing and fee structure established by the Convention was acceptable.

First, the fees are minimal in comparison to the enormous economic value that would be received, and the jobs that would be created, by the United States if its industry were to engage in oil, gas, and mineral development on the U.S. extended continental shelf in the Arctic. The U.S. would be required to make no payments for the first five years of production at any site, and then to pay a fee of one percent per year starting in year six, up to a maximum of seven percent in year twelve. Assuming the U.S. Government imposed, for example, a royalty fee of approximately 18 percent on the value of production on the U.S. extended continental shelf, that would be 18 percent more than the U.S. would gain if we stayed outside the Convention. In other words, joining the Convention would attract substantial investment, and produce substantial revenues for the Treasury, that would not otherwise

be produced. So, even when the Convention payment is at its highest rate of 7 percent, the U.S. Treasury would still be 11 percent better off with respect to each production site than it would be if the U.S. does not join the Convention. This would be an enormous benefit -- not a loss -- to the U.S. budget.

Second, these fees would only have to be paid by the United States if there is actually production on the U.S. extended continental shelf.

Third, these fees were negotiated by U.S. negotiators in consultation with experts from the U.S. oil and gas industry, who deemed them to be acceptable.

Fourth, all of the western industrialized countries, including our major allies, as well as Russia and China, have concluded that these fees are acceptable and have joined the treaty. If these fees would actually cause the economic woes claimed by critics, then certainly these other countries would not have been willing to agree to pay them. Instead, most of these countries are already busily surveying and staking claims to their extended continental shelves so that their oil, gas, and mining companies can exploit these resources. For example, Norway -- which already has a sovereign wealth fund worth $700 billion, all of which has been derived from Arctic oil and gas profits -- is preparing to make a claim to the oil and gas on its extended continental shelf in the Arctic. Russia, Canada, and Denmark are all preparing to make similar claims in the Arctic using the provisions of the Convention, and they have agreed to pay royalties if they exploit the resources on their extended continental shelves.

Finally, royalty fees would not be paid to the United Nations. They would be paid through the International Seabed Authority, and back to the Parties to the Convention under a distribution formula developed by the Seabed Authority's Council, where the U.S. would have a permanent seat and a decisive voice on how fees would be spent.

[*Page 8-9*]

Bellinger, John B. "***Testimony of John B. Bellinger III: On Law of The Sea Convention (June 14, 2012)*** ." Testimony before the June 14, 2012, June 14, 2012. [**More** (5 quotes)]

Simply false to equate modest royalty payments with a "new authority to tax American citizens"

"Assertions that the Convention will create authority for an international organization to tax American citizens. The Convention does nothing of the kind. It does provide for payments on "commercial terms" to mine deep seabed minerals that do not belong to the United States. This is similar to payments to Indonesia or Chile for the ability to have access to resources in those countries. We would not remotely regard payments for such access as authority for taxation of American citizens by Indonesia or Chile. Moreover, unlike arrangements for minerals mining access in foreign countries, in the new deep seabed Authority United States firms will have assured access to mine, and the disposition of payments as well as the rules and regulations for such mining will be

subject to a United States veto. Moreover, that veto is exercisable with respect to the distribution of revenues from firms of all other nations mining the deep seabed – thus effectively multiplying the ability of the United States to ensure that the distributions to states parties are put to a good use. Similarly, the Convention provides for minimal revenue sharing for oil and gas development in areas beyond the 200 mile economic zone. Such revenues, which would amount to an average of two to five percent over the life of a well, were an enormous bargain for the United States as payment in return for our obtaining sovereign rights over resources in an area of the continental shelf beyond 200 nautical miles that is roughly equivalent to the size of California. That is, we retain ninety-five to ninety-eight percent of the value of the future resources in this area beyond the 200 mile economic zone placed under United States resource jurisdiction by the Convention. Indeed, the revenue sharing system adopted was drafted by a representative of an American oil company on our law of the sea industry advisory group and has been perfectly acceptable to the oil industry. And even beyond the great bargain that was the purchase of Alaska, in this case not a penny is due until seven years after production begins. Moreover, once again, the distribution of any such revenues to states parties, including revenues from this small royalty from all production beyond 200 miles from other nations, would be subject to a United States veto;

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Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Dispute resolution mechanisms in UNCLOS are not a reason to reject the treaty

The costs associated with the dispute resolution provisions in UNCLOS are similar to those the United States is already subject to under the principles of universal jurisdiction and territoriality and numerous other agreements the U.S. has already ratified. Furthermore, the Convention provides the United States with an escape from mandatory dispute resolution which the U.S. has already invoked in its signing statements to ensure that the U.S. military will not be threatened by UNCLOS tribunals.

Dispute settlement provisions in UNCLOS contribute to advancement of maritime law and are in best interest of US

"Several more forceful responses to the critics of the Convention's obligatory dispute settlement provisions are in order. First, the U.S. has already accepted the Convention's dispute settlement system with respect to certain significant categories of disputes (by ratifying the 1995 Fish Stocks Agreement, which incorporates the Convention's dispute settlement provisions).[54] Second, one can make a strong case that third-party dispute settlement has led to decisions that strengthen the Convention's rules and will lead to many more. For example, in its merits decision in the Saiga case, the ITLOS reinforced the concept of the EEZ as a zone of limited coastal state jurisdiction, which extends neither to customs matters nor generally to all matters affecting a coastal state's "public interest."[55] Third, the U.S. itself might find the Convention's dispute settlement system useful. For instance, arbitration could be threatened or pursued in order to oppose and publicly expose other states' illegal straight baseline claims.[56] The Convention's dispute settlement provisions can help prevent the compromises embodied in the Convention from unraveling.

[*Page 633-634*]

Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George Washington International Law Review**. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Dispute settlement provisions in UNCLOS were advocated by US originally because they are still best way to further rule of law

"We would do well to remember the original justifications for including the third-party dispute settlement provisions in the Convention. These justifications - which U.S. officials articulated and supported during UNCLOS III - include promoting certainty, predictability, and stability, with respect to rules that greatly benefit the United States.[105] These dispute settlement provisions can help deter

illegal behavior, as well as promote the peaceful settlement of disputes. Domestic enforcement of Convention provisions can also serve this end. At the most fundamental level, the Convention furthers the rule of law in the world - the values of using agreed-upon rules and procedures to resist unilateral assertions of jurisdiction or sovereign control, resolving differences even-handedly according to established rules, and providing stable expectations for international actors. Giving full effect to provisions for third-party dispute settlement at the international and national levels would help further these values.

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Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

US was leading advocate of system of third party arbitration within UNCLOS because it viewed this as essential to consistent application of the law

"U.S. concerns about third-party dispute settlement were rarely voiced when the Convention was being negotiated. Indeed, the United States strongly supported third-party dispute settlement at the Third United Nations Conference on the Law of the Sea (UNCLOS III), the forum at which the Convention was negotiated during 1973-1982. U.S. negotiators regarded the dispute settlement provisions as important to achieving consensus at the negotiations and contributing to stability and predictability with respect to law of the sea disputes. According to Professor Louis B. Sohn, writing a third of a century ago during UNCLOS III, a

> principal concern of the United States in the law of the sea negotiations is to provide procedures leading to a binding settlement of law of the sea disputes. Without such procedures it might be difficult to reach the final compromise needed to arrive at an overall solution of the issues before the Conference. The value of such a compromise would be greatly diminished if the parties to the treaty retained the right of unilateral interpretation, without any chance for an impartial adjudication. The purpose of the law of the sea negotiations is to achieve stability, certainty, and predictability, thus removing, or at least diminishing, the conflicts over law of the sea issues which otherwise might threaten the peace of the world. Only an effective method of dispute settlement can remove this danger.

Statements of U.S. officials and U.S. proposals at UNCLOS III emphasized the need for a comprehensive dispute settlement system that would apply with minimal exceptions to all parties and to all parts of the Convention.[21] The binding third-party dispute settlement provisions should yield uniform interpretations of the Convention, with the United States favoring recourse to a permanent law of the sea tribunal to further that goal.[22] Another U.S. objective was "to broaden the access to dispute settlement methods," opening some procedures to individuals and international organizations.[23] The United States was one of the leading proponents of a comprehensive, binding

third-party dispute settlement system at UNCLOS III that would lead to uniform interpretation and application of the Convention.

[*Page 33-34*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

U.S. would not be constrained by foreign tribunal and could choose other methods of dispute resolution

"*[MYTH] The Convention mandates another tribunal to adjudicate disputes.*

- The Convention established the International Tribunal for the Law of the Sea. However, Parties are free to choose other methods of dispute settlement. The United States would elect two forms of arbitration rather than the Tribunal.

- The United States would be subject to the Sea-bed Disputes Chamber, should deep seabed mining take place under the regime established by the Convention. The proposed Resolution of Advice and Consent, however, makes clear that the Sea-bed Disputes Chamber's decisions "shall be enforceable in the territory of the United States only in accordance with procedures established by implementing legislation and that such procedures shall be subject to such legal and factual review as is constitutionally required and without precedential effect in any court of the United States."

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)***." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

Dispute settlement provisions within UNCLOS provide best possible alternative for U.S.

"Finally, dispute settlement under customary international law can run the gamut from diplomatic intervention to economic sanctions, to arbitration, to bringing an action before the International Court of Justice. Bottom line, it is ad hoc, at best. The Convention, on the other hand, contains an elaborate dispute settlement mechanism that promotes compliance with its provisions and ensures that ocean disputes will be settled in a peaceful manner. This mechanism is both flexible, in that Parties have options as to how and in what fora they will settle their disputes, and comprehensive, in that most of the Convention's rules can be enforced through binding dispute resolution. At the same time, however, the dispute settlement mechanism accommodates matters of vital national concern by excluding certain sensitive categories of disputes, such as fisheries management in the EEZ, from

binding dispute settlement. It also allows State Parties to exclude other disputes, such as controversies involving military activities, from the binding dispute settlement procedures.

As a State Party, the United States could enforce its rights and preserve its prerogatives through peaceful dispute settlement under the Convention, as well as en- courage compliance with the Convention by other State Parties.

Schachte, William L. "*National Security: Customary international law and the Convention on the Law of the Sea*." **Georgetown International Environmental Law Review**. Vol. 8, No. 2 (Summer 1995). [**More** (6 quotes)]

U.S. benefits from third party dispute settlement provisions only by being party to UNCLOS

"The United States would obtain the benefit of third party dispute settlement in dealing with non-military oceans interests. The United States was one of the principal proponents in the law of the sea negotiations for compulsory third party dispute settlement for resolution of conflicts other than those involving military activities. We supported such mechanisms both to assist in conflict resolution generally and because we understood that third party dispute resolution was a powerful mechanism to control illegal coastal state claims. Even the Soviet Union, which had traditionally opposed such third party dispute settlement, accepted that in the law of the sea context it was in their interest as a major maritime power to support such third party dispute settlement.[17] International arbitration, which the President has recommended for the United States in this case, is about as American as apple pie. Indeed, George Washington took great pride in the initiative that led to the Jay Treaty and settlement through arbitration of disputes we had with the United Kingdom. This Convention, negotiated by the first Chief Justice of the United States and one of the principal draftsmen of the Federalist Papers, may well have avoided a second war with Britain at a time the new Nation could ill afford it. And, following the Civil War, the United States again led the world to arbitration in the Alabama Claims Arbitration that resulted in substantial net payments to the United States. Modern international arbitration owes its existence to these important American initiatives.[18]

[*Page 22-23*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

On balance, multiple reasons to believe that U.S. exposure to dispute settlement provisions under UNCLOS would be more to its benefit than detriment

“On the other hand, the United States can also find itself in the position of a defendant. That is the risk that comes with the benefit. The United States successfully endeavored to minimize that risk by supporting both mandatory and optional exceptions to the obligation to arbitrate or adjudicate disputes. Let me highlight a few:

First, the obligation applies only to disputes concerning the interpretation and application of the Law of the Sea Convention that have not been settled by other means.

Second, the obligation does not apply to disputes that are also subject to arbitration or adjudication under some other agreement.

Third, the obligation does not apply where there is an agreement between the parties to settle the dispute by some other means, and that agreement excludes any further procedure.

Fourth, only a very limited category of cases may be brought against coastal states with regard to their exercise of sovereign rights or jurisdiction. The most important of these, central to the objectives of the United States with respect to the Convention as a whole, involves alleged violation by the coastal state of the provisions of the Convention regarding rights and freedoms of navigation, overflight, submarine cables and pipelines, and related uses.

Fifth, a state may file a declaration excluding disputes concerning maritime boundaries between neighboring coastal states, concerning military activities, and concerning matters before the UN Security Council. A declaration excluding all such disputes is contained in the resolution of advice and consent contained in the Committee’s 2004 report.

The record of dispute settlement tribunals under the Law of the Sea Convention to date is certainly reassuring. Very few cases have been brought since 1994. All have been handled with considerable caution and prudence, especially in terms of the operative provisions of the judgments and awards.

My conclusion, therefore, is that the probable costs and risks are small, that the magnitude of the probable benefits is very high, and accordingly that America’s interests are best served becoming party to the Convention. To put it differently, the risks of damage to America’s long-term security, economic, and environmental interests by not becoming party to the Convention are far greater than the risks of becoming a party.

[*Page 10*]

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (6 quotes)]

Risk that tribunal would interfere with US military activities, already low, would be even lower if US was party to the convention

“The role of the Law of the Sea Tribunal is to resolve disputes over the Convention. The Convention mandates that the Tribunal resolve all disputes, except those involving military activities. Opponents of the Convention argue that the tribunal could dispute U.S. designations of certain activities as military, forcing the U.S. to limit military operations. Some even claim American “citizens could be dragged before politically motivated foreign jurists.”[18]

Professor John Norton Moore, the leading U.S. expert on the law of the sea, told the Senate Foreign Relations Committee that the chances of the Tribunal undermining U.S. military operations was comparable to that of a meteorite striking the capitol building.[19] Still, administration officials have taken precautions. Upon joining the Convention, the United States would submit a declaration stipulating that it is acceding on the condition that states themselves have the authority to decide whether activities are military.[20] Opponents think that even this precaution leaves a chance of the Tribunal harassing the U.S. military.

As a party to the Convention, however, the United States can nominate the judges to sit on the tribunal, rendering this wildly remote possibility even more unlikely. If the United States does not ratify the Convention, it has no control over the decisions the Tribunal reaches. The Tribunal will never have power over the U.S. military, but its decisions will form precedents that will help resolve future maritime disputes. Those precedents would affect U.S. interests.

[*Page 5*]

Friedman, Benjamin and Daniel Friedman. **How the Law of the Sea Convention Benefits the United States** . **Bipartisan Security Group**: Washington, D.C., November 2004 (7p). [**More** (4 quotes)]

Sovereignty costs of external dispute resolution in UNCLOS less ornnerous than provisions U.S. has already accepted

“There is no doubt that external dispute resolution infringes upon U.S. sovereignty and it is therefore not surprising that staunch advocates of sovereignty steadfastly oppose the Convention, in part due to its dispute resolution mechanisms. However, the costs associated with the Convention’s dispute resolution provision are similar to those the United States is already subject to under principles of universal jurisdiction and territoriality. Furthermore, the Convention provides the United States with an escape from mandatory dispute resolution. In light of this, arguments against ratification of the Convention based upon sovereignty rooted in the dispute resolution mechanisms are outweighed by the benefits the Convention offers to the United States.91

[*Page 373*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Arbitration clause in UNCLOS expands US options for resolving disputes, expanding ability to protect sovereignty

"The presence of a clause providing binding arbitration should not be viewed as a limitation on U.S. sovereignty. The United States retains, as do all countries ratifying UNCLOS, the right to resolve conflicts through diplomatic means. The arbitration provision provides further means for countries to resolve disputes. In essence, it provides additional rights and capabilities to the states that would not normally exist. As such, it serves as an extended means of enforcing sovereignty when diplomatic solutions fail. Therefore, arbitration is not a limit on the sovereignty of states, but rather a guardian of state sovereignty.

[*Page 282*]

Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

Concerns over jurisdiction of UNCLOS tribunals are overstated for three reasons

"The United States has considerable power to determine how accession to Convention would affect its national interests. This is primarily a function of the many years of negotiations getting the treaty to its 1994 form. More recent specific guidance provided by the U.S. Senate Foreign Relations Committee on conditions for U.S. accession to the treaty are laid out in a lengthy resolution identifying very specific declarations, understandings, and conditions that ensure protection of U.S. interests10. The conditions address a wide array of issues including representation on treaty decision-making bodies, ability to enforce U.S. environmental law, and rights to free navigation, as well as harmonization of the treaty with specific aspects of U.S. law. A particular concern to many in the United States is the specter of foreign courts making decisions about navigation and resource protection activities that ultimately affect U.S. interests. This concern could be said to be overstated for three reasons. First, accession to the Convention will allow the U.S. to have a say in the election of members of the Tribunal and to select members of arbitration panels making decisions. Second, and more important, is the fact that the U.S., as part of its accession (or any time thereafter), has the legal right to request the type of body it wants decisions concerning U.S. interests to be made by.

The choices the United States would have include:

1. A hearing before the International Tribunal for the Law of the Sea (ITLOS), a standing tribunal of 21 judges, each from a different nation, that serve nine year terms. The earliest the U.S. could get a seated judge would be in late 2008, when seven seats open.
2. A hearing before the International Court of Justice (ICJ), a UN court of 15 judges appointed by the General Assembly and Security Council. The U.S. currently has one sitting judge.
3. A special arbitral tribunal under "Annex VIII" made up of environmental, marine science, navigation and fisheries experts of which the U.S. would pick two of the five arbitrators.

4. A hearing before an “Annex VII” arbitration panel composed of five members of which the U.S. would be allowed to choose one and be involved in the appointment of at least three others.

The U.S. has already indicated its decision to adjudicate conflicts under the last two options, using the third option for fisheries, environmental and navigational disputes, and the fourth option for other disputes, meaning that all decisions concerning U.S. interests would go to a small arbitral body whose members are selected with U.S. input. Finally, nations may opt out of any of the above adjudication procedures when the issue debated concerns such issues as scientific research, boundary disputes, military activities and setting of limits in natural resource extraction within a nation’s EEZ.

[*Page 5-6*]

Sagarin, Raphael , Larry Crowder et al. Balancing U.S. Interests in the UN Law of the Sea Convention. Nicholas Institute for Environmental Policy Solutions, Duke University: Durham, NC, October 2007 (8p). [**More** (4 quotes)]

Arbitration provisions in UNCLOS are neither unique nor a threat to American interests

“MOORE: First, this is one of the few treaties that we've negotiated in which we specifically put in an exemption for all military activities with respect to submission to dispute settlement. You and I indeed are on record together as sending a letter to the Senate Foreign Relations Committee basically indicating that all military activities have been withdrawn from dispute settlement. And if that were not enough, the Senate resolution of advice and consent that's proposed basically indicates that any determination of whether that is true or not is in fact left to the United States to determine.

Let me also suggest that we're never, in the real world, going always to be able to control every arbitrator. There are going to be bad arbitrations. Unfortunately, all the judges are not Judge Steve Schwable (ph). And there are others that don't understand international law.

But in the aggregate, I believe it is strongly in the interest of the United States to continue to support compulsory dispute settlement. There's nothing un-American about this. Indeed, George Washington indicated that the single most important achievement of his administration was the arbitration provisions contained in the Jay Treaty.

In addition to that, the United States, at present, is a party to some 85 treaties with arbitration provisions, some of which are extremely important, and some 16 multilateral conventions that submit to a variety of different kinds of tribunals. So this is certainly nothing new. I think the simple answer is, one, for the tribunals that we're involved in, we will have the ability to select some of those judges, of course, in the way they're selected -- two out of the five in the general arbitration -- so we don't know what those other parties may have accepted. The arbitration only binding on them, not on other parties. So we're the ones that participate when we enter into arbitration in selecting the judges. A military exclusion would be applicable, so that's not an issue whatsoever in the case.

And finally, if they clearly did something that is ultra vires, as I would regard this as ultra vires, it clearly is simply not binding on the United States under normal rules of international law. That decisions that go beyond the jurisdiction of the tribunal are simply void.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

UNCLOS allows parties to choose other methods of dispute resolution and U.S. has chosen its own arbitration methods

"*[MYTH] The Convention mandates another tribunal to adjudicate disputes.*

- The Convention established the International Tribunal for the Law of the Sea. However, Parties are free to choose other methods of dispute settlement. The United States would choose two forms of arbitration rather than the Tribunal.
- The United States would be subject to the Sea-bed Disputes Chamber, should deep seabed mining ever take place under the regime established by the Convention. The proposed Resolution of Advice and Consent makes clear that the Sea-bed Disputes Chamber's decisions "shall be enforceable in the territory of the United States only in accordance with procedures established by implementing legislation and that such procedures shall be subject to such legal and factual review as is constitutionally required and without precedential effect in any court of the United States." The Chamber's authority extends only to disputes involving the mining of minerals from the deep seabed; no other activities, including operations on the surface of the oceans, are subject to it.

[*Page 11*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Recent ITLOS decision in dispute between Argentina and Ghana should make the U.S. question the wisdom of remaining outside the convention and protections of dispute resolution

"While the ITLOS decision may indeed be cheered in naval circles for its ringing affirmation of the sovereign immunity of warships (possibly also for military aircraft, although they are not defined in the LOS Convention, nor is their sovereign immunity addressed), it also serves as a reminder of the awkward position of the U.S. as a non-party to the LOS Convention (the Convention has been pending before the senate since 1994, but the senate has yet to give its advice and consent to

accession). Accordingly, should a similar incident occur involving a U.S. Navy or Coast Guard warship, the U.S. would not be able to apply to the ITLOS for the vessel's release. Should the U.S. become a party to the LOS Convention, it should also take note of the fact that Argentina shrewdly amended its article 298 declaration on October 26th (four days before instituting its first legal action under Annex VII of the LOS Convention) to remove its early rejection of the LOS Convention's compulsory dispute settlement procedures with respect to "military activities by government vessels and aircraft engaged in noncommercial service." (¶ 34). In presenting the Convention to the senate in 1994, the Clinton administration recommended that the U.S. exempt military activities from the Convention's compulsory dispute settlement procedures. Proposed declarations by the Senate Foreign Relations Committee in 2004 and 2007 adopted that position. This case demonstrates at least one potential drawback to such exemptions.

Allen, Craig H. "***Law of the Sea Tribunal Resoundingly Affirms the Sovereign Immunity of Warships and Orders Ghana to Release Argentine Tall Ship ARA Libertad*** ." **Opinio Juris**. (December 18, 2012) [**More**]

U.S. has traditionally seen the benefit of participating in third-party dispute settlment

"The United States would obtain the benefit of third party dispute settlement in dealing with non-military oceans interests. The United States was one of the principal proponents in the law of the sea negotiations for compulsory third party dispute settlement for resolution of conflicts other than those involving military activities. We supported such mechanisms both to assist in conflict resolution generally and because we understood that third party dispute resolution was a powerful mechanism to control illegal coastal state claims. Even the Soviet Union, which had traditionally opposed such third party dispute settlement, accepted that in the law of the sea context it was in their interest as a major maritime power to support such third party dispute settlement.[14]

[*Page 13-14*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention: Urgent Unfisinshed Business*** ." Testimony before the Senate Foreign Relations Committee, October 14, 2003. [**More** (5 quotes)]

Dispute resolution mechanisms in UNCLOS do not threaten U.S. military action

Some opponents of UNCLOS have argued that by ratifying UNCLOS, U.S. military forces could be subject to adverse ruling by international tribunals through the dispute resolution mechanisms of the treaty. However, the U.S. defense department has reviewed the relevant law and has found no undue liability risk to U.S. forces. Furthermore, in the Senate's Advice and Consent resolution that would ratify UNCLOS, the U.S. has taken advantage of article 298(1) in UNCLOS to exempt itself from all dispute settlement.

US advice and consent resolution regarding UNCLOS already excludes military activities from third party arbitration

"Furthermore, the United States has indicated that it may broadly construe the scope of the military activities exception. The U.S. State Department takes the position "that intelligence activities at sea are military activities for purposes of the U.S. dispute settlement exclusion under the Convention and thus the binding dispute settlement procedures would not apply to U.S. intelligence activities at sea."[54] The Advice and Consent Resolution also includes an understanding providing that a U.S. military vessel's collection of "military survey data" is a "military activity."[55] Hypothetical situations in which U.S. views concerning the scope of "military activities" might differ from the views of international judges or arbitrators are not difficult to imagine. For example, consider a case in which a coastal state challenged the collection in its EEZ of "military survey data" by a U.S. military vessel. Would an international tribunal accept the U.S. assertion that this data collection was a "military activity"? Or would the tribunal instead characterize a dispute over such data collection as one involving coastal state restrictions on the conduct of marine scientific research? Is military deployment of a listening or security device on a coastal state's continental shelf a "military activity" (likely the U.S. view), or would this deployment fall within the scope of the coastal state's control over installations on the continental shelf (under Article 60(1)(c) of the Convention)? The self- judging U.S. "military activities" condition in the Advice and Consent Resolution suggests that the United States desires to preserve its flexibility not to participate in certain third-party proceedings, and that the United States may well regard with great skepticism any attempt to proceed with a case that the United States deems to concern military activities. U.S. State Department and Department of Defense officials, along with military leaders, have stressed the importance ofthis "military activities" condition.

[*Page 40-41*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

On balance the U.S should welcome the dispute resolution mechanisms in the treaty

"A final focus of opponents' criticisms is the Convention's dispute settlement provisions. While reasonable people can differ over whether third- party dispute settlement is, on balance, a "pro" or a "con," I believe that these particular provisions are useful, well-tailored, and in no event a reason to jettison the Convention. The United States affirmatively sought dispute settlement procedures in the Convention to encourage compliance and to promote the resolution of disputes by peaceful means. We sought and achieved procedures that are flexible in terms of forum. For example, the Convention allows a Party to choose arbitral tribunals and does not require any disputes to go to the International Court of Justice. Its procedures are also flexible, allowing a Party to choose to exclude certain types of disputes, such as those concerning military activities. In this regard, some have questioned whether it is up to the United States – or a tribunal – to determine what constitutes a U.S. "military activity" under the Convention. We propose to include a declaration in the Senate's resolution of advice and consent making clear that each Party has the exclusive right to determine what constitutes its "military activity." And I can assure you that there is no legal scenario under which we would be bound by a tribunal decision at odds with a U.S. determination of military activities.

[*Page 7*]

Bellinger, John B. **The United States and the Law of the Sea Convention** . Institute for Legal Research: Berkeley, CA, 2008 (12p). [**More** (6 quotes)]

U.S. can issue signing statement upon ratifying UNCLOS that clarifies to interpretation of the military activities exemption

"The military activities exception is of obvious importance to the activities of the U.S. Armed Forces. As a result, we have examined this issue thoroughly to make certain that a tribunal cannot question whether U.S. activities are indeed "military" for purposes of that exception. Allow me to offer an example to illustrate the Administration's concern. It is possible to imagine a scenario wherein another State Party calls upon a tribunal to decide whether or not our military surveys in that country's EEZ or reconnaissance aircraft flying in the airspace above that country's EEZ—both of which are military activities of paramount importance—are consistent with the Convention.

In this scenario, if a tribunal were permitted to interfere with such military activities, this would have a major impact on our military operations and U.S. national security.

In this light, the Administration closely examined the Convention, its negotiating history, and the practices of the tribunals constituted under the Convention. Based on this examination, the Administration believes that it is clear that whether an activity is "military" is for each State Party to determine for itself. Indeed, having the ability to determine what is a "military activity" involves vital national security interests that are critical to our ability to defend the Nation, protect our forces

overseas, safeguard our interests abroad, and assist our friends and allies in times of need.

The Administration thus recommends that the United States submit a declaration electing to exclude all three of these categories of disputes from binding dispute settlement. With respect to the particular category of disputes concerning military activities, the Administration further recommends that the U.S. declaration make clear that its consent to accession to the Convention is conditioned upon the understanding that each Party has the exclusive right to determine which of its activities are "military activities" and that such determinations are not subject to review. We will provide the Committee with language on this point.

[*Page 4*]

Esper, Mark T. "***Statement of Mark T. Esper: On the U.N. Convention on the Law of the Sea (October 21, 2003)***." Testimony before the Senate Committee on Foreign Relations, October 21, 2003. [**More** (3 quotes)]

U.S. can exempt its military activities from dispute resolution tribunals

"*Myth 3: The Convention would permit an international tribunal to frustrate the operations of the U.S. Sea Services.*

Wrong. No international tribunal would have jurisdiction over the U.S. Navy, Marine Corps, or Coast Guard. Disputes concerning military activities can be completely excluded from the Convention's resolution provisions, and the United States has the exclusive right to determine what constitutes a U.S. military activity. Since 1982, all Chiefs of Naval Operations have supported ratification, and in May 2007 the Coast Guard Commandant underscored the need for ratification.

Truver, Scott C. "*UNCLOS Mythbusters*." **U.S. Naval Institute Proceedings**. Vol. 133, No. 7 (July 2007): 52-53. [**More** (4 quotes)]

Thorough review of dispute resolution and military activities concern under Bush Administration concluded that it was unlikely to be a threat

"In 2003, **Mark Esper, the Deputy Assistant Secretary of Defense for Negotiations Policy, testified** that the Bush administration closely examined the LOS Convention, pored through the negotiating history of the Treaty, and reviewed the practices of international tribunals constituted under the Convention.[43] Based on the thorough examination, the administration took the position that the scope of the military activity exemption is solely within the ambit of the authority of each

state party to determine for itself. Retired U.S. Navy Admiral William Schachte concurred, stating: ". . . No country would subordinate its international security activities to an international tribunal. . . . Certain disputes about military activities are considered ... to be so sensitive that they are best resolved by diplomatic means."[44]

[*Page 276*]

Wilson, Brian and **James Kraska**. "*American Security and Law of the Sea*." **Ocean Development & International Law**. Vol. 40. (2009): 268-290. [**More** (6 quotes)]

Exhaustive review concluded that U.S. could prevent UNCLOS tribunals from adverse rulings on U.S. military

"Last year, before the Senate Foreign Relations Committee, Administration officials expressed their serious concerns about whether the Convention's dispute resolution process could possibly affect U.S. military activities. A review was conducted within the Executive Branch on whether a Law of the Sea tribunal could question whether U.S. activities are indeed "military" for purposes of the Convention's military activities exception clause. Based on the Administration's internal review, it is clear that whether an activity is "military" is for each State party to determine for itself. The declaration contained in the current Resolution of Ratification, stating the U.S. understanding that each Party has the exclusive right to determine which of its activities are "military activities" and that such determinations are not subject to review, has appropriately addressed this issue.

[*Page 5*]

Clark, Vern. "***Statement of Admiral Vern Clark: On the Law of the Sea Convention (April 8, 2004)***." Testimony before the Senate Armed Service Committee, April 8, 2004. [**More** (2 quotes)]

U.S. ratification of UNCLOS will not put U.S. Navy under control of foreign tribunals

"*Myth: The Convention would permit an international tribunal to second-guess the U.S. Navy.*

Reality: No international tribunal would have jurisdiction over the U.S. Navy. U.S. military activities, including those of the U.S. Navy, would not be subject to any form of dispute resolution. The Convention expressly permits a party to exclude from dispute settlement those disputes that concern "military activities." The United States will have the exclusive right to determine what constitutes a military activity.

[*Page 16*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of***

the Convention ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Not remotely possible that tribunals could overrule U.S. on "military nature of activities"

"Responding to a question posed by Senator Lugar at a 2003 SFRC hearing regarding whether a tribunal could trump a state's decision regarding whether an activity was "military" in nature, **John Norton Moore emphatically stated**: "I believe the chances of this article being interpreted the way some are arguing and posing a risk to the United States is about like your deciding not to hold this hearing today because of the risk of the hearing room being hit by a meteorite. To be frank, Mr. Chairman, this is a silly objection. . . . "[45] The objection by critics of the LOS Convention and the purported risk of an overreaching tribunal misses one of the most basic rules of jurisprudence. If a court or tribunal acts beyond its jurisdiction, competence, or authority, such an action would be ultra vires and any decision or judgment issued by that court or tribunal would not be legally binding. Finally, of note is that many other countries have asserted an exemption under Article 298 to include either military activities or matters before the UN Security Council, including, Argentina, Australia, Belarus, Canada, Cape Verde, Chile, China, Germany, Mexico, the Republic of Korea, the Russian Federation, Tunisia, Ukraine, and the United Kingdom.[46] Consequently, there is broad international support for the military activities exemption.

[*Page 276-277*]

Wilson, Brian and **James Kraska**. "*American Security and Law of the Sea*." **Ocean Development & International Law**. Vol. 40. (2009): 268-290. [**More** (6 quotes)]

Concerns over international tribunal being used against US military forces fail to fully understand text of convention

"Concerns have been raised that it is not in the best interests of the United States to have its maritime activities subject to the control of an international tribunal, like the International Tribunal for the Law of the Sea or the International Court of Justice (ICJ). That concern is clearly misplaced. While the Convention does establish a Tribunal, parties are free to choose other methods of dispute resolution. The United States has already indicated that if it becomes a party it will elect two forms of arbitration rather than the Tribunal or the ICJ.

More importantly, this concern fails to recognize that no country would subordinate its national security activities to an international tribunal. This is a point that everyone understood during the negotiations of the Convention, and that is why Article 286 of the Convention makes clear that the application of the compulsory dispute resolution procedures of section 2 of Part XV are subject to the

provisions of section 3 of Part XV, which includes a provision that allows for military exemptions, which would encompass military activities conducted pursuant to PSI.

Some may try to argue that Article 288 allows a court or tribunal to make the final determination as to whether or not it has jurisdiction over a matter where there is a dispute between the parties as to the court's jurisdiction. They argue that Article 288 could be read to authorize a court or tribunal to make a threshold jurisdictional determination of whether an activity is a military activity or not and, therefore, subject to the jurisdiction of the court or tribunal. However, Article 288 is also found in section 2 of Part XV and therefore does not apply to disputes involving what the U.S. Government has declared to be a military activity under section 3 of Part XV. I submit this interpretation is supported by the negotiating history of the Convention, which reflects that certain disputes, including military activities, are considered to be so sensitive that they are best resolved diplomatically, rather than judicially. This interpretation is also supported by a plain reading of the Convention.

[*Page 19-20*]

Schachte, William L. "***Statement of Rear Admiral William L. Schachte: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Armed Services Committee, April 8, 2004. [**More** (4 quotes)]

Careful analysis of treaty text shows how U.S. negotiators were able to eliminate the possibility that U.S. forces would be subject to international courts

"Military officers serving as members on the United States delegation that negotiated the Convention ensured that it contained a military activities exemption from dispute resolution, which is ironclad. The Convention they helped craft permits a maritime nation, like the United States, to use compulsory dispute resolution as a sword against foreign coastal state encroachment while simultaneously shielding military activities from review.

Given the central importance of this issue, it is important to review the compulsory dispute resolution procedures contained in Part XV, Section 2 of the Convention, and explain, in detail, how Article 298 of the Law of the Sea Convention, under its express terms, will permit the United States to completely exempt its military activities from dispute resolution, and prevent any opposing State or court or tribunal from reviewing our determination that an activity is an exempted military activity.

Part XV, Section 2 of the Convention is titled, "Compulsory Procedures Entailing Binding Decisions." Section 2 is comprised of eleven Articles (286 – 296), which contain the compulsory dispute resolution procedures that some are concerned could be used to effect a review of our military activities.

Section 2 begins with Article 286, which provides that, except as provided in Section 3 of the Part XV, "any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to Section 1, be submitted at the request of any party to

the dispute to the court or tribunal having jurisdiction under this section."

Article 287 then provides the choice of procedure election. The President has asked the Senate to reject the first two choices available, the International Court of Justice and the International Tribunal for the Law of the Sea, and instead choose arbitration (what are referred to formally as arbitral tribunals).

Now, let's move on to Section 3, which is titled, "Section 3. Limitations and Exceptions to Applicability of Section 2." In Section 3 we find Article 298; and in Article 298, subparagraph 1, it states in pertinent part:

> 1. When signing, ratifying, or acceding to this Convention or at any time thereafter, a State may...declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes..."

There then follows three categories of disputes: Maritime boundary disputes, disputes involving military activities, and disputes involving matters before the United Nations Security Council. The president has asked the Senate to exempt all three categories.

The key language from Article 298.1 is: "A State may declare that it ... does not accept any one or more of the procedures provided for in section 2." It is the right of the State, and solely the State, to completely and preemptively reject all of the dispute resolution procedures provided for in Section 2. It is those very procedures that the opposing State or international court or tribunal would have to rely upon to try to assert authority over us.

It simply does not get any better than that---not in private contract law nor in treaty law. What this Convention makes clear is that a State party can completely reject all the dispute resolution procedures—on its own terms—for disputes involving maritime boundaries, military activities, and matters before the Security Council.

There is simply no process or procedure whereby our determination can be subject to review, because we have already preemptively rejected all the procedures provided for in Section 2, including article 287 (choice of forum), article 288 (the right of a court or tribunal to determine its own jurisdiction), article 290 (provisional measures) and article 292 (prompt release).

All permanent members of the United Nations Security Council (except the United States) and numerous other countries have taken the military activities exemption. They, like us, would never accept a court or tribunal acting ultra vires---beyond the limits of the Convention itself.

[*Page 2-3*]

U.S. Navy Judge Advocate General's Corps. **Eight National Security Myths: United Nations Convention on the Law of the Sea** . Office of the Judge Advocate General: Washington Navy Yard, DC, Undated [**More** (5 quotes)]

Conventions's provisions on 'peaceful purposes' cannot be used to

constrain lawful military activities

"The negotiating history on the Convention is clear on this point. In 1976, Ecuador attempted to turn the "peaceful purposes" provisions into an arms control obligation. They got nowhere. In response to the argument by Ecuador in 1976, the U.S. replied:

> "The term 'peaceful purposes' did not, of course, preclude military activities generally. The United States has consistently held that the conduct of military activities for peaceful purposes was in full accord with the Charter of the United Nations and with the principles of international law. Any specific limitation on military activities would require the negotiation of a detailed arms control agreement."

See 66-68th plenary sessions in 1976.

In 1985, the Secretary General of the United Nations reported that, "military activities which are consistent with the principles of international law embodied in the Charter of the United Nations, in particular Article 2, paragraph 4, and Article 52, are not prohibited by the Convention on the Law of the Sea.

[*Page 4*]

U.S. Navy Judge Advocate General's Corps. **Eight National Security Myths: United Nations Convention on the Law of the Sea** . Office of the Judge Advocate General: Washington Navy Yard, DC, Undated [**More** (5 quotes)]

Counterfactual claims are invalid - UNCLOS would not constrain U.S. capacity for self-defense

"Myth #8: Had the United States been subject to the Law of the Sea Treaty, President Kennedy could not have quarantined Cuba with the U.S. Navy, President Ford could not have used the Navy to rescue the Mayaguez, and President Reagan could not have sent a Navy carrier force to defy Qaddafi of Libya in the Gulf.

This is completely untrue. All the above operations were conducted in accordance with international law.

- President Kennedy established a quarantine around Cuba under the authorities of the UN Charter (Article 51 on self-defense and Article 52 on regional security arrangements) and the Rio Treaty (which established the Organization of American States (OAS)). On October 23, 1962, OAS voted to approve a U.S.-sponsored quarantine of Cuba.
- President Ford's use of military force to rescue the Mayaguez and its crew was a lawful use of force in self defense under Article 51 of the UN Charter.
- President Reagan deployed an aircraft carrier task force into the Gulf of Sidra to challenge Libya's unlawful claim that the Gulf was Libyan internal waters. During U.S. freedom of navigation operations in the Gulf, United States Navy aircraft engaged Libyan aircraft in self-

defense in accordance with Article 51 of the UN Charter.

The Convention does not in any manner whatsoever restrict, condition or infringe upon our inherent right of self-defense as reflected in Article 51 of the UN Charter. Nor does it affect our rights under the law of armed conflict.

The Law of the Sea Convention does not constrain or limit the President's options to defend our country; it enhances them by codifying navigation rights and freedoms that are essential for the global mobility of our armed forces and the sustainment of our combat troops.

[*Page 6*]

U.S. Navy Judge Advocate General's Corps. **Eight National Security Myths: United Nations Convention on the Law of the Sea** . Office of the Judge Advocate General: Washington Navy Yard, DC, Undated [**More** (5 quotes)]

U.S. has resolved the ambiguity in military activities exemption clause

The United States, as authorized by Article 298, would exempt “military activities” from compulsory dispute resolution. Under the Convention, a state party has the exclusive right to determine what constitutes a “military activity.” The U.S. declaration states:

> The Government of the United States of America declares, in accordance with article 298(1), that it does not accept any of the procedures provided for in section 2 of Part XV (including, inter alia, the Seabed Disputes Chamber procedure referred to in article 287(2)) with respect to the categories of disputes set forth in sub-paragraphs (a), (b), and (c) of article 298(1). The United States further declares that its consent to accession to the Convention is conditioned upon the understanding that, under article 298(1)(b), each State Party has the exclusive right to determine whether its activities are or were ‘‘military activities’’ and that such determinations are not subject to review.

US has made clear numerous times that military activities including intelligence gathering would not be subject to dispute resolution

“A concern raised by Administration witnesses last fall regarding resolution of disputes concerning military activities has been satisfactorily addressed by the proposed Resolution. As I testified before the Foreign Relations Committee, the ability of a Party to exclude disputes concerning military activities from dispute settlement has long been of importance to the United States. The U.S. negotiators of the Convention sought and achieved language that creates a very broad exception, successfully defeating attempts by certain other countries to narrow its scope. The United States has consistently viewed this exception as a key element of the dispute settlement package, which carefully balances comprehensiveness with protection of vital national interests.

This Administration reviewed whether the U.S. declaration on dispute settlement should in some way particularly highlight the military activities exception, given both its importance and the possibility, however remote, that another State Party might seek dispute settlement concerning a U.S. military activity, notwithstanding our declaration invoking the exception. As a result, the Administration recommended, and the proposed Resolution includes, a statement that our consent to accession to the Convention is conditioned on the understanding that each State Party has the exclusive right to determine whether its activities are or were “military activities” and that such determinations are not subject to review. Disputes concerning military activities, including intelligence activities, would not be subject to dispute settlement under the Convention as a matter of law and U.S. policy.

[*Page 4-5*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of***

the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Article 310 of UNCLOS allows ratifying parties to submit signing statements to clarify their intent

"Statements made by states to the LOS Convention have a high degree of importance because Article 309 of the Treaty bars state parties from making reservations. State parties may not except out undesirable language or provisions, as that would undermine the nature of the Convention as a package deal.[23] Although states may not make reservations or exceptions when signing, ratifying, or acceding to the Treaty, they may provide statements with a view toward harmonizing their domestic laws and regulations with the Convention.[24] Article 310 of the Convention provides authority for a state party, at the time of signature, ratification, or accession, or at any time thereafter, to make declarations and statements, provided such statements do not purport to exclude or to modify the legal effect of the provisions of the Convention. One hundred nineteen states have made such statements, including 33 that have done so upon signature, 60 states that have done so at the time of ratification or accession, and 16 more states that have done so at a later date.[25]

[*Page 272*]

Wilson, Brian and **James Kraska**. "*American Security and Law of the Sea*." **Ocean Development & International Law**. Vol. 40. (2009): 268-290. [**More** (6 quotes)]

U.S. signing statements for UNCLOS outlined and clarified seven critical issues for U.S. support

"The proposed U.S. statements represent a set of terms applicable to U.S. conduct as a party to the Convention and are evidence of state practice. Furthermore, the provisions serve as a comprehensive compilation of U.S. positions on the most critical areas of oceans policy reflected over the years in diplomatic communications and associated policy pronouncements concerning operations by the armed forces of the Coast Guard and the Department of Defense. The statements also outline some of the more important conditions under which the United States will operate within the LOS Convention. In particular, the statements affect the conduct of air and sea exercises, operations, and intelligence activities of the armed forces, and reflect the continuing importance of global freedom of navigation and overflight of military, intelligence, and other public vessels and aircraft. Collectively, the statements affirm activities historically undertaken by the U.S. armed forces throughout the world's oceans, and recognize that those operations are consistent with the rights and freedoms set forth in the Convention.[27] The seven critical American understandings related to national security and the Law of the Sea Convention are identified below and discussed in detail

throughout the remainder of this article.

1. Military activities. The U.S. maintains the exclusive right, as a state party to determine whether activities it conducts at sea constitute “military activities,” and therefore are, at the election of the United States, exempt from the provisions concerning mandatory dispute resolution under the terms of the Treaty.28

2. Peaceful purposes. The U.S. maintains that the Treaty wording “the seas shall be reserved for peaceful purposes” does not create new rights for coastal states or third countries, or generate any new obligations on behalf of naval powers.29

3. Innocent passage. In accordance with Article 19 of the LOS Convention, coastal states may not restrict innocent passage based on cargo, means of propulsion, destination, purpose, or flag.[30]

4. Transit and archipelagic sea-lanes passage. Military vessels and aircraft in their normal mode have the right of transit passage through straits used for international navigation and archipelagic sea-lanes passage through archipelagic sea-lanes and other normal routes normally used for international navigation, and coastal states may not restrict such passage.[31]

5. Exclusive economic zone. Restrictions or requirements for prior consent or notification to operate military vessels or aircraft in the exclusive economic zone (EEZ) are inconsistent with the Convention.[32]

6. Hydrographic and military surveys. Coastal states are not authorized to regulate hydrographic or military surveys in the EEZ, as these activities are separate and distinct from marine scientific research (MSR), which requires coastal state consent.[33]

7. Excessive claims.The United States will continue to oppose excessive coastal state maritime claims, continuing to challenge or protest such claims through bilateral and multilateral and diplomatic forums and demarches, military-to-military engagement, and operational assertions by the air and sea forces of the Navy and Air Force.[34]

[*Page 273-274*]

Wilson, Brian and **James Kraska**. "*American Security and Law of the Sea*." **Ocean Development & International Law**. Vol. 40. (2009): 268-290. [**More** (6 quotes)]

In prepared signing statements, U.S. has declared an exemption for its military activities from compulsory dispute resolution

“The United States, as authorized by Article 298, would exempt “military activities” from compulsory dispute resolution. Under the Convention, a state party has the exclusive right to

determine what constitutes a “military activity.” The U.S. declaration states:

> The Government of the United States of America declares, in accordance with article 298(1), that it does not accept any of the procedures provided for in section 2 of Part XV (including, inter alia, the Seabed Disputes Chamber procedure referred to in article 287(2)) with respect to the categories of disputes set forth in sub-paragraphs (a), (b), and (c) of article 298(1). The United States further declares that its consent to accession to the Convention is conditioned upon the understanding that, under article 298(1)(b), each State Party has the exclusive right to determine whether its activities are or were ‘‘military activities’’ and that such determinations are not subject to review.37

The legal effect of the declaration is to exclude from the jurisdiction of any court, arbitral panel, or the ITLOS any dispute involving the United States arising from military and intelligence activities, as well as matters under consideration at the UN Security Council. The declaration also recognizes that the United States reserves an exclusive right to determine whether a questioned activity constitutes a “military” activity.38 Once removed from review or jurisdiction, U.S. military activities are exempt from exposure to arbitration or outside court ruling, or review by a compulsory international panel or other state. The declaration represents a cornerstone U.S. interpretation and is virtually identical to the one recommended in the 1994 SFRC transmittal package.39 Testifying in 2003, the Department of State Legal Adviser stated that the declaration was essential in order to protect U.S. military activities, such as military surveys and reconnaissance flights, that are conducted over foreign coastal state EEZs, ensuring that those activities are not inappropriately subjected to international dispute resolution procedures.40

[*Page 275*]

Wilson, Brian and **James Kraska**. "*American Security and Law of the Sea*." **Ocean Development & International Law**. Vol. 40. (2009): 268-290. [**More** (6 quotes)]

Language in implementing advice and consent resolution limits self executability of UNCLOS tribunal decisions

“One particularly noteworthy issue is how the Advice and Consent Resolution treats the domestic enforceability of the Seabed Dispute Chamber's rulings. The text of the Convention explicitly provides for the domestic enforceability of Chamber decisions. According to Article 39 of Annex VI of the Convention, "decisions ofthe Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought." Justice Stevens, who concurred with the majority in Medellin, cited Article 39 as an example of a treaty text that "necessarily incorporates international judgments into domestic law."[85] Yet Article 39 is non-self-executing under the Senate's Advice and Consent Resolution, a position that is reinforced by another Resolution provision directed specifically at the decisions of this Chamber. This latter provision also calls for implementing legislation:

> The United States declares, pursuant to [A]rticle 39 of Annex VI, that decisions of the Seabed Disputes Chamber shall be enforceable in the territory of the United States only

in accordance with procedures established by implementing legislation and that such decisions shall be subject to such legal and factual review as is constitutionally required [86] and without precedential effect in any court of the United States.

Were an effort made to enforce a decision of the Seabed Disputes Chamber in U.S. court prior to implementing legislation, would the "clear" text of Article 39, which Justice Stevens believed points to its self-executing status, prevail? Or would a court defer to the Advice and Consent Resolution's call for implementing legislation? What obstacles might be posed by the "constitutionally required" reviews of Chamber decisions, to which the Resolution refers? U.S. courts regularly enforce the decisions of commercial arbitral tribunals, but in theory any international tribunal proceeding might lead to a result that presented constitutional due process problems and that hence could not be enforced in U.S. court.[87] Those who dislike the prospect of domestic enforcement of Convention provisions also may, in light of Medellin, seek to add language to the Advice and Consent Resolution specifying that Chamber decisions do not create U.S. private rights or private causes of action. Thus, even if the "clear" language of the Convention text were to lead a court to conclude that Article 39 of Annex VI of the Convention was self-executing, such additional language in the Resolution might present another bar to the enforcement of chamber decisions in U.S. courts.

[*Page 47-48*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

US advice and consent resolution regarding UNCLOS already excludes military activities from third party arbitration

"Furthermore, the United States has indicated that it may broadly construe the scope of the military activities exception. The U.S. State Department takes the position "that intelligence activities at sea are military activities for purposes of the U.S. dispute settlement exclusion under the Convention and thus the binding dispute settlement procedures would not apply to U.S. intelligence activities at sea."[54] The Advice and Consent Resolution also includes an understanding providing that a U.S. military vessel's collection of "military survey data" is a "military activity."[55] Hypothetical situations in which U.S. views concerning the scope of "military activities" might differ from the views of international judges or arbitrators are not difficult to imagine. For example, consider a case in which a coastal state challenged the collection in its EEZ of "military survey data" by a U.S. military vessel. Would an international tribunal accept the U.S. assertion that this data collection was a "military activity"? Or would the tribunal instead characterize a dispute over such data collection as one involving coastal state restrictions on the conduct of marine scientific research? Is military deployment of a listening or security device on a coastal state's continental shelf a "military activity" (likely the U.S. view), or would this deployment fall within the scope of the coastal state's control over installations on the continental shelf (under Article 60(1)(c) of the Convention)? The self- judging U.S. "military activities" condition in the Advice and Consent Resolution suggests that the United States

desires to preserve its flexibility not to participate in certain third-party proceedings, and that the United States may well regard with great skepticism any attempt to proceed with a case that the United States deems to concern military activities. U.S. State Department and Department of Defense officials, along with military leaders, have stressed the importance ofthis "military activities" condition.

[*Page 40-41*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

Advice and consent resolution protects us from having to divulge military secrets in front of tribunal

"Third, the Advice and Consent Resolution contains a declaration that the United States does not accept Part XV, section 2 procedures "with respect to the categories of disputes set forth in subparagraphs (a), (b), and (c) of article 298(1)." 49 This declaration thus excludes from Part XV, section 2 the maximum categories of disputes that may be exempted under Article 298. The matters covered include disputes concerning: maritime delimitation of the territorial sea, the exclusive economic zone, and the continental shelf; historic bays; military activities; enforcement activities related to EEZ fisheries and marine scientific research; and "disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations." This U.S. declaration would limit the ability of the United States to challenge the conduct of other states before third-party tribunals. By excluding "disputes concerning military activities," for example, the United States could not, according to Article 298(3), bring a third-party proceeding challenging the legality of military activities by coastal states that impeded U.S. attempts at transit passage through straits or innocent passage in the territorial sea. Nonetheless, the concern that the legality of the United States' own military activities might be challenged before a public, third-party tribunal apparently carries greater weight. Avoiding judicial scrutiny of the legality of U.S. uses of force, as occurred in the ICJ's Nicaragua and Oil Platforms cases, 51 or the concern that the United States might have to disclose military secrets to a tribunal, probably led the United States to include this military activities 52 exception.

[*Page 39*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

U.S. advice and consent resolution for UNCLOS stipulates US restrictions on applicability of third party

"The U.S. Resolution of Advice and Consent does not formally contain reservations. The Convention generally prohibits reservations, 35 although Article 298 permits optional declarations by which states can exclude limited categories of disputes from the Convention's third-party dispute settlement provisions. Despite the general prohibition on reservations, several states have appended understandings or interpretive declarations when they have signed or ratified the Convention. Unlike reservations, understandings and interpretive declarations in theory do not "purport[] to exclude, limit, or modify [a] state's legal obligation." 36 Instead, interpretive declarations and understandings "specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions."37 The line between a permissible interpretive declaration and an impermissible reservation is not always easy to discern, for the name that a state attaches to a statement about a treaty is not dispositive. The U.S. Advice and Consent Resolution contains declarations that are authorized under the Convention and that may limit Convention provisions that otherwise would apply (notably under Article 298). The Resolution also contains interpretative declarations and understandings that legally cannot, under Article 310 of the Convention, "purport to exclude or to modify the legal effect of the provisions of th[e] Convention in their application to" the United States.

The Advice and Consent Resolution helps us discern U.S. positions towards the Convention. Although this Resolution in theory could change in a future Congress, it is the product of an intensive interagency vetting within the U.S. government, and significant aspects of the Resolution reflect longstanding U.S. positions held by both Democratic and Republican administrations. The focus of this Part of this article is on the Advice and Consent Resolution's provisions that address the jurisdiction of international courts and tribunals operating under the Convention. These provisions suggest the United States will interpret the jurisdiction of third-party tribunals restrictively and will attempt to limit U.S. amenability to the jurisdiction of international tribunals as much as possible.

[*Page 36-37*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

As a party to UNCLOS, us would be able to block amendments and excessive claims that block military vessels

"The issue of innocent passage is raised by the concept of the territorial sea.207 In interpreting Article 21 of UNCLOS, some countries have adopted the view that they may, with due notice, create regulations and laws that restrict innocent passage through their territorial sea.208 The greatest restriction in these liberal navigation rules on innocent passage for the United States is the demand for prior notification and permission for the passage of a U.S. war vessel. 20 9 The Convention recognizes the right of passage through the territorial seas, allowing for overflight and navigational freedom of the high seas.21° Currently, the lenient navigation rules include the immutable legal right for ships and aircrafts to travel the international straits without coastal states' interference. 21 1

However, some UNCLOS III members may propose to amend the concept of freedom of navigation to allow the exclusion of vessels.212 As a member of UNCLOS III, the United States would be able to block such negative amendments. 21 3 Further, if it joined UNCLOS, the United States could potentially prevent or decrease "the backsliding" by states that have previously abandoned their excessive maritime claims, yet wish to reinstitute those claims given that the United States is currently not a member.

[*Page 771-772*]

Bates, Candace L. "*U.S. Ratification of the U.N. Convention on the Law of the Sea: Passive Acceptance Is Not Enough to Protect U.S. Property Interests*." **North Carolina Journal of International Law and Commercial Regulation**. Vol. 31. (2005-2006): 745-792. [**More** (7 quotes)]

Other parties will respect U.S. declaration on "military activities"

"[MYTH]: *Other parties will reject the U.S. "military activities" declaration as a reservation.*[19] Another false assertion—the American declaration is consistent with the Convention and is not a reservation (that is, in international legal usage, "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.")[20] It is an option explicitly provided by article 298 of the Convention. Parties to the Convention that have already made such declarations exercising this option include the United Kingdom, Russia, France, Canada, Mexico, Argentina, Portugal, Denmark, Ukraine, Norway, and China.

[*Page 121-122*]

Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

In signing statements, US has explicitly declared right to determine venue for settling disputes involving military

"From the outset the United States has insisted that a system of compulsory dispute settlement be a part of any comprehensive convention on the law of the sea.45 The US delegation, in the person of the late Louis Sohn, took the lead in the negotiating group that developed the final package, which became Part XV of the Convention and its related Annexes. It is incongruous that the flexible provisions of Part XV, worked out under the leadership of the United States, should now be the basis of objection to the Convention. The objectors suggest, without basis in fact, that the United States might be dragged against its will into the jurisdiction of the Law of the Sea Tribunal, particularly with respect to our military activities.46 They ignore the terms of the Convention that provide, with respect to compulsory procedures entailing binding decisions, an opportunity for States, upon signing,

ratifying or acceding to the Convention, "or at any time thereafter," to choose the binding procedure it will accept from a menu of settlement mechanisms. 47 The United States has indicated that it will choose arbitration under Annexes VII and VIII upon ac- cession.48 Further, the criticism ignores the provisions of Article 298 that provide that State parties may exclude from the applicability of "any" of the compulsory procedures providing for binding decisions, interalia,"disputes concerning military activities." One of the declarations that will accompany any US accession to the Convention will state that its accession "is conditioned upon the understand- ing that, under article 298(l)(b), each State Party has the exclusive right to deter- mine whether its activities are or were 'military activities' and that such determinations are not subject to review."

[*Page 119*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

Multiple states have opted out of dispute resolution for settling issues with military activities in their EEZ

"A number of States, in ratifying the Convention, have chosen to declare that they do not accept procedures for disputes concerning military activities. As of October 16, 2001, those States include Cape Verde, Chile, France, It- aly, Portugal, the Russian Federation, Ukraine, and Tunisia."[258] Others, such as India, Pakistan and The United Kingdom, have reserved judgment, per- haps waiting to make a declaration if and when the issue presents itself.[259]

Given the language of Article 298, and the concomitant proclivity on the part of maritime nations---especially the United States, which is not yet even a party to the Convention-to treat their naval vessels as sovereign entities ex- empt from the normal obligations of commercial vessels plying the seas, it is highly probable that these maritime nations would invoke Article 298 in every case.[260] Thus, when disputes arise regarding the military activities of a flag State in the EEZ of a coastal State, it is extraordinarily unlikely that the flag state would submit to the dispute resolution mechanisms of the Convention.

[*Page 297-298*]

Galdorisi, George V. and Alan G. Kaufman. "***Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*** ." **California Western International Law Journal**. Vol. 32. (2001-2001): 253-302. [**More** (4 quotes)]

U.S. has made clear that in signing UNCLOS it would reserve the right to determine which of its activities are military activities

While the Convention explicitly allows a state party to declare that certain conflicts will not be subject to the Treaty's dispute resolution processes, those exceptions are narrow. Article 298(b) allows a state party to effectively insulate "military activities" from Convention jurisdiction. Concerned that an adverse party might seek to apply the Convention's jurisdiction to a U.S. activity by characterizing it as nonmilitary, the Department of Defense recommended that accession to the Treaty be conditioned upon "the understanding that each Party [to the Convention] has the exclusive right to determine which of its activities are 'military activities' and that such determination are not subject to review."[57] This condition would protect a state party from becoming subject to a Convention-based dispute resolution tribunal if the military activity claim/exemption to such a tribunal were called into question.[58]

Speaking on behalf of the Joint Chiefs of Staff, Admiral Michael G. Mullen re- iterated the concerns raised by others in the defense community and agreed that the "military activities" exemption condition was of paramount importance in a U.S. move toward accession. The Admiral also agreed that accession was warranted. "Military operations since September 11 . . . have dramatically increased [U.S.] global military requirements."[59] In particular, Mullen noted that U.S. military operations relied upon "[t]he right of transit passage through international straits and the related regime of archipelagic sea lanes passage."[60] While maintaining that those rights were available to the United States under customary international law, "as a party to the Convention, the United States would . . . be in a stronger leadership position to assert its rights."[61]

[*Page 201*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

The Senate's Resolution of Advice and Consent clarifies U.S. position on jurisdiction over U.S. military activities

"The Senate can ensure that international tribunals do not gain jurisdiction over our military activities when we join this Convention. In 2003, the Administration worked closely with the Committee to develop a proposed Resolution of Advice and Consent --- which we continue to support --- that contains a declaration regarding choice of procedure for dispute resolution. The United States rejected the International Court of Justice and the International Tribunal for the Law of the Sea and instead chose arbitration. That choice-of-procedure election is expressly provided for in the Convention itself. In addition, and again in accordance with the express terms of the Convention, the draft Resolution of Advice and Consent completely removes our military activities from the dispute resolution process. Furthermore, each State Party, including the United States, has the exclusive right to determine which of its activities constitutes a military activity, and that determination is not subject to review.

[*Page 6*]

England, Gordon. "*Statement of Gordon England: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention (September 27, 2007)* ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (2 quotes)]

While the text may be ambiguous the negotiating history of the UNCLOS agreement indicates that it intended to preserve military freedom of navigation

"Despite the ambiguity in the language of UNCLOS and the divergence in interpretation of the text, there is some evidence that the Convention did not intend to broadly exclude peacetime military operations in the EEZ.[58] For instance, the 1949 International Court of Justice (ICJ) Corfu Channel decision refers to the freedom of navigation of warships in peacetime as a 'general and well-recognized principle.'[59] The ICJ's findings in the Corfu Channel case were influential in the development of the law of the sea in the UNCLOS conferences.[60] This finding is crucial since the freedom of navigation is the foundation for military operations at sea.[61] However, the Court's decision did not specify the scope of the rights included in the freedom of navigation of warships. During UNCLOS III, the President of the Conference, Tommy T.B. Koh, commented on the question of military activities in the EEZ by stating in 1984:

> The solution in the Convention text is very complicated. Nowhere is it clearly stated whether a third state may or may not conduct military activities in the exclusive economic zone of a coastal state. But, it was the general understanding that the text we negotiated and agreed upon would permit such activities to be conducted. I therefore would disagree with the statement made in Montego Bay by Brazil, in December 1982, that a third state may not conduct military activities in Brazil's exclusive economic zone[...].[62]

Unfortunately, the issue of military activities in the EEZ remains ambiguous and unsettled.

[*Page 26*]

Geng, Jing. "***The Legality of Foreign Military Activities in the Exclusive Economic Zone under UNCLOS*** ." **Merkourios: Utrecht Journal of International and European Security Law** . Vol. 74, No. 28 (2012): 22-30. [**More** (7 quotes)]

UNCLOS is a peacetime treaty that will not impair U.S. ability to conduct military operations but will greatly facilitate them

MOORE: The second point in relations to, are we going to be inhibited in something like the Cuban Missile Crisis, for example. And this is, I think, also something that has some misperceptions about

the treaty. This is basically a treaty for peacetime settings. This does not in any way, shape or form interfere with the legal rights of the United States for defense, individual or collective defense, or any of our fundamental kinds of foreign policy issues that we're engaged in. There is nothing in the treaty that has any kind of inhibition that would be a problem for the United States in the Cuban Missile Crisis or in any of the other national security and defense issues that this country has been involved in.

In fact, the chiefs have testified over and over again just to the contrary of that. That is that this helps United States mobility. It helps us move around the world's oceans. And for those who have noticed the latest strategy, Naval strategy of the United States, it's called a 1,000-ship Navy. It is a matter of cooperation with countries all over the world in dealing with terrorism and piracy and all the other issues. We are severely harmed if we are not part of this treaty and are empowered basically to deal with that issue.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

UNCLOS provisions on reserving oceans for "peaceful purposes" will in no way impede U.S. navy

"Criticisms that the United States should not commit to provisions in the 1982 Convention to the effect that the high seas are “reserved” for peaceful purposes and that parties to the treaty shall refrain from “any threat or use of force against the territorial integrity or political independence of any state,” without noting that these obligations simply parallel the obligation in the United Nations Charter, already binding on the United States and every other nation in the world banning the aggressive use of force. These obligations, as those in the United Nations Charter, do not in any way inhibit either the right of individual or collective defense or otherwise lawful military activities. If these provisions did in any way inhibit such activities in the world’s oceans there would have been no agreement on the Convention. This is abundantly evident in the robust naval activity of nations for which the Convention has been in force;

[*Page 26*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Dispute resolution mechanisms in UNCLOS not unique to the convention

The United States is already a party to more than 85 agreements (most of them multilateral in nature) that provide for the resolution of disputes by the International Court of Justice. It has also already accepted the dispute resolution mechanisms in UNCLOS by ratifying the 1995 Fish Stocks Agreement and the 2000 Convention on Central and Western Pacific Fisheries, both of which incorporate by reference the dispute settlement provisions of the Convention.

Dispute resolution mechanism in UNCLOS no worse than already accepted principle of universal jurisdiction

"Criticism of the Rome Statute stems from concerns that the United States would compromise sovereignty by allowing others to prosecute its citizens without its consent, and potentially denying them basic constitutional rights and other domestic law protections.[81] Proponents of the ICC contend that U.S. arguments against ratification of the Rome Statute fail in the face of facts.[82] These arguments can be extrapolated and applied to the far less controversial dispute resolution provisions of the Convention. Among the most compelling arguments against a cooperative dispute resolution mechanism are assertions that a foreign body would have jurisdiction over U.S. citizens. Under the widely accepted principles of universal jurisdiction and territoriality, the United States already relinquishes a great deal of power over the fate of its citizens on trial.[83] Concerns of bias among the deciding party are also ill-founded. With respect to the International Criminal Court, there are a number of safeguards in place to guard against such fears.[84] The dispute resolution provisions in the Convention do not provide for prosecutions of U.S. citizens, but largely govern disputes over economic matters.[85] While there are costs as- sociated with agreeing to a dispute resolution mechanism that is not an American court, those costs are neither new nor absolute.[86] Furthermore, the underlying concern with the ICC, fear of prosecution of servicemen and women,[87] is not relevant in this context. In fact, the U.S. Navy and other military members support ratifi- cation of the Convention.[88] Finally, as discussed earlier, the dispute resolution provisions of the Convention contain an explicit carve-out for issues that infringe upon national sovereignty, among others.[89] Under those circumstances, parties to the Convention are not required to utilize any of the mechanisms enumerated, and can instead rely upon a non-binding option, thus softening the delegation aspect associated with dispute resolution.[90]

[*Page 373*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

US has already accepted UNCLOS arbitration in two previous agreements but the Advice and Consent resolution serves to further qualify application

"The United States is not today unalterably opposed to the dispute settlement provisions of the Convention. Indeed, it has already accepted them, since it has ratified the 1995 Fish Stocks Agreement and the 2000 Convention on Central and Western Pacific Fisheries, both of which incorporate by reference the dispute settlement provisions of the Convention.[59] However, the Convention as a whole envisions roles for institutions and sets out rules potentially affecting a wide range of subject matters. The Resolution of Advice and Consent - especially its declarations and understandings relating to military activities - reflects an attitude of caution about U.S. participation in the Convention's third-party dispute settlement procedures. The Resolution appears to reflect some of the concerns of the unilateralists/anti-institutionalists.

[*Page 41-42*]

Noyes, John. "*The United States and the Law of the Sea Convention: U.S. Views on the Settlement of International Law Disputes in International Tribunals and U.S. Courts*." **The Publicist**. Vol. 1. (2009): 27-52. [**More** (10 quotes)]

Dispute resolution mechanisms in UNCLOS same as in other international agreements and do not threaten military

"*MYTH: Dispute resolution mechanisms of the convention are binding on the United States.*

This assertion is undeniable. The United States will, by declaration as detailed in the draft Senate Resolution of Advice and Consent, choose arbitration or special arbitration as the method applicable for most categories of disputes. That is consistent with many other international agreements, including the 1995 Agreement for the Implementation of Provisions of the Law of the Sea for the Conservation of Fish Stocks, which the United States joined in 1996. The use of such mechanisms is not considered a surrender of sovereignty by the majority. Some disputes specific to the resources of the seabed beyond national jurisdiction will be subject to resolution in the Seabed Disputes Chamber of the International Tribunal on the Law of the Sea. The jurisdiction of this chamber, by definition, falls outside areas of sovereign control. Finally, by declaration as detailed in the draft Senate Resolution of Advice and Consent, the United States will not accept any mandatory resolution mechanism for disputes concerning military activities, including military activities by government vessels and aircraft engaged in noncommercial service. The sovereign immunity of U.S. vessels and aircraft on government service will be protected by the convention.

[*Page 46*]

Borgerson, Scott G. The National Interest and the Law of the Sea . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Over 85 treaties U.S. is already a party to contain similar if not more restrictive dispute settlement provisions to UNCLOS

"According to the Department of State, the United States is already a party to more than 85 agreements (most of them multilateral in nature) that provide for the resolution of disputes by the International Court of Justice. More than 200 treaties – including civil air transport agreements and various types of investment treaties – provide for mandatory arbitration at the request of a party. In addition, there are a number of international organizations that include dispute resolution mechanisms, including the U.S.- Iran Claims Tribunal, and the International Civil Aviation Organization. The acceptance of arbitration in the Law of the Sea Convention is hardly a departure for the United States. Moreover, unlike most such dispute settlement provisions, the Law of the Sea Convention specifically permits the United States to not accept submission of disputes concerning military activities. This provision was insisted on by the United States in the negotiations leading to the Convention and was supported by navies a ll over the world.

[*Page 23*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Sovereignty costs of external dispute resolution in UNCLOS less ornnerous than provisions U.S. has already accepted

"There is no doubt that external dispute resolution infringes upon U.S. sovereignty and it is therefore not surprising that staunch advocates of sovereignty steadfastly oppose the Convention, in part due to its dispute resolution mechanisms. However, the costs associated with the Convention's dispute resolution provision are similar to those the United States is already subject to under principles of universal jurisdiction and territoriality. Furthermore, the Convention provides the United States with an escape from mandatory dispute resolution. In light of this, arguments against ratification of the Convention based upon sovereignty rooted in the dispute resolution mechanisms are outweighed by the benefits the Convention offers to the United States.91

[*Page 373*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. will not be obligated to transfer technology under UNCLOS

Treaty modifications in 1994 addressed national security concerns over technology transfer provisions

"U.S. Technological Advantage. It is true that the 1982 form of the convention mandated private technology transfer detrimental to U.S. national security and economic interests. That was one of the factors specifically cited when President Reagan rejected the convention. Article 144 of the convention does encourage technology transfer, calls for parties to "cooperate in promoting the transfer of technology and scientific knowledge," and remains in force following the adoption of the 1994 agreement but does not mandate technology transfer. Such transfer, mandated by Annex III Article 5 of the convention, was eliminated by section 5 of the annex to the 1994 agreement. Additional protection against national security damage through technology transfer is provided by Article 302 of the convention: "[N]othing in this Convention shall be deemed to require a State Party, in the fulfillment of its obligations under this Convention, to supply information the disclosure of which is contrary to the essential interests of its security."

[*Page 43-44*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

Controversial technology transfer provisions have been removed from the convention

"[MYTH]: *Obligatory technology transfers will equip actual or potential adversaries with sensitive and militarily useful equipment and know-how (such as antisubmarine warfare technology).*[17] In fact, no technology transfers are required by the Convention. Mandatory technology transfers were eliminated by section 5 of the annex to the 1994 Agreement amending Part XI of the Convention. Further, Article 302 of the Convention explicitly provides that nothing in the Convention requires a party to release information the disclosure of which is contrary to the essential interests of its security.

[*Page 121*]

Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

1994 agreement removed obligations of member states to transfer technology or share revenue

"The United States has not ratified UNCLOS because it initially objected to part XI of the treaty, as did many other developed nations.[110] The objections to part XI were based on economic and security concerns.[111] Part XI recognized the region of seabed and ocean floor beyond the jurisdiction of any state to be the common heritage of humankind.[112] Part XI, therefore, requires states to share the financial benefits[113] from activities within the region as well as the related technology.[114] In response to the objections to these provisions, the U.N. General Assembly adopted a resolution to encourage the United States and other objecting states to ratify UNCLOS.[115] This resolution, known as the Agreement Relating to the Implementation of Part XI of the U.N. Convention on the Law of the Sea of 10 December 1982, allows countries to ratify UNCLOS without being bound to part XI.[116] Given that the United States may ratify UNCLOS without part XI, the benefits to the development of offshore wind power are one of the many reasons for the United States to ratify UNCLOS.[117]

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Dwyer, Kieran. "***UNCLOS: Securing the United States' Future in Offshore Wind Energy*** ." **Minnesota Journal of International Law**. Vol. 18, No. 1 (2009): 265-290. [**More** (7 quotes)]

Technology transfers have been eliminated from the treaty and military sensitive technology was never at risk

"*[MYTH] Obligatory technology transfers will equip actual or potential adversaries with sensitive and militarily useful equipment and know-how (such as anti-submarine warfare technology).*

- No technology transfers are required by the Convention. Mandatory technology transfers were eliminated by Section 5 of the Annex to the Agreement amending Part XI of the Convention.

- Article 302 of the Convention provides that nothing in the Convention requires a party to disclose information the disclosure of which is contrary to the essential interests of its security.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

U.S. ratification of UNCLOS will not threaten our intelligence operations

Opponents of U.S. ratification of UNCLOS have argued that U.S. intelligence operations will be complicated by UNCLOS because it will prevent U.S. submarines from gathering intelligence in territorial waters. However, these operations are already regulated by the existing 1958 convention which the U.S. ratified and expects other nations to abide by. Furthermore, the intelligence community has reviewed the treaty and concluded that it was still in U.S. interests to ratify the treaty.

Nothing in UNCLOS will change the conduct of naval intelligence operations

"Nothing in the Convention will affect the way we currently conduct surveillance and intelligence activities at sea. Opponents to the Convention argue that the Convention's provisions on innocent passage – Articles 19 and 20 – will prohibit or otherwise adversely affect U.S. intelligence activities in foreign territorial seas at a time when such activity is vital to our national security. I can say without hesitation that nothing could be further from the truth.

While it is true that Article 19 provides that intelligence collection within the territorial sea is inconsistent with the innocent passage regime and that Article 20 provides that submarines must navigate on the surface when engaged in innocent passage, it's a far stretch to thus conclude that the Convention prohibits intelligence collection and requires submarines to navigate on the surface when transiting the territorial sea. Nothing in Article 19 prohibits a U.S. vessel from engaging in intelligence activities in a foreign territorial sea. If a vessel does engage in such activities, it simply cannot claim that it is engaged in innocent passage. The same rule has applied for the past seven decades. Similarly, Article 20 does not prohibit submerged transits through the territorial sea, per se. Article 20 merely repeats the rule from the 1958 Convention on the Territorial Sea, a convention to which the United States is a party. The rule concerning submerged transits from the 1958 Convention has been the consistent position of nations, including the United States, for more than 70 years and it has never been interpreted as prohibiting or otherwise restricting intelligence collection activities or submerged transits in the territorial sea. In short, if or when the need arises to collect intelligence in a foreign territorial sea, nothing in the LOS Convention will prohibit that activity.

[*Page 10-11*]

Schachte, William L. "***Statement of Rear Admiral William L. Schachte: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Armed Services Committee, April 8, 2004. [**More** (4 quotes)]

Closed hearings before the Senate Armed Services and Classified Intelligence committees confirmed that UNCLOS will not jeopardize intelligence gathering

"U.S. intelligence collection activities at sea are not constrained by the Convention.

This matter was fully reviewed at closed hearings before the SSCI and SASC in 2004. At the unclassified level we can comment that those Committees concluded, after receiving testimony from DoD, CIA, and DoS, that the Convention does not affect US intelligence collection activities. Those agencies confirmed that testimony in recent correspondence to the SFRC.

With regard to innocent passage, the United States already obligates itself to abide by articles 19 and 20 of the Convention, and we are already formally bound to the same obligations in the 1958 Territorial Sea Convention.

[*Page 3*]

U.S. Navy Judge Advocate General's Corps. **Eight National Security Myths: United Nations Convention on the Law of the Sea** . Office of the Judge Advocate General: Washington Navy Yard, DC, Undated [**More** (5 quotes)]

U.S. defense and intelligence community played role in drafting articles 19 & 20 to protect U.S. rights

"Though national security remains a top U.S. priority, opponents of UNCLOS have overstated the degree to which the treaty would endanger that security. First, major concerns appear to stem from a misreading of articles 19 and 20.[81] Additionally, the provisions at issue were negotiated with the input and consent of the U.S. intelligence community (including the National Security Council) and were approved by the Central Intelligence Agency and the Department of Defense.82 In fact, some of the strongest supporters of the treaty come from the intelligence community and the highest ranks of the U.S. military.[83] As for the reliance upon customary international law to ensure permission for navigation by U.S. vessels, some commentators see this as a risky and costly alternative to ratification.[84]

[*Page 363-364*]

Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

Nothing in the convention will impact intelligence operations or the

proliferation security Initative

“The US-developed PSI is directed toward preventing the illicit transportation by ships of weapons of mass destruction, their delivery systems and related materials. Under the Law of the Sea Convention and customary international law, a number of jurisdictional bases exist for stopping and searching ships suspected of being engaged in some sort of illicit activity. These include jurisdiction exercised by a State with respect to ships flying its flag or within its territorial sea, ports or contiguous zone, and stateless vessels. It is also permissible to stop and search a foreign-flag vessel with the permission of the flag State. The PSI builds on this latter basis of jurisdiction with a series of bilateral agreements by which the United States and its treaty partners agree in advance on a set of orderly procedures for the reciprocal granting of permission for visits and search of suspected ships and cargoes. There is nothing in the Convention that would change the law in any respect with respect to the US practices under the Proliferation Security Initiative. Likewise, with respect to intelligence operations, the Law of the Sea Convention contains no restrictions on US naval surveillance and intelligence operations not already included in the 1958 Convention on the Territorial Sea and Contiguous Zone to which the United States is already a party.

[*Page 117-118*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

No provision in UNCLOS threatens work of U.S. intelligence community

“Myth: The convention would interfere with the operations of our intelligence community. Having either chaired or participated in the 18-agency National Security Council interagency process that drafted the United States' negotiating instructions for the convention, we found this charge so bizarre that we recently checked with the intelligence community to see if we had missed something. The answer that came back was that they, too, were puzzled by this charge, as there was absolutely no truth to it. We are confident that there is no provision in the convention which will, if approved by the Senate, constrain the operations of our intelligence community. In this regard, the United States is already bound by the 1958 convention, and since 1983, pursuant to President Reagan's order, we have operated under the provisions of the 1982 convention, with the exception of deep seabed mining issues associated with Part XI.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

International law has established precedent that peacetime intelligence collection is not aggressive

"It is also important to note that UNCLOS does not treat intelligence collection as a threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state in violation of the U.N. Charter. Article 19(2)(c) clearly distinguishes collecting intelligence from "threat or use of force," which is discussed as a separate prohibited activity in Article 19(2)(a) for ships engaged in innocent passage. This issue was resolved by the Security Council in 1960 following the shoot down of a U.S. U-2 spy plane near Sverdlovsk, Russia. An effort by the Soviet Union to have the Security Council decide that the activity of the U.S. spy plane was an act of aggression was soundly defeated seven to two (with two abstentions), thereby reaffirming the legality of peacetime intelligence collection under the U.N. Charter.47 This view is shared by most experts.[4]

[*Page 219*]

Pedrozo, Raul. "*The U.S.-China Incidents at Sea Agreement: A Recipe for Disaster*." **Journal of National Security Law and Policy**. Vol. 6. (2012): 207-226. [**More** (4 quotes)]

UNCLOS would have no impact on US intelligence activities and would be more be more favorable than 1958 convention we have been operating under for decades

"The question has been raised whether the Convention (in particular articles 19 and 20) prohibits intelligence activities or submerged transit in the territorial sea of other States. It does not. The Convention's provisions on innocent passage are very similar to article 14 in the 1958 Convention on the Territorial Sea and the Contiguous Zone, to which the United States is a party. (The 1982 Convention is in fact more favorable than the 1958 Convention both because the list of non-innocent activities is exhaustive and because it generally uses objective, rather than subjective, criteria in the listing of activities.) A ship does not, of course, enjoy the right of innocent passage if, in the case of a submarine, it navigates submerged or if, in the case of any ship, it engages in an act in the territorial sea aimed at collecting information to the prejudice of the defense or security of the coastal State, but such activities are not prohibited by the Convention. In this respect, the Convention makes no change in the situation that has existed for many years and under which we operate today.

[*Page 5*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Article 19 of UNCLOS will not impact U.S. intelligence operations

"The 2002 National Security Strategy states that the United States' success in the Global War on Terrorism depends on the destruction and disruption of terrorist organizations by "Identify[ing] and destroying the threat before it reaches our borders."[69] Clearly, the United States' ability to conduct intelligence activities effectively is crucial to the prevention of future terrorist activities.[70] Thus, Article 19 of UNCLOS, which appears to have ramifications for intelligence activity is highly significant.[71]

The impact of UNCLOS on intelligence gathering activities hinges on the interpretation of Article 19(2)(c), namely what constitutes innocent passage through coastal states' territorial waters.[72] According to proponents of UNCLOS, the Convention will not significantly impact the United States' intelligence gathering activities.[73] Proponents will admit that intelligence gathering does not qualify for an innocent activity under Article 19(2)(c) and therefore does not entitle the vessel conducting intelligence activities to the benefits of innocent passage.[74] But they note that intelligence activities are not specifically prohibited or regulated by the Convention.[75]

[*Page 126*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

Intelligence community has not raised any objections to ratifying UNCLOS

"MOORE: Now, on those questions, first, on the issue of, is there any interference with intelligence. Point number one -- the intelligence community fully participated in the interagency task force. This is not some little operation run in a separate office of the State Department. This is run out of the NSC. There is nothing in the intelligence community that they wanted they did not get in the Law of the Sea Convention. And there are some sensitive things in there in fact that the United States got for the intelligence community.

To my knowledge, there is not a single issue that is a problem in intelligence that I have seen. There was a hearing held from the Intelligence Committee. And the CIA and the Defense Department and all of those involved in this testified there was no issue. This is an absolutely false issue being raised against the convention.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

No basis to concerns that UNCLOS would impact U.S. intelligence operations

"WATKINS: I'll just pick up on one that's very special to me, and that's on intelligence. There was a Senate Select Committee hearing on this intelligence issue on law of the sea in 2004. And witnesses came from the CIA, from Defense, and they all confirmed that the U.S. intelligence plus submarine activities would not be impaired by this convention.

And so, again, the hearings have gone into detail across some of the questions you raised and the myths that are thrown out there by the opponents that somehow this is going to do great damage. And you know, when our P-3 was very closely monitored by the People's Republic of China a few years ago, one of the things we were accused of is getting intelligence over international waters with our air phones headed towards China mainland. And we were sitting there as non-members of the Law of the Sea Convention and would have weak grounds on which to base -- we would have good grounds on which to base it, but whether they would be listened to was questionable.

So again, intelligence is not only gathering information in national waters but also international. So the whole issue of intelligence gathering is another one of these myths that's thrown out there that we're going to lose our ability to do what we have to do to be number one in our national security efforts through good intelligence gathering. So I think that that is, again, one thing that's thrown up there in the air that has no basis whatsoever.

Borgerson, Scott G, **James Watkins**, **John Norton Moore**. "***Strange Bedfellows: The Law of the Sea and Its Stakeholders*** ." **Federal News Service Transcript**. (March 20, 2008) [**More** (9 quotes)]

Accession to UNCLOS would allow US to better support its protests against intelligence collection within our territorial waters

"In the mid-1980s the Soviets had drawn a system of straight baselines in the Arctic Ocean. Segment 8-9 is a twenty-six mile line that enclosed Motovsky and Kola Bays. According to the military experts writing in press and magazine accounts, on February 11, 1992, USS Baton Rouge was lurking in what it thought to be international waters when it and a Sierra-class Russian submarine collided.[25] In the ensuing diplomatic dispute, the U.S. Navy claimed that the collision occurred more than twelve miles from the "normal baseline," the shoreline, which placed it well within international waters. However, Russia claimed that the U.S. submarine was operating illegally while submerged within its territorial sea as measured from their claimed straight baseline.

Years later, when another Russian submarine, Kursk, sank under mysterious circumstances in the same general area, the Russian Navy immediately claimed that it was the fault of the United States, which had intelligence gathering submarines in the area monitoring the Russian exercises.26 If the United States and Russia were both Party to the Convention, we would likely be able to resolve the legality of this particular baseline segment and avoid such potential incendiary incidents. We continue

to have similar disputes concerning excessive straight baseline claims with many other countries all over the world, including China, Iran, Colombia, and Vietnam.

[*Page 579-580*]

Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

Top officials agree that UNCLOS would in no way constrain U.S. military or intelligence efforts

"The opponents' second claim is that the treaty would prevent the U.S. Navy from undertaking unilateral action, such as collecting intelligence in the Asia-Pacific region, because permission to do so is not explicitly granted in the text. According to Admiral Samuel Locklear, commander of U.S. Pacific Command, however, "The convention in no way restricts our ability or legal right to conduct military activities in the maritime domain." On the contrary, as U.S. Defense Secretary Leon Panetta put it, U.S. accession to the convention "secures our freedom of navigation and overflight rights as bedrock treaty law." Even so, critics point out, the ultimate indispensability of U.S. naval power means that the country can receive the benefits of the convention without being bound by it. Since the world seems to have functioned perfectly well in this halfway house for some time, it would make no sense to codify the convention now. It would be comforting if all that were true. It isn't.

Wright, Thomas. "***Outlaw of the Sea: The Senate Republicans' UNCLOS Blunder*** ." **Foreign Affairs**. (August 7, 2012) [**More**]

UNCLOS preamble specifically avoids regulating matters such as intelligence activities

"Critics seem to overlook the fact that Articles 17 to 32 of the Convention address only the right of innocent passage. The preamble makes clear what would be true in any event: “matters not regulated by this Convention continue to be governed by the rules and principles of general international law.” Suffice it to say that the matters not regulated by the Convention include the right of self-defense, the international law of armed conflict, and the complex (and for understandable reasons, rarely discussed) questions regarding the practice of states with regard to covert intelligence activities in each others’ territory.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

U.S. ratification of UNCLOS would not have an adverse effect on its intelligence activities

"*Myth: The Convention would prohibit or impair U.S. intelligence and submarine activities.*

Reality: The Convention does not prohibit or impair intelligence or submarine activities. Joining the Convention would not affect the conduct of intelligence activities in any way. This issue was the subject of extensive hearings in 2004 before the Senate Select Committee on Intelligence. Witnesses from Defense, CIA, and State all confirmed that U.S. intelligence and submarine activities are not adversely affected by the Convention.

We follow the navigational provisions of the Convention today and are not adversely affected; similarly, we would not be adversely affected by joining.

[*Page 17-18*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

Articles 19 & 20 of UNCLOS do not in any way restrict U.S. intelligence operations

"*[MYTH] The Convention, specifically articles 19 and 20, prohibit two functions vital to American security: collecting intelligence in, and submerged transit of, territorial waters.*

- This assertion is not correct.
- The Convention does not prohibit U.S. intelligence activities, nor would it have any negative effect on those activities.
- In the 1958 Convention, Article 14 provides that passage is innocent "so long as it is not prejudicial to the peace, good order or security of the coastal State" and that "submarines are required to navigate on the surface and to show their flag."
- The United States is already a party to the 1958 Territorial Sea Convention, which contains provisions very similar to articles 19 and 20 of the 1982 Convention.
- The 1982 Convention's specification of activities that are considered to be "prejudicial to the peace, good order, or security of the coastal State" are more favorable than the provisions of the 1958 Convention both because the list of activities is exhaustive and because it generally uses objective, rather than subjective, criteria in the listing of activities.

- Since President Reagan's 1983 Oceans Policy Statement, the United States has conducted its activities consistent with the non-deep seabed provisions of the 1982 Convention.

- U.S. accession to the Convention supports ongoing U.S. military operations, including the continued prosecution of the war on terrorism.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

Article 20 does more to improve U.S. ability to collect intelligence and protect its territorial waters than it does to impair it

"The specific argument that the convention would pre- vent the U.S. from using its submarines to collect intelligence is fallacious. Several sources, including the minority views in the Senate Committee on Foreign Relations, note that Article 20 of the convention requires submarines and other underwater vehicles to navigate on the surface and show their flags when engaged in innocent passage. This is correct, so far as it goes. But the minority report then concludes that this would not especially during the Cold War—in gathering intelligence close to foreign shorelines.

What the minority report and other critics fail to men- tion is that the 1958 Convention on the Territorial Sea and the Contiguous Zone, to which the United States has long been party, contains exactly the same restriction.[15] Moreover, the collection of intelligence in any guise within the territorial sea does not fall within the ambit of innocent passage. The United States would never accept foreign submarines or foreign warships engaging in intelligence-gathering operations in the ter- ritorial sea off of San Diego or Norfolk. Indeed, when President Reagan signed a proclamation extending the U.S. territorial sea to 12 nautical miles on December 27, 1988, consistent with the convention, one of the first things that the Coast Guard did was to advise a Soviet military vessel gathering intelligence just a few miles off of Pearl Harbor to leave the area immediately.[16]

The U.S. military and intelligence communities are well aware that the convention would have a positive impact on our national security. Moreover, as Senator Richard Lugar, at the time of this writing, ranking minority member of the Foreign Relations Committee, has argued, it would be unprecedented for the Senate to deny to our nation's military and national security leadership a tool that they have unanimously claimed that they need, especially during a time of war.[17]

[*Page 10*]

Oliver, John T. "***A Window of Opportunity: The U.N. Convention on the Law of the Sea.*** ." **The Coast Guard Proceedings of the Marine Safety & Security Council**. Vol. 66, No. 3 (Summer 2009): 6-10. [**More** (5 quotes)]

UNCLOS will not uniquely restrict submarine operations

UNCLOS specifically guarantees the right to conduct transits through international straits in "normal modes", which may include submerged transit in the case of submarines. UNCLOS does not explicitly prohibit submerged transit in territorial seas altogether, especially in international straits.

UNCLOS will not impact U.S. submarine operations

"Submarine forces are a key tool in waging the Global War on Terrorism and their unimpeded use is of crucial significance.[58] The use of submarine forces provides a unique tactical advantage because of a submarine's ability to monitor a potential enemy undetected for a long duration.[59] The ability to transit the ocean beneath the surface is therefore critical to a submarine's ability to maintain the advantage of covertness.[60]

The impact of UNCLOS on submarine operations hinges on interpretation of Article 20 of the treaty.[61] Gordon England, former Secretary of the Navy, has stated that UNCLOS does not restrict or prohibit submarine activities.[62] UNCLOS specifically guarantees the right to conduct transits through international straits in "normal modes", which may include submerged transit in the case of submarines. Nevertheless, the Convention mandates that ships refrain from acts that are "prejudicial," including submerged transit in territorial waters; failure to meet this obligation results in a vessel's loss of innocent passage status.[63] But, UNCLOS does not explicitly prohibit submerged transit in territorial seas altogether, especially in international straits.[64] This notion is echoed by Deputy Secretary of Defense, John Negroponte, who has stated that UNCLOS "does not prohibit or impair [. . submarine activities in anyway."[65]

[*Page 125*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

UNCLOS convention would have no unique effect on ability of submarines to collect intelligence beyond restrictions already agreed to in 1958 convention

The specific argument that the Convention would prevent the United States from using its

submarines to collect intelligence is fallacious. Several sources, including the Minority Views in the Senate Committee on Foreign Relations, note that Article 20 of the Convention requires submarines and other underwater vehicles to navigate on the surface and show their flag when engaged in innocent passage. This is correct, so far as it goes. But the minority report then concludes that this would "fail to protect the significant role submarines have played, especially during the Cold War, in gathering intelligence very close to foreign shorelines."

What the minority report fails to mention is that the 1958 Convention on the Territorial Sea and the Contiguous Zone, to which the United States has long been party, contains exactly the same restriction.[39] Moreover, the collection of intelligence in any guise within the territorial sea is not "innocent passage."[40] Such operations are called espionage, not innocent passage. The United States would never accept foreign submarines or foreign warships engaging in intelligence-gathering operations in the territorial sea off of San Diego or Norfolk. Indeed, when President Reagan signed a proclamation extending the U.S. territorial sea to twelve nm on December 27, 1988, consistent with the Convention, one of the first things that the Coast Guard did was to advise a Soviet military vessel gathering intelligence just a few miles off of Pearl Harbor to leave the area immediately.[42] The U.S. military and intelligence communities are well aware that the Convention would have a positive impact on our national security. Moreover, as Senator Richard Lugar, ranking minority member of the Foreign Relations Committee, has argued, it would be unprecedented for the Senate to deny to our nation's military and national security leadership a tool that they have unanimously claimed that they need, especially during a time of war.[43]

[*Page 586-587*]

Oliver, John T. "*National Security and the U.N. Convention on the Law of the Sea: U.S. Coast Guard Perspectives*." **ILSA Journal of International and Comparative Law**. Vol. 15, No. 2 (2008-2009): 573-586. [**More** (8 quotes)]

Concerns about submarine passage (article 20) ignore more restrictive requirements of 1958 convention U.S. is already party to

Criticisms that under Article 20 of the 1982 Convention submarines are required to navigate on the surface and to show their flag, without noting that this obligation is already binding on the United States under Article 14 of the 1958 Territorial Sea Convention. Nor does this criticism even bother to mention the critical difference between the 1958 and 1982 Conventions, that under the 1982 Convention, this obligation no longer applies in straits used for international navigation. In such straits there is a right under the 1982 Convention of “transit passage,” permitting transit in the normal mode; which includes submerged transit and overflight.

[*Page 26*]

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest***." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

U.S. participation in UNCLOS will not undermine national sovereignty

The sovereignty costs associated with the Convention are grossly overstated primarily because many of these costs have already been accepted by the United States. In addition, the U.S. stands to gain sovereignty over 4.1 million square miles of territory by acceding to the treaty.

U..S. does not forfeit its sovereignty by signing on to the convention

"*Myth: The United States is giving up sovereignty to a new international authority that will control the oceans.*

Nothing could be further from the truth. The United States does not give up an ounce of sovereignty in this convention. Rather, as noted, the convention solidifies a massive increase in resource and economic jurisdiction for the United States, not only to 200 nautical miles off our coasts, but to a broad continental margin in many areas even beyond that. The new International Seabed Authority (ISA) created by this convention, which, as noted, has existed for a decade and will continue to exist regardless of U.S. actions, deals solely with mineral resources of the deep seabed beyond national jurisdiction--it has nothing to do with the water column above the seabed. The deep seabed is not only an area in which the United States has no sovereignty; but one on which the United States and the entire world have consistently opposed extension of national sovereignty claims.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

U.S. sovereignty has more to lose by not being party to the treaty

"Today's opponents, including Ayotte, DeMint, and Portman, focus on two issues. First, they argue, the treaty is an unacceptable encroachment on U.S. sovereignty; it empowers an international organization -- the International Seabed Authority -- to regulate commercial activity and distribute revenue from that activity. Yet sovereignty is not a problem: During the 1994 renegotiation, the United States ensured that it would have a veto over how the ISA distributes funds if it ever ratified the treaty. As written, UNCLOS would actually increase the United States' economic and resource jurisdiction. In fact, Ayotte, DeMint, and Portman's worst fears are more likely to come to pass if the United States does not ratify the treaty. If the country abdicates its leadership role in the ISA, others will be able to shape it to their own liking and to the United States' disadvantage.

Wright, Thomas. "***Outlaw of the Sea: The Senate Republicans' UNCLOS Blunder*** ." **Foreign Affairs**. (August 7, 2012) [**More**]

Signing on to international agreements is an exercise of U.S. sovereignty, not an abrogation

"Arguments against the convention are, in a way; a denigration of law; they seem to indicate that any international agreement is an unwelcome infringement of U.S. sovereignty, when the contrary is the case. President George Washington regarded the Jay Treaty with Great Britain as the most important achievement of his administration. No one would accept a loss of U.S. sovereignty. At the same time, one of the most important sovereign rights is the legal ability of states to enter into agreements, just as individual citizens in the United States have the right to agree to contracts with one another. In fact, it is only children and the mentally incompetent who have no right to contract. To deny the U.S. government the right to enter into agreements with other nations would deprive it of one of its most fundamental rights, leaving it with few options short of expending the lives of its armed forces to establish and enforce national rights. It should also be understood that under the U.S. Constitution, freedom of action cannot be lost through international agreements. One widely-accepted precept of U.S. foreign policy is that a subsequent act of Congress can override a prior international agreement. Further, critics fail to mention that because of its sovereignty, the United States is free to withdraw from the convention.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Many sovereignty costs of the convention have already been accepted by U.S. in other agreements

"The sovereignty costs associated with the Convention are grossly overstated primarily because many of these costs have already been accepted by the United States. Provisions of the Convention that infringe upon sovereignty include limitations on unilaterally claiming territorial waters, limitations on economically exploitable areas on the seas, limitations on the continental shelf, revenue sharing provisions for exploitation of resources on the high seas, imposition of environmental obligations, and a mandatory dispute resolution mechanism.[22] As will be discussed next, the United States has already agreed to most of these provisions through a variety of previously signed treaties.[23]

[*Page 363*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. sovereignty has more to gain than lose from ratification of UNCLOS

"Many of these arguments have been put into perspective, however, by the actual history and operation of UNCLOS. **Instead of posing a threat to national sovereignty, U.S. ratification of UNCLOS would actually enlarge U.S. power by providing a permanent seat on the ISA,[58] and would be —the greatest expansion of U.S. resource jurisdiction in the history of the nation.**[59] A permanent seat on the ISA would give the United States a strategic advantage, namely a —greater ability to defeat amendments that are not in the U.S. interest, by blocking consensus or voting against such amendments.[60]

Concerns about abuse of power by the ISA are similarly unfounded, as the ISA operates independently from the U.N.[61] and is comparable to other specialized U.N. organizations, many of which the U.S. already endorses. **Further, the navigational protections for American ships on the high seas would enhance, not diminish, U.S. sovereignty.**[62] Some UNCLOS proponents also argue that claims to U.S. sovereignty are overstated in the context of a shared resource like the world's oceans.[63] **Finally, due to the inevitability of international reliance on UNCLOS to form international maritime law and regulate maritime disputes, the United States will suffer a huge loss of power if it fails to accede to the treaty.**[64]

[*Page 360-361*]

Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

UNCLOS expanded national sovereignty more than any other international agreement

"Even more laughable is the charge of a conspiracy to create a world government. In reality, the convention expanded national sovereign rights more than any international agreement in history. Its central thrust entails an extension of coastal resource and economic rights in a vastly enlarged exclusive economic zones (EEZ) and continental shelf, while furthering sovereign rights and navigational freedom. On the contrary, the corridors of the law of the sea negotiations were predominantly filled with thoughts of nationalism rather than internationalism. And ironically, in their attack on the convention, the critics join extreme internationalists who have been key opponents of the treaty because it focuses on national sovereign rights.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of**

International Affairs. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Sovereignty argument against UNCLOS is a red herring since the U.S. already abides by agreement in practice

"No wonder everyone from the head of the U.S. Chamber of Commerce to the president of the Natural Resources Defense Council to the chairman of the Joint Chiefs of Staff (along with every living secretary of state) has argued that the United States should ratify unclos. It is far past time for the Senate to follow their advice. Skeptical Senate Republicans have stood in the way of ratification, arguing that the treaty would place limits on U.S. sovereignty. But that argument is a red herring, since the United States already follows all of the treaty's guidelines anyway, and ratifying it would in fact give Washington new rights and greater influence. There are probably enough votes from moderate Republicans for the treaty to pass, if the president decided to make ratification a priority.

[*Page 86-87*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

U.S. has already agreed to limiting the continental shelf in 1964 Convention

"Ultimately, the Convention settled on an outer limit for the continental shelf of 200 miles,[38] which satisfied many geographically disadvantaged states (those that do have a naturally wide shelf), but also allowed special considerations for states with naturally broad shelves by granting them a potentially deeper shelf of up to 350 miles instead of the standard 200.[39] With the exception of the special considerations, Convention provisions limiting the continental shelf echoed those in the 1964 Convention on the Continental Shelf which set the limit as 200 miles and gave coastal states exclusive rights over its continental shelf.[40] The United States is a party to the 1964 Convention on the Continental Shelf and thus bound by these limits.[41] However, if the United States qualifies for the special considerations provided for in the Convention for states with naturally broader shelves, it has the potential to increase its continental shelf.[42]

[*Page 365-366*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

No basis to argument that UNCLOS infringes on U.S. sovereignty

"*[Question] How do the panelists respond to the objection that UNCLOS would infringe on U.S. sovereignty?* Professor Caron answered that, if anything, UNCLOS represents a tremendous effort to preserve sovereignty in oceans, and expressed that he does not understand the argument that UNCLOS somehow diminishes sovereignty. Ambassador Balton agreed, adding that it is important to try and understand the objections to UNCLOS. He countered the notion the United States can depend on the Navy to assert sovereignty over the ocean, explaining that the Navy is a major advocate of UNCLOS because it is more effective and efficient to use the rule of law rather than military force. Commander Kraska also noted that most materiel moves by non-naval vessels, so it is important to have a regime that prevents other countries from blocking those materiel shipments.

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0 "***National Security, Economic Well-Being, and the Law of the Sea*** ." **Environmental Law Institute**. (June 6, 2011) [**More**]

U.S. would not abdicate authority or sovereignty to International Seabed Authority under UNCLOS

"Many other claims are simply misplaced. There is no transfer of sovereignty or wealth to the International Seabed Authority.

We have never claimed sovereignty over the seabeds beyond the continental shelf, and have consistently taken the position that any such claim would be unlawful. This is made abundantly clear by our own Deep Seabed Hard Minerals Act. We neither have nor assert jurisdiction over the activities of foreign states and their nationals on the deep seabeds.

Nothing that could rationally be called sovereignty was conferred on the Seabed Authority. The powers of the Seabed Authority are very carefully defined and circumscribed, and are controlled by a Council on which we will have a permanent seat and a veto over regulations. Private companies have the right to apply for and receive long-term exclusive rights to mine sites on a first-come, first-served basis and have legal title to the minerals they extract. All parties to the Convention are obliged to respect those mining rights and recognize that legal title.

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Oversight hearing to examine the "United Nations Convention on the Law of the Sea"*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (9 quotes)]

U.S. is not sacrificing any of its rights or sovereignty by agreeing to abide by convention and regulation by the ISA

Myth: The United States is giving up sovereignty to a new international authority that will control the oceans.

"Nothing could be further from the truth. The United States does not give up an ounce of sovereignty in this Convention. Rather, the Convention solidifies a truly massive increase in resource and economic jurisdiction of the United States, not only to 200 nautical miles off our coasts, but to a broad continental margin in many areas even beyond that. The new International Seabed Authority created by this Convention, which, as noted, has existed for a decade and will continue to exist regardless of United States actions, deals solely with the mineral resources of the deep seabed beyond national jurisdiction. That is an area in which we not only have no sovereignty but also in which we and the entire world have opposed extension of national sovereignty claims. Moreover, to mine the deep seabed minerals requires security of tenure for the billion dollar plus costs of such an operation. Our industry has emphatically told us that they can not mine under a 'fishing approach' in which everyone simply goes out to seize the minerals. The Authority was a necessary specialized agency, of strictly limited jurisdiction, to deal with this need for security of tenure. Quite contrary to the recent testimony of one witness before the Senate Committee on Environment and Public Works, the Seabed Authority would not have "the exclusive right to regulate what is done, by whom, when and under what circumstances in subsurface international waters and on the sea-floor."[5] Rather, the Authority is a small, narrowly mandated specialized international agency that, emphatically, has no ability to control the water column and only has functional authority over the mining of the minerals of the deep seabed beyond national jurisdiction. Again, this is a necessary requirement for seabed mining, in an area beyond where any nation has sovereignty, to provide security of tenure to mine sites, without which mining will not occur[6];

[*Page 10*]

Moore, John Norton. "***Statement of John Norton Moore: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004)***." Testimony before the Senate Committee on Armed Services, April 8, 2004. [**More** (6 quotes)]

UNCLOS extends U.S. sovereignty over a previously unowned resource

"In contrast, quite to the contrary of arguments advanced against the Convention by some opponents, the Convention does not remove United States sovereignty or sovereign rights over the resources of the deep seabed. Neither the United States nor any other Nation has now, or has ever had, sovereignty over the mineral resources beyond the continental margins. In fact, it has been a consistent position of the United States and other developed nations to oppose any extension of national sovereignty into this area. Indeed, it is precisely because no nation in the world controls the mineral resources of the ocean basins that the Convention has created a narrowly limited international mechanism to permit mining of these resources. For without such a regime, industry simply cannot obtain the legal rights necessary for the over billion dollar cost of a deep seabed mining operation.

Moore, John Norton. "***Testimony of John Norton Moore: United States Adherence to the Law of the Sea Convention: A Compelling National Interest*** ." Testimony before the House Committee on International Relations, May 12, 2004. [**More** (17 quotes)]

Any risks to sovereignty from ratifying UNCLOS are negligible compared to potential gains for national security

"Protecting national sovereignty is a legitimate aim -- and one that some liberal internationalists may have been too cavalier about in the past. But for the goal to have any meaning, it must be framed so that it can be met. This is certainly what Reagan had in mind when he articulated a specific set of problems with the original UNCLOS that could be (and eventually were) dealt with. This time around, however, those who object to the treaty have defined sovereignty in such ideological terms that they will never be satisfied. By their reckoning, the United States can never be party to an international organization, even if it has veto status in it.

An international organization might very marginally limit U.S. freedom of action, but this is negligible in comparison to the harm that instability and conflict in the South China Sea could inflict on U.S. interests. Previous presidents from both parties understood the trade-off: In challenging times, and to exercise global leadership, Washington protected its interests by making enlightened commitments overseas, whether in the form of alliances, institutions, or foreign assistance.

Wright, Thomas. "***Outlaw of the Sea: The Senate Republicans' UNCLOS Blunder*** ." **Foreign Affairs**. (August 7, 2012) [**More**]

U.S. can extend the range of territory under its sovereign control by ratifying UNCLOS

The area of resource jurisdiction the U.S. would gain legal status to by ratifying the treaty is approximately equal to that of the continental United States and exceeds the area of the Louisiana Purchase, the purchase of Alaska or any other addition to U.S. sovereignty in history.

U.S. can extend sovereignty by 200,000 square miles by ratifying UNCLOS

"The Law of the Sea Convention allows countries to claim a continental shelf beyond their 200-nautical-mile EEZ, to a line 350 nautical miles from their coastal baselines, if they can establish that their continental shelf meets the complicated formula found in Article 76. This provision may be of substantial importance in the Arctic, now that the ice in that region is breaking up, as exemplified by Russia's planting of a flag on the sea floor of the North Pole on August 2, 2007. Russia was not claiming the North Pole, but was exploring the seabed to see whether it could justify a claim to an extended continental shelf under Article 76. The United States may also be able to make an extended continental shelf claim in the Arctic region, perhaps claiming ''more than 200,000 square miles of additional undersea territories,''[41] but its ability to make such a claim credibly will be substantially weakened if it remains outside the Law of the Sea Convention.[42]

[*Page 59*]

Van Dyke, Jon M. "***U.S. Accession to the Law of the Sea Convention*** ." **Ocean Yearbook**. Vol. 22. (2008): 47-59. [**More** (5 quotes)]

U.S. gain in sovereignty over territory is greatest among all parties due to its extensive coastlines

"The final, and currently most prominent, argument against ratification surrounds sovereignty. Opponents say that, by limiting itself to a 200 nautical mile exclusive economic zone and whatever extended continental shelf it can claim, the United States is restricting its jurisdictional sovereignty. What this argument misses, however, is that the United States' continental shelf is the largest of any —up to 600 miles offshore in the Arctic alone. John Norton Moore of the University of Virginia School of Law has argued that ratification would "massively increase [U.S.] sovereign jurisdiction" by more than the size of the Louisiana Purchase and Alaska combined.

Ernest Z. Bower and Gregory Poling. "***Advancing the National Interests of the United States:***

Ratification of the Law of the Sea ." **Southeast Asia from the Corner of 18th & K Streets**. (May 25, 2012) [**More**]

US accession to UNCLOS would greatly increase territory under its sovereign control

"Perhaps the most obvious and compelling gain for the United States will be secure title to jurisdiction over the non-living resources of the seabed and subsoil of the continental shelf extending beyond 200 nautical miles (nm). Both customary and conventional international law recognize state rights to this limit, but sea areas beyond are high seas, and sea-bed and sub-soil are part of the common heritage of humanity. These principles have been in process of development since the 1960s. The Convention, however, allows coastal States to establish outer limits to the continental shelf that go beyond 200nm provided the conditions set for in Article 76 of the Convention are satisfied. Through this process the United States stands to gain rights to enormous areas of seabed, especially in the Arctic. The Convention established the Commission on the Limits of the Continental Shelf (CLCS) to give official imprimatur to such outer continental shelf limits and thus the 'extended' or 'outer' continental shelf areas enclosed within them.[9] This is crucially important, because without secure legal title, it is hard to envisage any commercial entity wishing to explore and exploit resources beyond 200nm being able or willing to invest the billions of dollars necessary to conduct such operations, especially in hostile environments such as the Arctic. It should not be forgotten that security of title, and the need to ensure proper control of activities, were among the policy considerations which led to the 'Truman Proclamation' on the Continental Shelf of 1945.[10] This Proclamation laid the foundation for the entire modern law of the sea, because it took state rights beyond the limits of the territorial sea for the first time.

[*Page 4*]

Schofield, Clive and Ian Townsend-Gault. "*Time for the United States to Join the Party? Prospects for US Ratification of the United Nations Convention on the Law of the Sea*." **International Zeitschrift**. Vol. 8, No. 3 (December 2012): 1-6. [**More** (4 quotes)]

UNCLOS is not a transfer of either wealth or technology but a gain of resource jurisdiction the size of the Louisiana Purchase

"*Myth: U.S. adherence will entail history's biggest voluntary transfer of wealth and surrender of sovereignty.*

To the contrary, the convention enhances not only sovereignty of U.S. military ships and aircraft, but also bolsters our resource jurisdiction over a vast area off of our coasts. In fact, the convention supports the sovereign rights of the United States over extensive maritime territory and the natural resources therein, including a broad continental shelf that in many areas extends well beyond the

200-nm limit. The area of resource jurisdiction confirmed under national control of the United States by this convention is approximately equal to that of the continental United States and exceeds the area of the Louisiana Purchase, the purchase of Alaska or any other addition to U.S. sovereignty in history. It is also the most extensive of any nation in the world. The mandatory technology transfer provisions of the deep seabed mining sections in the original convention, to which the United States objected, were eliminated in the 1994 agreement. Any transfer of funds to nations from deep seabed mining revenues, or oil and gas development beyond 200 miles, is subject to a U.S. veto. As such, we not only have a veto over where our seabed mining revenue would go, but also over that of all nations worldwide. This new power is simply lost if we fail to adhere

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Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

UNCLOS expands U.S. sovereignty by 4.1 million miles

"While the Convention appears to be a widely supported agreement, it has failed to receive consent of the Senate. The opposition has focused mainly on a few "primarily ideological, objections to the Convention so as to take advantage of several procedural customs within the Senate . . . ."[102] The most often cited argument against ratifying the Convention involves the surrender of U.S. sovereignty. However, as noted in section III, the Convention actually expands the United States sovereignty rights. It grants the United States exclusive rights to a twelve-mile territorial sea, a 200-mile EEZ, and finally a possibility to extend its continental shelf up to 350 miles.[103] This brings an additional 4.1 million miles^2 of ocean under American jurisdiction.

[*Page 163-164*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

U.S. is losing emerging Arctic race by not being party to UNCLOS

By remaining outside of UNCLOS, the U.S. is ceding its leadership role in the region in a number of ways. First, and most importantly for the U.S. strategic and economic interests, by remaining outside of the treaty the U.S. is not able to submit its claims for the extended continental shelf in the Arctic to the CLCS, preventing U.S. industries from claiming mineral rights. Secondly, existing Arctic governance regimes are based on and rely on UNCLOS and the U.S. non-party status prevents it from contributing as a full partner, weakening the overall Arctic governance regime. Finally, U.S. efforts to develop a strategy for the Arctic are constrained by the continual question of its non-party status and legitimacy as a leader.

U.S. is being left behind in race for the Arctic as a non-party to UNCLOS

"As the global climate is warming up rapidly, leading to ice-free summers in the Arctic Ocean, Arctic nations are confronting the prospect of new rights over the Arctic's vast natural resources. All Arctic nations— Canada, Denmark, Norway, Russia—except for the United States, ratified the Convention and have already submitted, or are preparing to submit, proposed limits for their extended continental shelves to the Commission. The submissions will enable these countries to obtain international recognition over their extended continental shelves in the Arctic, including exclusive rights over oil and gas reserves.

As a nation with an extensive coastline and a continental shelf with enormous oil and gas reserves, the United States has much more to gain than lose from joining the Convention. Furthermore, the uncertainties stemming from the customary law make it a less effective measure to protect American interests. Only a universal regime such as the Convention can adequately safeguard the United States' interest in the Arctic Ocean. The best way to guarantee access to the Arctic's resources is for the United States to become a party to the Convention.

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Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

U.S. has limited time to ratify convention to secure access to Arctic resources

Ratification of the Convention is an urgent matter. Although a state has up to ten years after it has

ratified the Convention to map and submit proposed limits of its continental shelf to the Commission on the Limits of the Continental Shelf, by that time it may be too late.[196] Global climate change has caused parts of the Arctic Seacap to begin melting, making it navigable for the first time.[197] While this is promising for underwater mining industries, these environmental effects have attracted a great deal of attention and the international community is cooperating to reverse them.[198] Instead of engaging in fruitless political battles with its strategic adversaries, the United States should move quickly to ratify the Convention and focus its energy on extracting the resources beneath the Arctic as quickly as possible.[199] Ratification "would allow full implementation of the rights afforded by the convention, [allowing member nations] to protect coastal and ocean resources."[200]

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Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. national interest harmed by remaining outside UNCLOS regime and unable to take advantage of Arctic boom

"The good news is that it's not too late to play catch-up. The first and most obvious place for the United States to start is to finally join the 164 other countries that have acceded to unclos. Ironically, Washing- ton had a hand in drafting the original treaty, but Senate Republicans, making misguided arguments about the supposed threat the treaty poses to U.S. sovereignty, have managed to block its ratification for decades. The result has been real harm to the national interest.

UNCLOS allows countries to claim exclusive jurisdiction over the por- tions of their continental shelves that extend beyond the 200-nautical- mile exclusive economic zones prescribed by the treaty. In the United States' case, this means that the country would gain special rights over an extra 350,000 square miles of ocean—an area roughly half the size of the entire Louisiana Purchase. Because the country is not a party to unclos, however, its claims to the extended continental shelf in the Beaufort and Chukchi seas (and elsewhere) cannot be recognized by other states, and the lack of a clear legal title has discouraged private firms from exploring for oil and gas or mining the deep seabed. The failure to ratify unclos has also relegated the United States to the back row when it comes to establishing new rules for the Arctic. Just as traffic through the Bering Strait is growing, Washington lacks the best tool to influence regulations governing sea-lanes and protecting fisheries and sensitive habitats. The treaty also enshrines the international legal principle of freedom of navi- gation, which the U.S. Navy relies on to project power globally.

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Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

U.S. should make ratification of UNCLOS a top priority to ensure it doesn't lose out on opening of Arctic

“In light of a global climate crisis and the escalating battle over the valuable resources below the North Pole, Congress should make ratification of UNCLOS one of its top priorities. Until the United States is a treaty member, it cannot enjoy voting privileges on the influential ISA (on which it would be granted a permanent seat) nor submit claims to the CLCS to gain legal rights to the resources in the North Pole‘s seabed. The concerns that influenced President Reagan not to sign the treaty in 1982 have largely disappeared, and the remaining concerns are easily refuted. U.S. ratification of UNCLOS makes sense not just for economic, national security, and environmental reasons, but also to enhance the diplomatic standing of the United States. Accession to UNCLOS now would be a powerful and meaningful gesture on behalf of the United States, symbolizing a recommitment to global cooperation.

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Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

Ratification of UNCLOS is critical component of any U.S arctic strategy

“Despite the slowdown, Russia continues to increase its military presence in the Arctic. The National Security Strategy of the Russian Federation until 2020 stresses the importance of strengthening border guard forces in the region and updating their equipment, while creating a new unit of military forces to “ensure military security under various military-political circumstances.”[78] Russia’s assertive rhetoric has been matched by a range of steps that stake its military prominence in the Arctic by developing its coastal defense infrastructure and enhancing its technology capa- bilities, which have been perceived by its Arctic neighbors as provocative and controversial. For example, Russia fired cruise missiles over the Arctic in a summer 2007 exercise; reinforced its Northern Fleet in order to perform additional exercises in the summer of 2008; tested new electronic equipment and precision weapons; and resumed Arctic patrols for the first time since the end of the Cold War. Several times during the past two years U.S. and NATO jets have shadowed Russian bombers close to the Norwegian and Alaskan coasts, particularly during and after the Georgia-Russia conflict in August 2008.

[*Page 25*]

Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

US is falling behind in the race to exploit Arctic resources because it remains outside of UNCLOS

"The Arctic Ocean is currently at the center of the outer continental shelf discus- sion. In fact, the Arctic is becoming the test bench for international politics. It is an ocean where oil and gas, minerals, fisheries, sea lanes, military interests, and gover- nance over ocean spaces meet in conflict among the five "frontline" states (USA, Canada, Denmark/Greenland, Norway, and Russia) while other neighboring entities like Iceland, the EU, Japan, and China express their Arctic interests as well.

All these happen at the same time when Arctic temperatures are rising twice as fast as in the rest of the world20 and climate change becomes incalculable. The warming temperatures break up polar ice, raise sea levels, erode coastlines at a remarkable speed,21 and potentially cause international conflicts as the Arctic becomes accessible at least during the summer. The USA, unlike the other Arctic states, is falling behind in this contest with little or no icebreaking and naval capacities in the region. Moreover, since the USA has not ratified the Law of the Sea Convention, it is neither in a position to claim outer continental shelf areas nor has a say in the International Seabed Authority ISA which will be responsible for deep-sea mining in central parts of the Arctic. Denmark, on the other hand, is working on its "Arctic strategy" with an anticipated claim of outer continental shelves north of Greenland to include the pole, which will be formally presented to the CLCS before 2014.

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Jenisch, Uwe K. "*Old laws for new risks at sea: mineral resources, climate change, sea lanes, and cables*." **WMU Journal of Maritime Affairs**. Vol. 11. (2012): 169-185. [**More** (4 quotes)]

U.S. is locked out of the institutions that will govern control of arctic resources as a non party to UNCLOS

"Corollary to the non-accession to the LOS convention, the US can not access the institutions and mechanisms operating under the legal regime of the Convention. In the present scenario, therefore, the United States lacks legal basis to submit claims for enlarging its continental shelf beyond 200 NM to the CLCS Commission until it ratifies the LOS Convention. This in turn will hamper the US prospects of accessing the Arctic resources. In the meantime, however, state parties to the Convention - Canada, Denmark, Finland, Iceland, Norway, Sweden, and Russia - are all currently competing for valuable sea-bed overlapping rights in the Arctic and collecting evidences to make claim for an extended continental shelf (ECS) in the Arctic region. While the CLCS Commission may begin evaluating their respective ECS claims after receiving submissions at any time, the US continues to have its hands tied for its inability to use the CLCS procedure until it ratifies the LOS Convention. In sum, until the US becomes a party to the LOS Convention, it cannot access the CLCS Commission to gain legal rights to the Arctic seabed resources, nor can it enjoy voting privileges on the influential ISA Authority in influencing decision-making in deep-seabed mining in the —Areall beyond the national jurisdiction.

[*Page 14*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

U.S. non party status to UNCLOS complicates ability to operate and compete for Arctic resources

"Unfortunately, as UNCLOS nears its 40th anniversary, the United States has yet to ratify the treaty despite strong urging from the U.S. Defense and State Departments, as well as from the Joint Chiefs of Staff. In its "Arctic Roadmap," the U.S. Navy actively supports accession to UNCLOS because it provides "effective governance: freedom of navigation, treaty vs. customary law, environmental laws, and extended continental shelf claims."[33] Joining UNCLOS would give the U.S. government a clear framework in which it could more effectively confront growing difficulties pertaining to freedom of navigation in the Arctic region. By not ratifying the U.N. Convention on the Law of the Sea, the United States is at a considerable economic disadvantage as the other Arctic coastal states submit their claims. The United States maintains the world's largest EEZ and has 360 major commercial ports. With potential claims of up to 600 miles of possible resource-rich continental shelf territory in the Arctic, remaining outside the UNCLOS only erodes the position of the United States in the region.

These difficulties have been made explicitly clear in recent reports from the Department of Defense and the U.S. Navy. The Department of Defense has noted that its "lack of surface capabilities able to operate in the marginal ice zone and pack ice will increasingly affect accomplishment of this mission area [sea control] over the mid- to far-term."[34] Moreover, the U.S. Navy "acknowledges that while the Arctic is not unfamiliar for the Navy, expanded capabilities and capacity may be required for the Navy to increase its engagement in this region."[35] These challenges are likely to increase moving forward unless further action is taken. As discussed below in further detail, the fact that the United States has yet to ratify UNCLOS compounds these issues.

[*Page 24-25*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

Warming of the arctic is a compelling reason for U.S. to pursue ratification of UNCLOS at earliest opportunity

The United States has basic and enduring national interests in the oceans. These diverse interests—

security, economic, scientific, dispute settlement, environmental, and leadership—are best protected

“through a comprehensive, widely accepted international agreement that governs the varying (and sometimes competing) uses of the sea. Although the United States has lived outside the Convention for 30 years, climate change in the Arctic provides the current Administration with a new and urgent incentive to re-engage the Senate and urge that body to provide its advice and consent to U.S. accession to the treaty at the earliest opportunity. As a nation with both coastal and maritime interests, the United States would benefit immensely from becoming a party to UNCLOS—accession will restore U.S. oceans leadership, protect U.S. ocean interests and enhance U.S. foreign policy objectives, not only in the Arctic, but globally.

[*Page 774-775*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

U.S. could challenge China's claim to Arctic resources by becoming party to UNCLOS

“In May 2013, five Asian nations—including China—were granted ob- server status in the Arctic Council, and China has stated it does not intend to be a “wallflower” in the forum.[33] Beijing has expressed an interest in developing new shipping routes through the Arctic that will connect China with its largest export market—the European Union. To that end, in August 2013, a Chinese merchant vessel loaded with heavy equipment and steel set sail from Dalian en route to Rotterdam via the Arctic’s Northern Sea Route (NSR).[34] China has also expressed an interest in developing Arc- tic resources. In March 2010, Rear Admiral Yin Zhou of the People’s Liberation Army Navy stated at the Eleventh Chinese People’s Political Consultative Conference that “under . . . UNCLOS, the Arctic does not belong to any particular nation and is rather the property of all the world’s people” and that “China must play an indispensable role in Arctic exploration as it has one-fifth of the world’s population.”[35] Officials from the State Oceanic Administration have similarly indicated that China is a “near Arctic state” and that the Arctic is an “inherited wealth for all humankind.”[36] As a party to UNCLOS, the United States could claim an ECS in the Arctic and forestall any encroachment of U.S. ocean resources by China or any other nation.

[*Page 767*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Most important step U.S can take to shore up its Arctic Strategy is to ratify UNCLOS

"The United States must take some very concrete steps over the next several years to improve its strategic posture in the Arctic so that over the next 40 years the region is a model of regional coop- eration and not a zone of potential conflict.

The most vital step the United States must take immediately is ratification of the Law of the Sea Convention (UNCLOS). UNCLOS provides the necessary guidance and appropriate frame- work to resolve claims to an extended continental shelf in the Arctic region. To prepare itself for ratification, the United States must continue to invest funds in Arctic scientific research and explo- ration in preparation for submitting U.S. claims for extended territorial boundaries. The Obama Administration must make UNCLOS ratification a legislative priority (amongst many other competing priorities) and achieve Senate ratification as soon as possible. Should the U.S. remain outside of UNCLOS for the foreseeable future, it will find itself in a growing strategic disadvantage in shaping future policy outcomes vis-à-vis the Arctic.

[*Page 26*]

Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

U.S. needs to ratify UNCLOS to establish shared law in the Arctic to avoid conflict

"The Arctic nations are preparing submissions for the extended shelves; Russia's is currently under review. Under the terms of the convention, the American zone would be the largest in the world — more than 3.3 million square miles, an area greater than the lower 48 states combined.[74] In addition to protection of shelf claims, the convention is good for the United States because it sets pollution standards and requires signatories to protect the marine environment. The United States has not submitted a claim because it has not ratified the Convention.[75]

Ratification is also important for U.S. long-term presence in the region. In the absence of shared law, countries often make unreasonable and irres- ponsible claims in the maritime environment—the Arctic will be no different.[76] Without binding law, the United States gambles on long-term credibility to enforce international law, freely navigate the oceans, and protect the business ventures that rely on uniform laws.

[*Page 13*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

U.S. economic security is at risk by not engaging in the Arctic -- ratification of UNCLOS is a critical first step

"The United States stands atop a precipice, faced with a momentous opportunity to take advantage of trillions of dollars in natural resources, while sim- ultaneously restoring the nation's economic security through governance and job creation. Governance is the first step. Ratifying the Law of the Sea Conven- tion must be a priority for the administration or the United States will lose economically and could be challenged as the global maritime leader. The Inter- national Maritime Organization will remain the key vehicle for governance mechanisms. AIS expansion, as well as mandated Arctic shipping guidelines and establishing traffic patterns should be top priorities for the United States. Governance needs to be accompanied by a significant acquisition program to keep pace with the other Arctic nations. Ice- breakers, additional aircraft, and infrastructure can no longer be shoehorned into a Coast Guard budget, which has inadequate funding even for recapitaliza- tion of its Vietnam-era fleet.

The United States needs an Arctic economic development strategy that incorporates the departments of Defense, Homeland Security, Commerce, and Energy. Such strategy should include plans for shore-based infrastructure, communications, and surveillance technology, icebreakers, and response aircraft for the region. In an era of declining budgets, the simplest course of action would be to ignore the tremendous potential of investment in the Arctic. However, such willful turning away reduces our ability to reap tremendous economic benefits and could harm U.S. national security interests.

[*Page 16-17*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Current interest in arctic development gives special urgency to US need to ratify UNCLOS

"The activity related to Arctic claims suggests an urgency for U.S. accession to the Convention. This urgency is driven both by what the United States can do and what it can undo as a party to the Convention. While we currently can comment on proposals by other Convention nations[9], accession to the treaty would give the United States standing to substantially modify or block proposals that the U.S. found detrimental to its national interests. This could be done by preparing its own claim to the Continental Shelf Commission, or by working cooperatively with other Arctic nations to develop logical rules to govern exploitation of resources and other uses of the Arctic Sea. This latter strategy reflects one of the biggest benefits of U.S. accession to the Convention-namely that it would generate goodwill and a sense of cooperation over a shared mission to responsibly use the resources of the sea while protecting the oceanic environment for generations to come.

[*Page 5*]

Sagarin, Raphael , Larry Crowder et al. Balancing U.S. Interests in the UN Law of the Sea Convention. Nicholas Institute for Environmental Policy Solutions, Duke University: Durham, NC, October 2007 (8p). [**More** (4 quotes)]

U.S. has already committed to UNCLOS framework in Arctic by signing 2008 Illulissat Declaration but will remain outside of conversation until party to UNCLOS

"The legal regime applicable in the Arctic is the customary international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). While the United States has not ratified UNCLOS, it considers the convention's navigation and jurisdiction provisions to be binding international law. The convention advances and protects the national security, environmental, and economic interests of all nations, including the United States, codifying the navigational rights and freedoms that are critical to American military and commercial vessels. It also secures economic rights to offshore natural resources.[26] Article 76 of the convention allows nations to claim jurisdiction past their exclusive economic zones on the basis of undersea features that are considered extensions of the continental shelf, if a structure is geologically similar to a nation's continental landmass.[27] In May 2008 five of the Arctic nations adopted the Illulissat Declaration, which acknowledges that "the Law of the Sea is the relevant legal framework in the Arctic" and that there is "no need to develop a new comprehensive international legal regime to govern the Arctic," committing the signatories to an "orderly settlement of any possible overlapping claims."[28]

Currently there are overlapping, unresolved maritime boundary claims between the United States and Canada, Canada and Denmark, Denmark and Norway, and Norway and Russia. At this time, none of these disputed boundary claims pose a threat to global stability. While the United States and Canada disagree on the location of the maritime boundary in and northward of the Beaufort Sea, the United States considers Canada a close ally, and the dispute does not jeopardize this relationship.[29] Unfortunately, the United States is the only Arctic nation that has not joined UNCLOS, despite support from President Barack Obama and the Bush and Clinton administrations. Because the Illulissat Declaration recognizes the law of the sea as the framework for deciding issues of Arctic territoriality, the United States will likely find itself at a disadvantage when critical Arctic conversations occur.[30]

[*Page 40*]

Titley, Rear Admiral David W., U.S. Navy, and Courtney C. St. John. "***Arctic Security Considerations and the U.S. Navy's Roadmap for the Arctic*** ." **Naval War College Review**. Vol. 63, No. 2 (Spring 2010): 35-48. [**More** (3 quotes)]

U.S. excluded from discussions on future of Arctic because dispute

resolution is governed by UNCLOS framework

"Meanwhile, U.S. influence in the region is waning, which will only exacerbate America's ability to secure its interests in the region. Within the Arctic Council, the primary venue for promoting cooperation in the region, the United States remains the only member that has not ratified LOSC. The Arctic Council is a consensus-based forum which often debates and makes decisions regarding issues already governed by previous agreements and international law, such as the natural resource exploitation protections provided by LOSC. Considering agreements within existing frameworks such as LOSC can make it easier to level the playing field and hold discussions with countries – except the United States. Given its failure to date to ratify LOSC and subsequent lack of international legitimacy and protections provided under the International Seabed Authority for its natural resource claims, the United States remains excluded from important mechanisms for promoting economic cooperation and respect for rightful natural resource claims by all Arctic countries.

[*Page 7*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. running risk of losing out on Arctic territory by not being a signatory to UNCLOS

"While the United States debates whether or not the convention would undermine U.S. sovereignty, Russia, Canada, and the other Arctic nations are doing all they can to prove that these newly available territories belong to them. By waiting to ratify the convention, the United States risks losing potential territory to countries that are already operating under the treaty, specifically Canada. For example, the Beaufort Sea includes an area where the EEZs of the United States and Canada overlap. Predictably, the two countries have differing opinions on how the area, which covers more than 7,000 square nautical miles, should be demarcated. Canada argues that the treaty signed between Russia and the United Kingdom in 1825, defining the boundary as following the 141° west meridian "as far as the frozen ocean," should stand. The United States position is that since no maritime boundary was ever negotiated between Canada and the United States, the boundary should run along the median line between the two coastlines. This is the kind of territorial dispute the United States stands to lose by not ratifying the convention.

[*Page 38*]

Carlson, Jon D., Christopher Hubach, Joseph Long, Kellen Minteer, and Shane Young. "*Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims*." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 21-43. [**More** (5 quotes)]

UNCLOS ratification is key to securing claims to Arctic resources

through CLCS

“UNCLOS holds specific value for the Arctic security environment as it lays out a set of rules on how to divide disputed territory and resolve possible tensions. It also represents the only path for Arctic coastal states to submit scientific claims to extend their outer continental shelf, which provides important clarity for future economic development. While the five Arctic coastal states are limited by their exclusive economic zone of 200 nautical miles from their coasts, the convention allows them to extend their economic zone if they can prove that the Arctic seafloor’s underwater ridges are a geological extension of the country’s own continental shelf. Within 10 years of ratifying the UNCLOS, countries must submit evidence to the UN Commission on the Limits of the Continental Shelf, the governing body created to deliberate on these submissions, to make their case for an extended continental shelf.

[*Page 24*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

U.S. must adopt multilateral approach to succeed in the Arctic region, starting with ratification of UNCLOS

“Global climate change is bringing about epochal transformation in the Arctic region, most notably through the melting of the polar ice cap. The impact of these changes, and how the global community reacts, may very well be the most important and far-reaching body of issues humanity has yet faced in this new century. A number of nations bordering the Arctic have made broad strides toward exercising their perceived sovereign rights in the region, and all except the United States have acceded to the United Nations Convention on the Law of the Sea (UNCLOS), which provides an international legal basis for these rights and claims.[1] Similarly, while most Arctic nations have been planning, preparing, and program- ming resources for many years in anticipation of the Arctic thaw, the United States has been slow to act on any of the substantive steps necessary for the exercise of sovereign rights or the preservation of vital national interests in the region.[2]

The United States must move outside the construct of unilateral action in order to preserve its sovereign rights in the Arctic, capitalize on the opportunities available, and safeguard vital national interests in the region. In today’s budget-constrained environment and as a Nation at war with higher resource priorities in Iraq and Afghanistan than in the Arctic, it is unrealistic to believe that any significant allocation will be programmed for addressing this issue.[3] Since the United States is too far behind in actions necessary to preserve its critical interests as compared to the other Arctic countries, the Nation must take the lead to cultivate a new multilateral partnership paradigm in the region.

[*Page 117*]

Smith, Reginald R. "***The Arctic: A New Partnership Paradigm or the Next "Cold War"?*** ." **Joint Force Quarterly**. Vol. 62, No. 3 (July 2011): 117-124. [**More** (4 quotes)]

Consensus of military, political, and business authorities support U.S. ratification of UNCLOS to further interests in the Arctic

"In support of multilateral Arctic partnerships are a number of broad-based and disparate organizations and policies nonetheless unified in support of the issue, and additional support comes from consequential benefits inherent in UNCLOS accession. Overarching is National Security Presidential Directive (NSPD) 66, "Arctic Region Policy," released in 2009. Among the directive's policy statements is a robust admonishment for accession to UNCLOS:

> Joining [the UNCLOS treaty] will serve the national security interests . . . secure U.S. sovereign rights over extensive maritime areas . . . promote U.S. interests in the environmental health of the oceans . . . give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted . . . [and] achieve international recognition and legal certainty for our extended continental shelf.[19]

Furthermore, NSPD 66 persuasively promotes multinational partnership in the Arctic to address the myriad issues faced in the region.[20] Likewise, the Department of Defense, as articulated in its 2010 Quadrennial Defense Review, strongly advocates accession to UNCLOS in order "to support cooperative engagement."[21] Also among the tenacious supporters of accession are the U.S. Navy, whose leadership stresses that UNCLOS will protect patrol rights in the Arctic, and a number of environmental groups who want to advocate on behalf of Arctic fauna and flora.[22] In addition, the oil industry lobby representing Chevron, ExxonMobil, and ConocoPhillips asserts that oil and gas exploration cannot reasonably occur without the legal stability afforded in UNCLOS.[23] In a consequential benefit of accession, the extended U.S. continental shelf claims could add 100,000 square miles of undersea territory in the Gulf of Mexico and on the East Coast plus another 200,000 square miles in the Arctic.[24] Accession acts to strengthen and extend Arctic jurisdiction, open additional hydrocarbon and mineral resource opportunities, add to the stability of the international Arctic framework, and boost the legal apparatus for curtailing maritime trafficking and piracy.[25] The benefits appear to outweigh the costs as the United States is increasingly moving to a position of strategic disadvantage in shaping Arctic region policy outcomes by failing to ratify UNCLOS.[26]

[*Page 118-119*]

Smith, Reginald R. "***The Arctic: A New Partnership Paradigm or the Next "Cold War"?*** ." **Joint Force Quarterly**. Vol. 62, No. 3 (July 2011): 117-124. [**More** (4 quotes)]

U.S. at a disadvantage in Arctic Council discussions by not being a

member of UNCLOS

"The United States' continued failure to ratify the U.N. Convention on the Law of the Sea, or UNCLOS, despite broad, bipartisan consensus on its importance undermines our nation's credibility in international marine affairs and diminishes our influence in international forums such as the Arctic Council. Since it was negotiated under Ronald Reagan, every president has supported ratification, and failure to ratify is preventing the United States from defining territorial claims in the Arctic under international law. This leaves us at a disadvantage to every other Arctic Council member. The Obama administration, as part of its comprehensive planning for the Arctic Ocean, should elevate efforts to secure Senate ratification of this treaty after the midterm elections. This effort should include renewed coordination with the Senate Foreign Relations Committee chairman, as well as high-level outreach to all members of the Senate to convey the vital importance of UNCLOS to U.S. commercial, scientific, and security interests in the Arctic Ocean. The administration should call on former Presidents Bill Clinton and George W. Bush to jointly encourage ratification.

[*Page 16*]

Kelly, Cathleen , Michael Conathan, and Vikram Singh. **Helping the Arctic Council Find Its True North** . **Center for American Progress**: Washington, D.C., April 2014 (26p). [**More**]

U.S. must adopt cooperative multilateral approach by ratifying UNCLOS if it wants to regain leadership role in Arctic

"A cooperative approach among international partners is key to ensuring U.S. interests are met within the Arctic region. A multinational effort is essential to ensure both human safety and appropriate environmental stewardship. A unilateral U.S. approach is simply not feasible. However, as the world's sole superpower and as a contiguous Arctic nation, it is imperative that the U.S. assumes an Arctic leadership role within the international community.

Perhaps the most important step for the U.S. is to ratify UNCLOS in order to establish the legitimacy of U.S. leadership among the other stakeholders who have interests in the Arctic. This would partner the United States with the seven other Arctic nations (Russia, Canada, Denmark, Finland, Sweden, Norway, and Iceland), along with six indigenous organizations that are permanent members of the Arctic Council.[52] This multinational assembly meets semiannually and "provides the greatest potential for a comprehensive resolution of environmental and governance issues in the Arctic."[53] NSPD-66/HSPD-25 clearly acknowledges that the "Arctic Council has produced positive results for the United States by working within its limited mandate of environmental protection and sustainable development."[54] U.S. representation on the Arctic Council has slowly increased since its first meeting in 1996. In fact, in March 2010 Secretary of State Hillary Clinton met with her counterparts from Canada, Russia, Denmark, and Norway in Chelsea, Quebec, as part of the Arctic Ocean Foreign Ministers' Meeting. This meeting affirmed the importance of the Arctic Council, its membership, and the need for "new thinking on economic development and environmental protection."[55] However, the

Arctic Council is hindered by its “lack of regulatory authority and the mandate to enact or enforce cooperative security-driven initiatives.”[56] Although very useful for “scientific assessments” and “policy-relevant knowledge”, the Council does not address military concerns.[57]

[*Page 17-18*]

Bunker, Wayne M. **U.S. Arctic Policy: Climate Change, UNCLOS and Strategic Opportunity**. U.S. Army War College: Carlisle, PA, March 22, 2012 (24p). [**More** (4 quotes)]

CLCS has already received submissions from 40 countries without participation of a U.S. commissioner

“Other Benefits. We should also join the Convention now to steer its implementation. The Convention’s institutions are up and running, and we – the country with the most to gain or lose on law of the sea issues – are sitting on the sidelines. As I mentioned, the Commission on the Limits of the Continental Shelf has received submissions from over 40 countries without the participation of a U.S. commissioner. Recommendations made in that body could create precedents, positive and negative, on the future outer limit of the U.S. shelf. We need to be on the inside to protect and advance our interests. Moreover, in fora outside the Convention, the provisions of the Convention are also being actively applied. Only as a party can we exert the level of influence that reflects our status as the world’s foremost maritime power.

Clinton, Hillary. "***Statement from Hillary Clinton: The Law of the Sea Convention: The U.S. National Security and Strategic Imperatives for Ratification (Treaty Doc. 103-39)***." Testimony before the U.S. Senate Committee on Foreign Relations, May 23, 2012. [**More** (3 quotes)]

Two decades of widespread UNCLOS observance in Arctic have given treaty status of binding customary international law

“Additionally, the practice of States in a regional grouping, such as the Arctic Circle, can result in special customary law for all of the similarlysituated States, applicable only in that area.[n353] Further jeopardizing American interests is that the doctrine of the continental shelf in particular has been considered "instant customary law,"[n354] provided that the practice of States whose interests are affected is sufficiently extensive and uniform to indicate a legal obligation.[n355] If the other Arctic nations continue to assert sovereign rights, uniformly based on an extended continental shelf, America may easily be hamstrung by provisions that it does not acknowledge but nonetheless prove binding. By way of example, if an American mining corporation were to form a consortium under a bilateral treaty to harvest sea floor resources with a State that was already a member of UNCLOS, and sought to mine in an area already recognized by UNCLOS as an extension of another Arctic State's continental shelf, or even merely outside its own EEZ, it would contravene the Convention and

also subject both countries to international judicial proceedings.[n356]

It has been suggested that the universal right of navigation under UNCLOS [n357] might be able to provide an alternate legal basis for claiming Arctic economic rights.[n358] However, finessing this argument into a circumvention of the Convention's obligations and limits within the Arctic would be nothing more than unilateralism disguised as political legerdemain. The blithe dismissal of UNCLOS in favor of reliance on the Grotian conception of the freedom of the high seas in order to legitimize American rights over Arctic resources mistakenly ignores the global support and position of authority UNCLOS has achieved.

Rather, in all likelihood, America might be forced to accept the modus vivendi [n359] in the Arctic that has developed over two decades of widespread UNCLOS observance. If the Senate continues to blockade attempts to ratify the treaty, other contingencies should be considered, such as negotiating alternate regimes or implementing UNCLOS via executive order.[n360] Should several "uncooperative members of the Senate" force the United States to the sidelines, "the shortterm political costs of resubmitting UNCLOS [as an executive agreement would be justified] by America's need to be a full player in the remainder of this Arctic competition."

[*Page 244*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

U.S. has made a claim for the Arctic Seacap but as a non-party to UNCLOS, it has limited capacity to defend it

"The United States has also taken steps to tie its continental shelf to the Arctic Seacap in an effort to claim some of the re- sources beneath it.192 The most recent U.S. expedition may have found evidence to extend the continental shelf north of Alaska 100 miles from where it was originally thought to be.193 This could provide a challenge to Russia, Denmark and even Canada’s claims to the territory in the Arctic Seacap.

However, as a non-party to the Convention, the United States has limited recourse for its claim.194 As a party, the United States may (and likely would) submit evidence of its expansive continental shelf to the Commission on the Limits of the Continental Shelf and conclusively establish the outer limits of its territorial sea in the Arctic.195 Should another state try to infringe upon these limits, the United States would have evidence supported by international law to protect itself. The states most likely to pose a threat to the United States in the Arctic—Denmark, Canada and Russia—are all parties to the Convention and therefore must adhere to the findings of the Commission on the Limits of the Continental Shelf. Absent ratification of the Convention, the United States could have taken Russia’s approach. In the unlikely event that terra nullius is found to be an acceptable method for claiming territory on the seas, this action, nevertheless, would have been futile since Russia was the

first to assert a claim over the Arctic.

[*Page 389-390*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. non-party status to UNCLOS puts them at a disadvantage in the Arctic

“For all the changing conditions of the Arctic Ocean, one thing has not changed: the basic rules of international law relating to oceans. These laws apply to the Arctic in the same way that they apply to all the oceans. The international legal oceanic framework remains the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The United States has not yet become party to it, despite the fact that we recognize its basic provisions as reflecting customary international law and follow them as a matter of long-standing policy.

Our status as a non-party to the UNCLOS, however, puts the United States at a disadvantage in a number of fundamental respects, most of which lie beyond the scope of this discussion. But our efforts to address the changing Arctic region bring at least two of those disadvantages into sharp focus.

First, we are the only Arctic nation that is not party to the UNCLOS. As our neighbors debate new ways to collaborate on Arctic Ocean issues, they necessarily will rely on the UNCLOS as the touchstone for their efforts. The United States will continue to take part in these initiatives, but our non-party status deprives us of the full range of influence we would otherwise enjoy in these discussions.

Second, the four other nations that border the central Arctic Ocean—Canada, Denmark/Greenland, Norway, and Russia—are advancing their claims to the continental shelf in the Arctic beyond 200 nautical miles from their coastal baselines. The UNCLOS not only establishes the criteria for claiming such areas of continental shelf, it also sets up a process to secure legal certainty and international recognition of the outer limits of those shelves. The United States also believes that it will be able to claim a significant portion of the Arctic Ocean seafloor as part of our continental shelf. But as a non-party to the UNCLOS, we place ourselves at a serious disadvantage in obtaining that legal certainty and international recognition.

Ambassador David Balton and Rear Admiral Cari Thomas, U.S. Coast Guard. "***Ocean Governance in the High North*** ." **Proceedings Magazine**. (July 1, 2013) [**More**]

U.S. could send powerful signal of its willingness to cooperate in

Arctic by ratifying UNCLOS

"In terms of capabilities, the US is like most Arctic neighbours in not being adequately equipped to optimally operate year-round in an arctic maritime environment. After the events of September 11, 2001 funding for polar research was dramatically cut, and the US was left with only three Arctic-capable icebreakers.[61] The disparity between the growing importance of the Arctic and the lack of capability to adequately patrol it has been recognised by the US government.[62] The issue evidently has not reached a point yet where significant resources will be diverted to the Arctic at the expense of other priorities. Thus like most Arctic states at the moment, with the possible exception of Russia and to a lesser degree Canada, the US chooses to substitute rhetoric over substance.

From a security perspective, this may in fact be viewed in a positive light. While the US and other Arctic states recognise that access to the region may dramatically increase in coming years, the current reality is that Arctic sea ice will dramatically limit marine traffic and resource exploitation for the immediate future. The longer the sea ice serves as a deterrent for any possible 'scramble for the Arctic', the more time is available for stakeholders to use dialogue to diffuse stress points and find compromise positions on contentious issues such as boundary disputes. One such area of friction that the US could eliminate is its non-ratification of UNCLOS. Ratifying the Convention would send a signal to all Arctic and maritime stakeholders that the US is not simply a hegemonic state that abides by only its own rules, but a member of the global community that values and upholds international law.

[*Page 307-308*]

Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

U.S. stuck on the sidelines in the Arctic as a non-party to UNCLOS

"While the other Arctic powers are racing to carve up the region, the United States has remained largely on the sidelines. The U.S. Senate has not ratified the UN Convention on the Law of the Sea (UNCLOS), the leading international treaty on maritime rights, even though President George W. Bush, environmental nongovernmental organizations, the U.S. Navy and U.S. Coast Guard service chiefs, and leading voices in the private sector support the convention. As a result, the United States cannot formally assert any rights to the untold resources off Alaska's northern coast beyond its exclusive economic zone -- such zones extend for only 200 nautical miles from each Arctic state's shore -- nor can it join the UN commission that adjudicates such claims. Worse, Washington has forfeited its ability to assert sovereignty in the Arctic by allowing its icebreaker fleet to atrophy. The United States today funds a navy as large as the next 17 in the world combined, yet it has just one seaworthy oceangoing icebreaker -- a vessel that was built more than a decade ago and that is not optimally configured for Arctic missions. Russia, by comparison, has a fleet of 18 icebreakers. And even China operates one icebreaker, despite its lack of Arctic waters. Through its own neglect, the world's sole superpower -- a country that borders the Bering Strait and possesses over 1,000 miles

of Arctic coastline -- has been left out in the cold.

Borgerson, Scott G. "***Arctic Meltdown: The Economic and Security Implications of Global Warming*** ." **Foreign Affairs**. Vol. 87, No. 2 (March/April 2008). [**More** (10 quotes)]

U.S. has significant interests in untapped mineral wealth in Arctic

According to the U.S. Geological Survey, the Arctic region is the largest unexplored prospective area for petroleum remaining on earth with an estimated ninety billion barrels of undiscovered oil reserves, and 1,670 trillion cubic feet of natural gas. In addition, the unpredictability of the Persian Gulf region makes the Arctic region even more attractive for exploitation.

U.S. has significant economic interest in Arctic oil reserves

"The economic importance of the energy resources trapped under the Arctic seabed is difficult to overstate. In 2007, Alaska produced 722,000 barrels of oil per day.[96] This is only a fraction of the state's 1988 production peak of 2,017,000 barrels of oil per day.[97] Today, Alaskan oil production accounts for more than sixteen percent of all U.S. production; in 1988, it was more than a third. Natural gas is a significant energy resource in Alaska (433.5 billion cubic feet are marketed from Alaska per year) but contributes only 2.2% to the U.S. market.[98] U.S. Arctic oil exploitation pales, however, in comparison with that of the other Arctic nations.[99] Norway, for instance, has produced dramatically more oil from its Arctic sea beds than the United States has over similar periods. In 2007, Norway produced 2,564,884 barrels of oil per day compared to Alaska's mere 722,000 barrels per day; approximately 500,000 barrels per day more than Alaska's 1988 peak.[100] The other Arctic nations each produce significant quantities of oil as well.[101]

[*Page 319*]

Larkin, John E. D. "*UNCLOS and the Balance of Environmental and Economic Resources in the Arctic*." **Georgetown International Environmental Law Review**. Vol. 22. (2010): 307-336. [**More** (5 quotes)]

Warm arctic will increase availability of key resources including minerals and oil

"One future change in the Arctic region is greater accessibility to, and availability of, natural resources, including offshore oil and gas, minerals, and fisheries. The Arctic contains 10 percent of the world's known petroleum reserves and approximately 25 percent of its undiscovered reserves.[18] The U.S. exclusive economic zone has a potential thirty billion barrels of oil reserves and 221 billion cubic feet in natural gas reserves.[19] Minerals available for extraction in the Arctic include manganese, copper, cobalt, zinc, and gold. Coupled with a rise in global demand for natural oil and gas resources

and improved accessibility, the Arctic has become a new focus for oil companies looking for untapped resources. Already $2.6 billion has been spent on active oil and gas leases in the Chukchi Sea.[20] Yet the extraction of these minerals and petroleum reserves depends heavily upon development and deployment of resilient technology that can function in such harsh conditions, marked by lack of infrastructure and long distances to markets.

[*Page 38*]

Titley, Rear Admiral David W., U.S. Navy, and Courtney C. St. John. "***Arctic Security Considerations and the U.S. Navy's Roadmap for the Arctic*** ." **Naval War College Review**. Vol. 63, No. 2 (Spring 2010): 35-48. [**More** (3 quotes)]

U.S. access to Arctic mineral and oil wealth depends on accession to UNCLOS

"Determination of who owns the Arctic Ocean and any resources that might be found beneath those waters will have significant economic implications. The U.S. Department of Energy predicts a decline in petroleum reserves and, despite oil prices topping $146 in June 2008, the demand for oil is growing.[6] In addition to the vast mineral resources, the unpredictability of the Persian Gulf region makes the Arctic region even more attractive for exploitation. Russia and Norway have already submitted their claims to the Commission on the Limits of the Continental Shelf ("the Commission"), while Canada and Denmark are collecting evidence to prepare their submissions in the near future.[7] All of these nations can gain considerable oil and gas resources as a result of the Convention.

However, one Arctic state has so far failed to join the race. Unlike the other Arctic nations, the United States has not ratified the Convention. Although the United States has complied voluntarily with the Convention, the failure to ratify the Convention could foreclose its ability to tap into potential energy resources. This failure could prevent significant contributions to American energy independence, and increase security threats. Thus, the best way to guarantee access to the Arctic's resources and to protect other economic and non-economic interests is for the United States to become a party to the Convention.

[*Page 149-150*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Trillions of dollars of natural resources waiting to be developed in the Arctic

According to a 2008 assessment by the U.S. Geological Survey (USGS), "the total mean

undiscovered conventional oil and gas resources in the Arctic are estimated to be approximately 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids."[17] The overwhelming majority of these resources—84 percent—is expected to occur in offshore areas. Over 70 percent "of the mean undiscovered oil resources is estimated to occur in five provinces: Arctic Alaska, Amerasia Basin, East Greenland Rift Basins, East Barents Basins, and West Green- land-East Canada."[18] Similarly, over 70 percent "of the undiscovered natural gas is estimated to occur in three provinces: the West Siberian Basin, the East Barents Basins, and Arctic Alaska."[19] Arctic Alaska, the Amerasia Ba- sin, and the North Chukchi-Wrangel Foreland Basin provinces, portions of which could be claimed by the United States, account for over 40 million barrels of oil, 284 billion cubic feet of natural gas, 6.5 million barrels of natural gas liquids and 94 million barrels of oil and oil-equivalent natural gas.[20] The value of these resources is estimated to be in the trillions of dollars.[21]

[*Page 763-764*]

Pedrozo, Raul. "***Arctic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea*** ." **International Law Studies**. Vol. 89. (2013): 757-775. [**More** (10 quotes)]

Arctic resources are vital for U.S economic and national security

"Traditionally, national security is conceptualized as hard and soft power or military might and diplomatic influence. Economic strength, however, is the foundation of power. Adm. Mike Mullen, former chairman of the Joint Chiefs of Staff, proclaimed that debt poses the biggest threat to U.S. national security.[1] Although his warning hardly raised an eyebrow, the economic engines that are China and Germany—and their corresponding global strength—are evidence of the interdependence of economic and national security.

For the United States, greater economic security can be supplied by the untapped resources of the Arctic, where this nation has been dealt an exceptional, yet underutilized, hand. The U.S. share of the Alaskan Arctic holds an estimated 30 billion barrels of oil and more than 220 trillion cubic feet of natural gas, as well as rare earth minerals and massive renewable wind, tidal, and geothermal sources of energy. Unprecedented climate changes have increased access to the region and transformed it into an emerging commercial sector. In total, the economic potential amounts to trillions of dollars. In this period of financial stagnation, developing these energy sources would be a tremendous boost to the United States.

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Arctic region contains largest unexplored deposits of oil left

"The race for resources is on, although the United States remains at the starting gate. Joining Arctic neighbors in the exploration for and extraction of oil, gas, and rare earth minerals in the U.S. portion could provide an economic boon to the flailing economy of the United States. In 2008, the U.S. Geological Survey (USGS) stated that ''The extensive Arctic continental shelves may constitute the geographically largest unexplored prospective area for petroleum remaining on earth.''[11] In the report, the USGS estimates that 90 billion barrels of oil, nearly 1,700 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids may remain to be discovered throughout the region. Nearly all (84 percent) of the oil and gas is expected to be found offshore. The USGS estimate for total undiscovered oil and gas in the Arctic exceeds the total discovered amount of Arctic oil and oil-equivalent natural gas.[12]

[*Page 7*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

U.S. economic security is at risk by not engaging in the Arctic -- ratification of UNCLOS is a critical first step

"The United States stands atop a precipice, faced with a momentous opportunity to take advantage of trillions of dollars in natural resources, while sim- ultaneously restoring the nation's economic security through governance and job creation. Governance is the first step. Ratifying the Law of the Sea Conven- tion must be a priority for the administration or the United States will lose economically and could be challenged as the global maritime leader. The Inter- national Maritime Organization will remain the key vehicle for governance mechanisms. AIS expansion, as well as mandated Arctic shipping guidelines and establishing traffic patterns should be top priorities for the United States. Governance needs to be accompanied by a significant acquisition program to keep pace with the other Arctic nations. Ice- breakers, additional aircraft, and infrastructure can no longer be shoehorned into a Coast Guard budget, which has inadequate funding even for recapitaliza- tion of its Vietnam-era fleet.

The United States needs an Arctic economic development strategy that incorporates the departments of Defense, Homeland Security, Commerce, and Energy. Such strategy should include plans for shore-based infrastructure, communications, and surveillance technology, icebreakers, and response aircraft for the region. In an era of declining budgets, the simplest course of action would be to ignore the tremendous potential of investment in the Arctic. However, such willful turning away reduces our ability to reap tremendous economic benefits and could harm U.S. national security interests.

[*Page 16-17*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American**

Foreign Policy Interests. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Arctic contains huge deposits of oil and natural gas

"According to the U.S. Geological Survey, the Arctic region is the largest unexplored prospective area for petroleum remaining on earth.[21] The agency estimated that the Arctic may hold as much as ninety billion barrels of undiscovered oil reserves, and 1,670 trillion cubic feet of natural gas.[22] This would amount to 13% of the world's total undiscovered oil and about 30% of the undiscovered natural gas. With an average consumption rate of eighty six million barrels per day, "the potential oil in the Arctic could meet global demand for almost three years."[23] The Arctic's potential natural gas resources are three times bigger, which is equal to Russia's gas reserves, which are the world's largest.[24]

[*Page 152*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

Arctic oil deposits may make up an estimated 22% of undiscovered resources

"It also includes massive oil and gas deposits—the main reason the region is so economically promising. Located primarily in western Siberia and Alaska's Prudhoe Bay, the Arctic's oil and gas fields account for 10.5 percent of global oil production and 25.5 percent of global gas production. And those numbers could soon jump. Initial estimates suggest that the Arctic may be home to an estimated 22 percent of the world's undiscovered conventional oil and gas deposits, according to the U.S. Geological Survey. These riches have become newly accessible and attractive, thanks to retreating sea ice, a lengthening summer drilling season, and new exploration technologies.

Private companies are already moving in. Despite high extraction costs and regulatory hurdles, Shell has invested $5 billion to look for oil in Alaska's Chukchi Sea, and the Scottish company Cairn Energy has invested $1 billion do the same off the coast of Greenland. Gazprom and Rosneft are planning to invest many billions of dollars more to develop the Russian Arctic, where the state-owned companies are partnering with ConocoPhillips, ExxonMobil, Eni, and Statoil to tap remote reserves in Siberia. The fracking boom may eventually exert down- ward pressure on oil prices, but it hasn't changed the fact that the Arctic contains tens of billions of barrels of conventional oil that will one day contribute to a greater global supply. Moreover, that boom has also reached the Arctic. Oil fracking exploration has already begun in northern Alaska, and this past spring, Shell and Gazprom signed a major deal to develop shale oil in the Russian Arctic.

[*Page 80-81*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

Approximately 1/3 of Arctic resources lie within region U.S. would gain access to if it ratifies UNCLOS

"The U.S. Geological Survey released a report in 2008 that indicated approximately 13 percent of the world's untapped oil reserves reside in the Arctic region. One-third of these reserves lie inside the U.S. Exclusive Economic Zone (EEZ) off the northern slope of Alaska. The report also estimated that approximately 30 percent of the world's remaining natural gas reserves reside within the Arctic region.[19] In recent years, icecap melting, along with advances in technology, has rendered retrieval of natural resources in the Arctic both feasible and acceptable in terms of environmental risk.

[*Page 7*]

Bunker, Wayne M. **U.S. Arctic Policy: Climate Change, UNCLOS and Strategic Opportunity** . U.S. Army War College: Carlisle, PA, March 22, 2012 (24p). [**More** (4 quotes)]

Warming of the Arctic is allowing access to its mineral resource wealth, including precious gems and rare earth elements

"Then there are the minerals. Now, longer summers are providing additional time to prospect mineral deposits, and retreating sea ice is opening deep-water ports for their export. The Arctic is already home to the world's most productive zinc mine, Red Dog, in northern Alaska, and its most productive nickel mine, in Norilsk, in northern Russia. Thanks mostly to Russia, the Arctic produces 40 percent of the world's palladium, 20 percent of its diamonds, 15 percent of its platinum, 11 percent of its cobalt, ten percent of its nickel, nine percent of its tungsten, and eight percent of its zinc. Alaska has more than 150 prospective deposits of rare-earth elements, and if the state were its own country, it would rank in the top ten in global reserves for many of these minerals. And all these assets are just the beginning. The Arctic has only begun to be surveyed. Once the digging starts, there is every reason to expect that, as often happens, even greater quantities of riches will be uncovered.

[*Page 81*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

U.S. stands to make hundreds of billions of dollars and create 55,000 new jobs a year from developing Arctic oil and gas resources

"The potential implications of this extended continental shelf regime are profound. With one of the largest coastlines in the world, the United States is expected to have over 291,000 square miles of extended continental shelf.[89] The U.S. continental margin off the coast of Alaska alone may extend to a minimum of 600 miles from the Alaskan baseline.[90] Alaska's extended continental shelf lies over the Arctic Alaska province, one of the many oil- and gas-rich basins in the Arctic.[91] It is estimated that there may be almost 73 billion barrels of oil and oil-equivalent natural gas located in the Arctic Alaska province, the second highest estimated production capability of all Arctic provinces.[92] The continental shelf within the 200-mile EEZ under the Beaufort and Chukchi Seas alone may have over 23 billion barrels of oil and 104 trillion cubic feet of natural gas.[93] Not only would development of these resources promote energy independence, a U.S. national security objective,[94] it would also create almost 55,000 jobs per year nationwide and generate over $193 billion in federal, state, and local revenue over a fifty-year period.[95] Due to delays in Arctic oil and gas exploration in the Chukchi and Beaufort Seas, both within the U.S. 200-mile EEZ, the earliest estimated date of extraction is sometime after 2019.[96]

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Houck, James W. The Opportunity Costs of Ignoring the Law of Sea Convention in the Arctic . Hoover Institution: Stanford, CA, February 19, 2014 (40p). [**More** (16 quotes)]

Arctic warming is unlocking potentially greatest untapped reserve of oil and gas resources

"Shrinking ice caps, melting permafrost, and technological advances enable greater access to the region's abundant oil and gas reserves, which include as much as one-fifth of the undiscovered petroleum on the planet. With longer ice-free periods now available to explore for hydrocarbons, a new scramble for oil and gas could occur especially if oil prices recover to levels above $100 per barrel. In July 2008, the U.S. Geological Survey (USGS) estimated that the Arctic comprises 30 percent of the world's remaining natural gas resources, or 44 billion barrels, and 13 percent of untapped oil supplies, or 90 billion barrels. Nearly all (84 percent) of the oil and gas is expected to occur offshore, and most of the projected reserves are located in waters less than 500 meters deep and will likely fall within the uncontested jurisdiction of one or another Arctic costal state. "The extensive Arctic continental shelves may constitute the geographically largest unexplored prospec- tive area for petroleum remaining on Earth."7 The Arctic already accounts for one-tenth of global conventional petroleum reserves, and the projections of the latest USGS study did not even ad- dress the potential for developing energy sources such as oil shale, gas hydrates, and coal-bed methane, all of which could be present. But with it comes the risk of increased pollution, pos- sible spills from oil and gas, and the threat of contaminating water sources during the extraction process.

[*Page 2*]

Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

Arctic seabed has potential to be significant source of valuable minerals

"Oil and natural gas are not the only resources likely to be found in the Arctic valuable minerals may also exist on the seabed. Scientists have long known about unconventional mineral ore deposits known as manganese nodules. These nodules are spherical accretions of manganese, cobalt, copper and nickel which precipitate out of sea water at depth. n48 They form when warm solutions of dissolved metals from the earth's crust leach into cold ocean waters, and they are found on roughly a quarter of the ocean floor.[n49] Recovering the nodules can be technically difficult. The nodules are usually found under at least 2 miles of water and dredging them stirs large quantities of sediment which seriously disrupts marine habitat.[n50] Thus, excitement surrounding the minerals has calmed significantly since the 1970's.[n51] Not only must the technology become cheaper and more widely available, but industrial commodity prices must also remain high to make manganese nodules profitable.[n52]

[*Page 532-533*]

Mendez, Tessa. "***Thin Ice, Shifting Geopolitics: The Legal Implications Of Arctic Ice Melt*** ." **Denver Journal of International Law and Policy**. Vol. 38. (Summer 2010): 527-547. [**More** (6 quotes)]

Vast amounts of mineral and energy resources available in U.S. and Russian Arctic territories

"The U.S. Geological Survey estimates that the Arctic might hold as much as 90 billion barrels (13 percent) of the world's undiscovered oil reserves and 47.3 trillion cubic meters (tcm) (30 percent) of the world's undiscovered natural gas. At current consumption rates and assuming a 50 percent utilization rate of reserves, this is enough oil to meet global demand for 1.4 years and U.S. demand for six years. Arctic natural gas reserves may equal Russia's proven reserves, the world's largest.[1] (See Table 1.)

The Russian Ministry of Natural Resources estimates that the underwater Arctic region claimed by Russia could hold as much as 586 billion barrels of unproven oil reserves.[2] The ministry estimates that proven oil deposits "in the Russian area of water proper" in the Barents, Pechora, Kara, East

Siberian, Chukchi, and Laptev Seas could reach 418 million tons (3 billion barrels) and proven gas reserves could reach 7.7 tcm. Unexplored reserves could total 9.24 billion tons (67.7 billion barrels) of oil and 88.3 tcm of natural gas.[3] Overall, Russia esti- mates that these areas have up to 10 trillion tons of hydrocarbon deposits, the equivalent of 73 trillion barrels of oil.[4]

In addition to oil and gas, the Arctic seabed may contain significant deposits of valuable metals and precious stones, such as gold, silver, copper, iron, lead, manganese, nickel, platinum, tin, zinc, and diamonds. The rise of China, India, and other developing countries has increased global demand for these commodities.[5]

[*Page 3-4*]

Cohen, Ariel , Ph.D., Lajos F. Szaszdi, Ph.D., and Jim Dolbow. **The New Cold War: Reviving the U.S. Presence in the Arctic** . **Heritage Foundation**: Washington, D.C., October 30, 2008 (13p). [**More** (3 quotes)]

Other nations are pursuing Arctic claims to the detriment of the U.S.

Russia, Denmark, Norway, and Canada are staking their claims to Arctic resources but the United States, which has conducted research on how far the continental shelf extends from Alaska toward the North Pole, cannot submit any of its evidence because it is not a party to the UN Convention on the Law of the Sea (UNCLOS).

Russia asserting its rights in Arctic to gain access to resources

"The resource race of the 21st century requires that nations seek resources from every corner of the globe to meet growing demand.[169] The seas—long considered valuable sources of minerals, food, and now, energy—are no exception.[170]

Not surprisingly, nations are racing to stake a claim to these resources.[171] Russia made a bold move in August of 2007 by planting a flag on the Arctic Seacap at the North Pole in an attempt to reinforce claims it has been making since 2001 that it owns the resources on the floor of the Arctic Ocean.[172] The Arctic Seacap is an especially sought after area since it "may hold billions of gallons of oil and natural gas—up to 25 percent of the world's undiscovered reserves"[173] and is rapidly melting, making it navigable for the first time.[174] Russia's actions met immediate resistance from members of the international community, and have sparked debate over the resources the sea holds and who their lawful owner is.[175] In fact, one journalist commented that "[t]he polar dive was part publicity stunt and part symbolic move to enhance [Russia's] disputed claim to nearly half the Arctic seabed."[176]

[*Page 387*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty*** ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

Several countries including China and Japan are lobbying for permanent observer status at the Arctic Council

"Chinese activity in the Arctic to some extent mirrors that of other non-Arctic countries, as the region warms.

The European Union, Japan and South Korea have also applied in the last three years for permanent

observer status at the Arctic Council, which would allow them to present their perspective, but not vote.

This once-obscure body, previously focused on issues like monitoring Arctic animal populations, now has more substantive tasks, like defining future port fees and negotiating agreements on oil spill remediation. “We’ve changed from a forum to a decision-making body,” said Gustaf Lind, Arctic ambassador from Sweden and the council’s current chairman.

Elisabeth Rosenthal. "***Race Is On as Ice Melt Reveals Arctic Treasures*** ." **The New York Times**. (September 19, 2012) [**More**]

China using local companies as way of gaining access to Arctic resources

“Even so, Arctic nations and NATO are building up military capabilities in the region, as a precaution. That has left China with little choice but to garner influence through a strategy that has worked well in Africa and Latin America: investing and joining with local companies and financing good works to earn good will. Its scientists have become pillars of multinational Arctic research, and their icebreaker has been used in joint expeditions.

And Chinese companies, some with close government ties, are investing heavily across the Arctic. In Canada, Chinese firms have acquired interests in two oil companies that could afford them access to Arctic drilling. During a June visit to Iceland, Premier Wen Jiabao of China signed a number of economic agreements, covering areas like geothermal energy and free trade.

In Greenland, large Chinese companies are financing the development of mines that are being developed around discoveries of gems or minerals by small prospecting companies, said Soren Meisling, head of the China desk at the Bech Bruun law firm in Copenhagen, which represents many of them. A huge iron ore mine under development near Nuuk, for example, is owned by a British company but financed in part by a Chinese steel maker.

Chinese mining companies have proved adept at working in challenging locales and have even proposed building runways for jumbo jets on the ice in Greenland’s far north to fly out minerals until the ice melts enough for shipping.

“There is already a sense of competition in the Arctic, and they think they can have first advantage,” said Jingjing Su, a lawyer in Bech Bruun’s China practice.

Elisabeth Rosenthal. "***Race Is On as Ice Melt Reveals Arctic Treasures*** ." **The New York Times**. (September 19, 2012) [**More**]

Ratification of UNCLOS is necessary to exploit Arctic oil and gas

The Convention also gives the United States an opportunity to expand its sovereignty rights over resources on and under the ocean floor beyond 200 nautical miles to the end of its continental shelf, up to 350 nautical miles.[140] This mechanism is especially valuable to the United States as it would maximize legal certainty regarding the United States' rights to energy resources in large offshore areas, including the areas of the Arctic Ocean. However, the United States must ratify the Convention for its claims to be internationally recognized.[141] Not surprisingly, the American oil companies favor ratification, as it will allow them to explore oceans beyond 200 miles off the coast, where evolving technologies now make oil and natural gas recoverable.[142] If the United States ratifies the Convention it could expand its areas for mineral exploration and production by more than 291,383 square miles.[143] The United States' claim under article 76 would add an area in the Arctic (Chukchi Cap) roughly equal to the area of West Virginia.[144] With a successful claim the United States would have the sole right to the exploitation of all the resources on and under the Arctic Ocean bottom. These potential energy resources could make significant contributions to United States energy independence. Because the Convention is the only means of assuring access to the mineral resources beneath the Arctic Ocean, American companies "wishing to engage in deep seabed mining operations will have no choice but to proceed under the flag of a country that has adhered to the treaty."[145]

[*Page 169-170*]

Kolcz-Ryan, Marta. "***An Arctic Race: How the United States' Failure to Ratify the Law of the Sea Convention could Adversely Affect its Interests in the Arctic*** ." **University of Dayton Law Review**. Vol. 35. (2009-2010): 149-173. [**More** (10 quotes)]

China expanding ties with Iceland to gain access to Arctic resources

"No region so rich in resources, both real and man-made, can avoid attracting the attention of China for long. Indeed, right on cue, Beijing has begun a concerted effort to make inroads in the Arctic—especially in Iceland and its semiautonomous neighbor, Greenland—with far- reaching geopolitical implications. In May, the Arctic Council granted observer status to China, along with India, Italy, Japan, Singapore, and South Korea.

China sees Iceland as a strategic gateway to the region, which is why Premier Wen Jiabao made an official visit there last year (before heading to Copenhagen to discuss Greenland). China's state-owned shipping company is eyeing a long-term lease in Reykjavik, and the Chinese billionaire Huang Nubo has been trying for years to develop a 100-square-mile plot of land on the north of the island. In April, Iceland signed a free-trade deal with China, making it the first European country to do so. Whereas the United States closed its Cold War–era military base in Iceland in 2006, China is expanding its presence there, con- structing the largest embassy by far in the country, sending in a constant stream of businesspeople, and dispatching its official icebreaker, the Xue Long, or "Snow Dragon," to dock in Reykjavik last August.

[*Page 84*]

Borgerson, Scott G. "*The Coming Arctic Boom: As the Ice Melts, the Region Heats Up* ." Foreign Affairs. Vol. 92, No. 4 (July/August 2013): 76-89. [More (7 quotes)]

Other Arctic nations are taking the lead in developing rich Arctic resources in oil, minerals, and rare earth elements

"Russia is in the lead for Arctic oil exploration in its region, with its neighbors not far behind. Last year, Russia announced plans for two oil giants to begin drilling as early as 2015.[15] The Russian firm Gazprom is developing the Shtokman field in the Barents Sea, home to one of the world's largest natural gas deposits. Russia has active oil and gas fields off western Siberia and is shipping oil from an offshore terminal in the Pechora Sea to Murmansk.[16] Greenland is embarking on offshore drilling near Disko Island off its west coast.[17] Norway has developed the Snoh- vit gas field in the Barents Sea near the Hammerfest and is shipping its output of liquefied natural gas to Europe and North America.[18] In 2008, Canada received C$1.2 billion ($1.8 billion) from British Petroleum for rights to explore three parcels in Canada's Beaufort Sea, north of the Arctic Circle.19 The world is one step closer to the Arctic economy. Rare earth minerals are also embedded in the Arctic. Red Dog Mine, the largest zinc mine in the world, is located in northwest Alaska and is quite profitable despite operating only 99 days a year.[20] Across the Arctic in Siberia, is the Norilsk Nickel mining com- plex, which leads the world in nickel and palladium production, and is not far behind with copper.[21] Rich iron ore deposits run through Canada in the Baffin Basin.[22]

[*Page 7*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." American Foreign Policy Interests. Vol. 34. (2012): 5-19. [More (7 quotes)]

Multiple states have competing claims for jurisdiction over the North Pole

"As Russia, Denmark and Canada vie to stake their claims, a complicating factor is that a fourth country, the United States, has conducted research on how far the continental shelf extends from Alaska toward the North Pole and could potentially stake its own claim. However, the U.S. cannot submit any of its evidence because it is not a party to the UN Convention on the Law of the Sea (UNCLOS).

Norway, a fifth country that could conceivably have a territorial claim to the North Pole, has said that it will not pursue any claim under UNCLOS.

Russian officials are making repeated statements about the government's intent to claim jurisdiction over the North Pole through a coming submission of evidence to the Commission on the Limits of the Continental Shelf under UNCLOS. The submission will be a continuation of one made to the

commission in 2001, which the panel determined insufficient. Russia was directed to resubmit its evidence “within a reasonable time.”

Canada and Denmark likely won't be far behind, claiming in recent submissions to the commission that they each will soon submit evidence that their continental shelves extend to the North Pole.

Canada made a partial submission to the commission on Dec. 9, 2013, on delineating its outer continental shelf in the Atlantic Ocean. It did not include data about the North Pole, but specifically reserved Canada's right to make a submission of such evidence in the future.

Jenny Johnson. "***Who Owns the North Pole? Debate Heats Up as Climate Change Transforms Arctic*** ." **Bloomberg News**. (April 4, 2014) [**More**]

Many countries are trying to expand their influence within Arctic Council to have a say over arctic resources

“Highlighting the Arctic’s growing global importance, a number of countries with no geo- graphical links to the Arctic region but with important commercial and economic interests, such as China, South Korea, and the European Union, want to have a voice in future Arctic delibera- tions. France, Germany, Poland, Spain, the Netherlands, and the United Kingdom have been granted “permanent observer” status on the Arctic Council, and China is considered an “ad hoc observer.” Only Arctic Council member states have voting rights, and therefore “ad hoc observer” status does not differ from “permanent observer” with regard to the influence on the decision- making process in ministerial meetings. However, “ad hoc observer” status requires that nation to apply to be admitted to each Arctic Council meeting. The European Union’s application to become a “permanent observer” was blocked in 2009 by Arctic Council member Canada in response to the European Union’s ban on the importation of seal products. This example illustrates the chal- lenges of relying on the current structure of the Arctic Council for balanced and objective rulings, which often fall victim to paralyzing squabbles and the partial leveraging of national interests. On the other hand, the Arctic Five excludes nations and indigenous peoples with legitimate interests in the region, compromising its international credibility as a comprehensive governing arrange- ment. As rifts among international governance institutions continue to emerge, to the detriment of regional policy cohesiveness, the U.S. government must clarify how it wishes to primarily proceed with its multilateral Arctic engagement, either principally through the Arctic 5 ad hoc process or through the more institutionalized Arctic Council’s effort.

[*Page 14*]

Conley, Heather A. and Jamie Kraut. **U.S. Strategic Interests in the Arctic: An Assessment of Current Challenges and New Opportunities for Cooperation** . **Center for Strategic and International Studies**: Washington, D.C., April 27, 2010 (28p). [**More** (6 quotes)]

China views US non signatory status to UNCLOS as a liability it can exploit to gain access to Arctic resources

"The 2009 article that started the series on Arctic issues in the Journal of the Ocean Uni- versity of China, "Research on the Issue of Arctic Environmental Law from the Point of View of International Law," by Liu Huirong and Yang Fan of Ocean University's School of Law and Political Science, is from start to finish an examination of environmental and legal issues pertaining to the Arctic.26 It contains no substantial discussion of specifically Chinese interests in the Arctic and does not regard or treat Arctic environmental issues as representing a legal or diplomatic back door through which China could enter the Arctic and then throw its weight around geopolitically.

Liu and Yang bemoan the present lack of a comprehensive international Arctic treaty, and consider extensively the reasons for the "fragmentation of international law" as it pertains to the Arctic environment. They also discuss at some length the contradictions among various treaties and instruments of environmental law, as well as between na- tional and international law. They then give suggestions for resolving these conflicts.27 In their conclusion they express optimism about UNCLOS as the best means for balancing international interests, characterizing the U.S. refusal to accede to the convention as an American liability:

> Looking far and wide at the legal documents which can resolve disputes related to the Arctic and how each state implements them, [it is our opinion that] UNCLOS is the most effective path for balancing the rights and interests among each of the signatory Arctic states. In the present disputes, with the exception of the United States, all other countries have already ratified UNCLOS. As a nonsignatory state to UNCLOS, in the midst of the disputes over resources which are growing fiercer by the day, the United States is meet- ing up with risks and hazards [regarding access to] the rich resources of several thousand square kilometers of continental shelf. The position of the U.S. as a nonsignatory state in reality impedes its protection of its maritime interests. To protect their rights and interests in the Arctic region, every state has started paying serious attention to UNCLOS and hopes to find in it the legal basis for supporting its positions, this in order to win advantageous positions in international court decisions and obtain the recognition of international society.

[*Page 9-10*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

US policy makers should not underestimate Chinas potential interests or influence in the Arctic region

The United States should neither underestimate China's burgeoning interests in the Arctic region nor

allow itself to be outdone by China. The Chinese have become acute observers of the region.

“According Dr. Robert Huebert, an internationally renowned Canadian expert on the Arctic at the University of Calgary, China has shown itself to be a quick study in Arctic affairs and has been doing a lot of very good homework on the region.108 The government of the United States should pay close attention to China’s engagement in Arctic affairs and consider its possible security implications, especially since the U.S. Navy in late 2009 observed that increasing economic and scientific activi- ties in the Arctic are “potential sources of competition and conflict for access and natural resources.”

[*Page 35*]

Curtis, David Wright. **The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China** . China Maritime Studies Institute, U.S. Naval War College: Newport, RI, August 2011 (45p). [**More** (7 quotes)]

UNCLOS ratification is the only way U.S. can preserve sovereignty in Arctic

“Opponents to ratification argue that ratifying the treaty undermines U.S. sovereignty.[64] In essence, in the event of a dispute, the ISA would have the ability to rule against the interests of the United States. Not only is this position outdated, it is incorrect. It assumes that the United States has the naval power to assure its interests at sea. However, U.S. naval power in the Arctic is limited, at best. Moreover, the continental shelf extensions in the Arctic are a perfect example of how ratifying the treaty would actually enhance U.S. sovereignty, rather than limit it. Additionally, ratifying a multilateral treaty would signal to the world that the United States will operate on the same set of rules agreed to by everyone. At a minimum, ratification would buy some badly needed international goodwill.

[*Page 11-12*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global Rush North** . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [**More** (5 quotes)]

U.S. failure to ratify UNCLOS complicates U.S. naval operations in the Arctic

By remaining outside the Convention, the United States makes it more difficult for U.S. naval forces to have maximum operating flexibility in the Arctic and complicates negotiations with maritime partners for coordinated search and rescue operations in the region. The ability of U.S. naval forces to carry out their missions would be assisted if the United States were to ratify UNCLOS.

US failure to ratify UNCLOS complicates ability of military to operate in the Arctic

"FINDING: The committee has studied the implications of the failure of the United States to ratify the 1982 United Nations Convention on the Law of the Sea (UNCLOS) from the standpoint of potential impacts on national security in the context of a changing climate. As climate change affords increased access to the Arctic, it is envisioned that there will be new opportunities for natural resource exploration and recovery, as well as increased ship traffic of all kinds, and with that a need for broadened naval partnership and cooperation, and a framework for settling potential disputes and conflicts. By remaining outside the Convention, the United States makes it more difficult for U.S. naval forces to have maximum operating flexibility in the Arctic and complicates negotiations with maritime partners for coordinated search and rescue operations in the region. (Chapter 1)

RECOMMENDATION: The ability of U.S. naval forces to carry out their missions would be assisted if the United States were to ratify UNCLOS. Therefore, the committee recommends that the Chief of Naval Operations, the Commandant of the Marine Corps, and the Commandant of the Coast Guard continue to put forward the naval forces' view of the potential value and operational impact of UNCLOS ratification on U.S. naval operations, especially in the Arctic region. (Chapter 1)

[*Page 4*]

Committee on National Security Implications of Climate Change for U.S. Naval Forces. **National Security Implications of Climate Change for U.S. Naval Forces** . National Research Council: Washington, D.C., 2011 (226p). [**More** (5 quotes)]

U.S. ratification of UNCLOS key to securing freedom of navigation rights in Arctic

The foundational element of any U.S. security strategy for the Arctic, including NSPD-66, is to ensure freedom of navigation. As a nation heavily dependent on shipping and maritime access, the United

States has a vital national interest in supporting the most stringent enforcement of open sea lanes of communication. The most effective tool for governing and enforcing the right of free passage in international straits is the UNCLOS treaty.

The fact that the United States has not ratified the treaty is of key relevance to its efforts to ensure freedom of navigation in the Arctic and to take full advantage of the region's economic benefits. A product of nine years of international collaboration and active U.S. participation, UNCLOS entered into force in 1994 and provides the most comprehensive framework available for governing the world's oceans, including the Arctic. The treaty established internationally rec- ognized measures to claim sea areas and rights to territorial waters, exclusive economic zones, and extensions of national underwater continental shelves. Currently 161 countries and the European Union have joined the convention.[32] While the United States has not ratified the treaty, it does view the treaty as international customary law and abides by nearly all its articles. It is unclear when the U.S. Senate will ratify the treaty, although both the Bush and the Obama administrations have sought ratification.

[*Page 23-24*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

UNCLOS is best regime for Arctic Governance

UNCLOS represents the consensus of decades of debate on how best to govern shared ocean resources and to handle disputes over border conflicts. The Arctic nations have settled on UNCLOS, adopting it in their laws and subsequent agreements, and it forms the basis for governance of the Arctic region.

Antarctica treaty is poor alternative to UNCLOS for resolving Arctic disputes because it was based on environmental protection, not resource exploitation

"In particular, the rush to reclaim the Arctic is "reminiscent of early efforts to conquer Antarctica." [n293] The Antarctic Treaty System is a unique international legal regime and has developed international cooperation for almost fifty years. [n294] When the Antarctic Treaty was negotiated in 1959, it designated the continent as a completely demilitarized zone of peace, halting all claims of sovereignty in order to focus on exploration and scientific research. [n295] Drilling was also prohibited without the approval of threefourths of the nations with voting power.

However, the South Pole is an inexact parallel. Antarctica, in contrast to the Arctic, is an expansive landmass, and over 90% of the Antarctic is entirely inaccessible. Measuring 14 million square kilometers, the continent is larger than the U.S. and Mexico combined, and dwarfs the Arctic. [n296] While there is extensive marine biodiversity, the mineral and hydrocarbon resources of the Antarctic do not exist in the same commercially exploitable quantities as they do in the North Pole. [n297] Several effete attempts have been made to stake a claim of sovereignty in the pursuit of Southern Ocean seabed mining, but these are without precedential value. The most dispositive reason militating against using the Antarctic Treaty system as a basis for a new Arctic regime is simply that some Arctic States are far more concerned with their own claims of sovereignty than with environmental issues.

[*Page 234-235*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Abandoning UNCLOS in Arctic would undermine all principles UNCLOS is based-on, encouraging non-diplomatic solutions to

territorial disputes

“Although some policy officials and scholars argue countries should abandon UNCLOS and implement a new legal regime,[207] such action would undermine the effectiveness of the existing legal norms provided by UNCLOS. Abandoning UNCLOS would only weaken current international Arctic law, create economic uncertainty, and pose potential security issues.[208] In addition, the formulation, adoption, and implementation of new international Arctic legislation would, at best, be a difficult, if not impossible, process.[209] Considering the enormous economic wealth at stake, coupled with the political power of today's oil, abandoning UNCLOS might erroneously be interpreted by some as encouraging military solutions to Arctic territorial disputes.

[*Page 532*]

Wilder, Meagan P. "*Who Gets the Oil?: Arctic Energy Exploration in Uncertain Waters and the Need for Universal Ratification of the United Nations Convention on the Law of the Sea*." **Houston Journal of International Law**. Vol. 32, No. 2 (2009-2010): 505-544. [**More** (8 quotes)]

Law of the sea is an ideal framework for arctic governance

“Over the past year or so, some of the most interesting law of the sea issues for us have come from the Arctic, where climate change is creating the prospect for increased shipping, oil and gas activity, tourism, and fishing. As a result, the law of the sea has become more relevant than ever. I want to conclude with a few observations and some ideas about ways forward regarding the melting Arctic.

My first observation is that while some have expressed concern that the Arctic is a “lawless” region, this could not be further from the truth. For one, the law of the sea, as reflected in the Convention, provides an extensive legal framework for a host of issues relevant to the Arctic. It sets forth navigational rights and freedoms for commercial and military vessels and aircraft in various maritime areas. It addresses the sovereignty of the five Arctic coastal States – the U.S., Russia, Canada, Denmark, and Norway – by setting forth the limits of the territorial sea and the applicable rules. It addresses sovereign resource rights by setting forth the limits of the exclusive economic zone and the continental shelf and rules governing those areas. It provides the geological criteria relevant to establishing the outer limits of the continental shelf beyond 200 nautical miles – a topic of great interest these days as the Arctic coastal States seek to extend their respective shelves to the limits permissible under international law. For Parties to the Convention – that is, the four other coastal States – it sets forth a procedure for securing international recognition of those outer limits. International law also sets forth rules for resolving cases where the maritime claims of coastal nations overlap. And finally, the law of the sea provides rules regarding marine scientific research in the Arctic and sets out the respective rights and responsibilities among coastal States, flag States, and port States regarding protection of the marine environment.

[*Page 10*]

Bellinger, John B. The United States and the Law of the Sea Convention . Institute for Legal Research: Berkeley, CA, 2008 (12p). [**More** (6 quotes)]

U.S. needs to ratify UNCLOS to establish shared law in the Arctic to avoid conflict

"The Arctic nations are preparing submissions for the extended shelves; Russia's is currently under review. Under the terms of the convention, the American zone would be the largest in the world — more than 3.3 million square miles, an area greater than the lower 48 states combined.[74] In addition to protection of shelf claims, the convention is good for the United States because it sets pollution standards and requires signatories to protect the marine environment. The United States has not submitted a claim because it has not ratified the Convention.[75]

Ratification is also important for U.S. long-term presence in the region. In the absence of shared law, countries often make unreasonable and irres- ponsible claims in the maritime environment—the Arctic will be no different.[76] Without binding law, the United States gambles on long-term credibility to enforce international law, freely navigate the oceans, and protect the business ventures that rely on uniform laws.

[*Page 13*]

Bert, Melissa. "*The Arctic Is Now: Economic and National Security in the Last Frontier*." **American Foreign Policy Interests**. Vol. 34. (2012): 5-19. [**More** (7 quotes)]

Arctic states have committed to cooperation under existing UNCLOS regime in the Ilullisatt and Ottawa declarations

"So far, the goal of the Arctic states seems to be cooperation in protecting the environment while encouraging investment in hydrocarbon development. This goal is reflected in both regional and country-specific documents. At a regional level, Arctic states have repeatedly declared goals for cooperation. For example, the Ottawa Declaration established the Arctic Council—the main regional coordinating body of Arctic states—in 1996 with the following mission statement:

[T]o provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic Indigenous communities and other Arctic inhabitants on common Arctic issues; in particular, issues of[28] sustainable development and environmental protection in the Arctic.

More recently in 2008, five key Arctic states—Canada, Denmark, Norway, the Russian Federation, and the United States—adopted the Ilulissat Declaration, claiming a set of unified policy goals.[29] The Ilulissat Declaration captured the following regional policies of the Arctic States:

- commitment to the current legal framework and an observation that there is “no need to develop a new comprehensive international legal regime to govern the Arctic Ocean;”[30]
- recognition of the role of the Arctic States in protecting the unique Arctic ecosystem; and
- commitment to a cooperative approach to making Arctic development a sustainable undertaking.[31]

[*Page 397*]

Rice, Kristen. "*Freezing to Heat the Future: Streamlining the Planning and Monitoring of Arctic Hydrocarbon Development*." **Colorado Natural Resources, Energy & Environmental Law Review**. Vol. 24, No. 2 (Summer 2013): 391-418. [**More** (3 quotes)]

UNCLOS key framework for peaceful resolution of competing hydrocarbon claims in Arctic

“Arctic states are also cognizant of the fact that the current legal framework provides an opportunity for them to obtain effectively sovereign control over the hydrocarbon-rich Arctic waters. The main goal of the United Nations Convention on the Law of the Sea (“UNCLOS”), the international regulatory framework governing the use of the world’s oceans and seas, is to:

> facilitate international communication, and . . . promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.[5]

Part VI of UNCLOS is key to Arctic hydrocarbon development because it governs the boundaries and extent of states’ sovereign control over offshore natural resources.[6] A state exercises “sovereign rights for the purpose of exploring [its continental shelf] and exploiting its natural resources” and may exclude other states from doing so without its consent within its continental shelf.[7] As a default rule, a state’s continental shelf extends to the greater of the outer edge of its continental margin[8] (up to 350 nautical miles), or 200 nautical miles from the baselines[9] from which the breadth of the territorial sea is measured.[10] The burden is on the coastal state to establish that the outer edge of its continental margin extends beyond 200 nautical miles.[11] To do this, the state must submit certain information outlined in Article 76 to the Commission on the Limits of the Continental Shelf (“CLCS”).[12] The CLCS, consisting of twenty-one experts nominated by individual states and elected by all parties to five-year terms, can accept or reject the claims.[13] If the CLCS rejects the claim, the state must revise its submission to conform to the formula set out in Article 76.[14] The limits established by the state are final and binding.[15] Finally, the state provides the Secretary-General of the United Nations with charts and relevant data describing the established outer limits, and then the information is published.[16]

[*Page 394-395*]

Rice, Kristen. "*Freezing to Heat the Future: Streamlining the Planning and Monitoring of Arctic Hydrocarbon Development*." **Colorado Natural Resources, Energy & Environmental Law Review**. Vol. 24, No. 2 (Summer 2013): 391-418. [**More** (3 quotes)]

An Arctic treaty modeled off of the Antarctic treaty system is unlikely to succeed in the Arctic because it Is not in the interest of any of the Arctic states

"An ATS-style ban or overarching regulatory regime is not suitable for the Arctic for two reasons. First, a regime banning Arctic oil and gas production will not materialize because it is not in the interests of the would-be signatories. Whereas the drafters of the ATS were interested in preserving the continent as a scientific sanctuary,[37] the Arctic states are already heavily invested in Arctic oil and gas development, not preservation of the region as a scientific sanctuary. For states to disregard those investments in exchange for a ban on development at this point is not feasible.

Second, the five Arctic states likely to have jurisdiction over Arctic waters—Canada, Denmark, Norway, the United States, and Russia— have already declared in unison that no new regulatory scheme is needed.[38] Furthermore, building consensus is difficult. For example, the United States' experience with state regulation of hydraulic fracturing disclosure demonstrates this point. In the United States, public outcry about the contents of hydraulic fracturing fluids has failed to induce a comprehensive national policy response, but instead has led to a flurry of state regulations in recent years.[39] States responded quickly to the call for regulation in divergent ways based on what local lawmakers saw as the best way to approach the situation. For example, while New York instituted a moratorium on the use of fracturing in the Syracuse watershed,[40] Colorado adopted regulations requiring disclosure of chemicals used in the process with an exception for trade secrets.41 Building consensus regarding a comprehensive regulatory regime between states within a single country is difficult enough, and building such a consensus between countries with no overarching sovereign body may be even more difficult.

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Rice, Kristen. "*Freezing to Heat the Future: Streamlining the Planning and Monitoring of Arctic Hydrocarbon Development*." **Colorado Natural Resources, Energy & Environmental Law Review**. Vol. 24, No. 2 (Summer 2013): 391-418. [**More** (3 quotes)]

UNCLOS regime in the Arctic responsible for keeping the scramble for arctic resources from devolving into resource conflicts

Fifth and finally, it does seem that UNCLOS reflects a larger sea-change in how the international

community, and legitimate international governing bodies, can create frameworks for cooperative action, or at least limit the damage of non-cooperative action. As such, by including dispute-resolution mechanisms in future framework agreements, IGOs like the United Nations can productively expand into new or emerging areas of global governance. Accordingly, it does appear that the Arctic Scramble, and maritime disputes elsewhere, need not recall the imperial division of Africa. Rather, there appears to be widespread recognition and acceptance of UNCLOS as the legitimate framework for establishing, defining, deciding, and resolving disputes on maritime territorial issues. Merely by existing and coming into legal standing with ratification, UNCLOS delegitimizes the traditional power-politics methods of settling the disputes. Instead, UNCLOS is overtly designed to handle these events. By defining the rules of the road, and by defining where the road begins and ends, UNCLOS is the discursive legisla- tor, judge and policeman on the maritime highway. And no one, as yet, is seriously challenging that role, at least in the Arctic.

[*Page 41*]

Carlson, Jon D., Christopher Hubach, Joseph Long, Kellen Minteer, and Shane Young. "*Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims*." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 21-43. [**More** (5 quotes)]

UNCLOS is the established, consensus framework for Arctic governance

Recent trends strongly indicate that human activity in the Arctic region will continue to increase for the foreseeable future. This raises certain national and global security concerns. UNCLOS represents the international consensus on rules governing the use of the planet's oceans. This treaty was developed between 1973 and 1982; it was implemented on 16 November 1994. It combined several treaties governing laws of the sea that were previously separate. So, UNCLOS is a comprehensive treaty that codifies international law for the vast global commons of the world's oceans, which make up nearly three-quarters of the earth's surface. Notably, UNCLOS is an internationally accepted — and therefore a legitimate — means of defining sovereignty over the world's oceans. It is particularly important in the Arctic, where several nations — including the United States — have conflicting claims. Articles within UNCLOS offera framework for a peaceful resolution of sovereignty disputes. UNCLOS clearly specifies state and international rights as they pertain to the world's oceans.

[*Page 4-5*]

Bunker, Wayne M. **U.S. Arctic Policy: Climate Change, UNCLOS and Strategic Opportunity** . U.S. Army War College: Carlisle, PA, March 22, 2012 (24p). [**More** (4 quotes)]

All arctic nations are pursuing claims within framework of UNCLOS

"While it may be peculiar that geologic structures might dictate ownership of resources,[n269] Russia has obtained a competitive edge by operating persistently and adhering to the provisions of the Convention. Most importantly, other Arctic States have seen the writing on the wall. Aware of the undeniable progress Russia has made, the other littoral countries have been stirred from their casual observance of UNCLOS within the Arctic, and have undertaken new cartographic datagathering expeditions to claim as much territory as they can under the parameters of the Convention.[n270] In fact, following Russia's 2001 submission, eight other countries began work on filing their own CLCS submissions under UNCLOS.

For example, Canada recently changed the nature of its Arctic claims to conform to UNCLOS procedure, by departing from simple reaffirmations of past assertions of sovereignty and instead beginning work on a continental shelf proposal due for submission in 2013.[n272] Even the United States participated in a joint seabedmapping mission in the Beaufort Sea last month, a region widely considered the "top prize in the Arctic oil rush."

[*Page 231-232*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Reforming UNCLOS for the Arctic is not a viable option -- consensus would take too long

"Reforming the treaty, however, would be difficult. The UNCLOS is not a region-specific treaty: over 150 nations are signatories, and 145 have ratified it.[154] The UNCLOS initially took over a decade to acquire the required number of signatures to become effective.[155] The dramatic reform required to make the UNCLOS an effective means to protect the Arctic would likely require member states to redraft large portions of the massive document. Nations around the world would subsequently have to acquiesce to the changes.[156]

If the international community makes the required changes to the UNCLOS, there is always the risk that current member states will rebuke the new treaty. If the reformed treaty fails to gain acceptance, not only would the Arctic remain unprotected, but so would the world's other oceanic environments. This risk may not be worth its potential cost. Even if member states form a consensus of better protecting the Arctic environment, and more ratify the treaty, it still may prove to be ineffective. Many nations, including the United States, tend to ratify treaties only to claim reservations about provisions they do not like.[157] This severely limits a treaty's ability to create the kind of change necessary to protect the Arctic.

[*Page 674*]

Farrens, Thomas C. "***Shrinking Ice, Growing Problems: Why We Must Act Now to Solve Emerging Problems Posed by an Ice-Free Arctic*** ." **Transnational Law & Contemporary Problems**. Vol. 19. (Spring 2010): 655-679. [**More** (5 quotes)]

Struggle for Arctic resources could devolve into conflict

Currently, there is no major tension between the Arctic states. They all want peaceful solutions to their border disputes and see the advantages of freedom of navigation through the Northern Sea Route and the Northwest Passage. However, at the time when the coastal nations are able to increase their oil production in the Arctic, conflict can more easily occur. A shortage of energy and other resources will make the nations more determined to solve their border issues, which may increase the tension between them.

Warming arctic is opening up new potential shipping lanes and resource extraction possibilities but increasing risks of conflict and tension over the same

"Once long neglected in terms of governance and management, the Arctic is slowly attracting greater attention as a region in need of an effective legal regime following the observed and potential the impact of climate change in recent time.[29] Science has provided overwhelming evidence of human-influenced Arctic climate change and the likelihood that the pace of change is accelerating. Scientists predict that the Arctic may be ice-free for the first time in recorded history by as early as 2013.[30]

An ice-free Arctic has two important implications. First, it will expose vast regions of seabed that are rich in natural resources, making extraction of these resources possible. It is estimated that about 30 per cent of undiscovered gas and 13 per cent of undiscovered oil can be found in the marine areas north of the Arctic Circle.[31] According to the USGS estimates, Arctic region has the hydrocarbon reserves of 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids.32 Second, an ice-free Arctic will open previously impassable shipping lanes, thereby, improving prospects for Arctic navigation. The most promising route, historically known as the "Northwest Passage" may become navigable, which would reduce the length of the voyage between the Atlantic and Pacific oceans by an astonishing 9000 kilometers.[33]

This will result in two separate but related problems. First, the increased value of the region due to commercial exploration and trade will prompt Arctic nations to rush to establish their claim over the region. In fact, many Arctic countries, pursuant to Article 76 of the UNCLOS, are preparing to submit requests to the United Nations Commission on the Limits of the Continental Shelf to establish the outer limits of their continental shelves.[34] This has caused the spectre of rising tension over yet to be asserted maritime claims over the vast Arctic Ocean. The tension been further acerbated by the feasibility to extract the potential hydrocarbon resources in the Arctic seabed. The receding polar ice cap has ignited the competition for the mineral rights in the Arctic seabed. The competition arises from the fact that the Arctic is —the only place where a number of countries encircle an enclosed

ocean,[35] which gives numerous countries a valid claim for the same territory.[36]

[*Page 12-13*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

Russia is preparing for a new cold war in the Arctic

"The world is at a precipice of a potential new cold war in the Arctic between Russia and the NATO Arctic nations. Russia is in a position to win it. The number of icebreaking hulls a country operates is the simplest and most tangible measure that can be used to judge its ability to conduct northern operations. The United States has a total of four diesel-powered icebreakers (one of which is out of service for this year) whereas the Russians have 14.[51] Of the 14, seven are nuclear-powered--capable of cutting through nine feet of ice without even slowing down. In comparison, the U.S. icebreakers can only make it through six feet of ice at a constant speed.[52] Even China and South Korea, non-Arctic nations, have icebreakers in preparation for regional access.[53]

In addition to greater Arctic naval power, the Russians also have a superior support infrastructure. The Soviet Union, in sustaining the Northern Sea Route and oil development in the Barents Sea, invested tremendous capital in developing a robust infrastructure of rail lines and river transport services. It maintained this infrastructure by offering state workers huge subsidies and inflated wages. Following the collapse of the Soviet Union, and the loss of state jobs, the region experienced a significant reduction in population. However, the Russian North still has a fully functioning infrastructure in place.[54] Meanwhile, the North American presence is —naked and unguarded.[55]

Russia intends to use these weaknesses along with divisions among the NATO members to increase its power in the region. According to a leading Russian economic journal, —...Russia's main task is to prevent the opposition forming a united front. Russia must take advantage of the differences that exist [between NATO states]."[56] Moreover, a prominent Russian Navy journal acknowledged that an increase in regional militarization could increase the possibility for local military conflict. —Even if the likelihood of a major war is now small, the possibility of a series of local maritime conflicts aimed at gaining access to and control over Russian maritime resources, primarily hydrocarbons, is entirely likely."[57]

[*Page 9-10*]

Beeber, Gregg C. **Arctic Trail: Six Steps The United States Must Take To Manage The Global Rush North** . Air University Press: Maxwell Air Force Base, Alabama, April 2009 (29p). [**More** (5 quotes)]

Nations are pursuing Arctic claims in emotional and nationalistic manner, heightening the risks of conflict

"Further, the responses of Arctic nations have been framed more as nationalistic and emotional arguments, rather than legal opinions. Despite the dubious legal authority of the Russian flagplanting in 2007, the incident provoked a degree of international consternation. True, a "19th Century imperial land grab" n242 in the Arctic is not a feasible outcome, since UNCLOS does provide a mechanism for resolving disputes that can be relied on to a certain extent. However, the illegality of a land grab does little to dampen the excited clamor of an Arctic "resource rush," poorly disguised by the other Arctic States.

For example, Canada's Foreign Minister at the time objected to the imperial nature of Russia's expedition. n243 Prime Minister Stephen Harper also hopes that Canada's renewed commitment to the region will bolster its longterm presence and strengthen the nation's sovereignty over the Arctic. n244 A Danish scientist has stated that "'the Vikings hope to get [to the Arctic] first.'" n245 The Russian scientist and legislator Artur Chilingarov has avowed that "'the Arctic is ours and we should demonstrate our presence.'" n246 There is good reason to expect that the frenetic scramble to establish Arctic sovereignty will only gain momentum as the ice continues to recede, especially considering "the alacrity with which coastal states [first] 'implemented' the sovereign rights ... with respect to oil and gas, fisheries, and other natural resources of the economic zone and continental shelf" when UNCLOS entered into force.

[*Page 227*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

No major tension between Arctic states but situation could change dramatically as race for resources heats up

"Currently, there is no major tension between the Arctic states. They all want peaceful solutions to their border disputes and see the advantages of freedom of navigation through the Northern Sea Route and the Northwest Passage. However, at the time when the coastal nations are able to increase their oil production in the Arctic, conflict can more easily occur. A shortage of energy and other resources will make the nations more determined to solve their border issues, which may increase the tension between them. Even if Russia cooperates with the other coastal Arctic nations today, there is a growing uncertainty about the stability and aspirations of this regime. Several scholars express concerns about a new “cold war” in the region. Rob Hubert, a professor of political science at the University of Calgary warn about the beginning of an arms race, and claims that the Arctic states talk about cooperation, but are preparing for conflict.[27] NATO’s Supreme Allied Commander in Europe, Admiral Stavridis, has also argued, “For now, the disputes in the north has

been dealt with peacefully, but climate change could alter the equilibrium over the coming years in the race of temptation for exploration of more readily accessible natural resources."[28]

[*Page 6-7*]

Margrethe, Ingrid Gjerde. **U.S. Policy for the Arctic and the Nation's Ability to Sustain Global Leadership** . U.S. Army War College: Carlisle, PA, March 2013 (32p). [**More** (3 quotes)]

Disputes over arctic fishing resources have already lead to increased tensions between arctic nations

"In addition to large deposits of Arctic oil, gas, and other natural minerals, the Arctic Ocean is connected to several significant breeding areas of fish stocks, which are anticipated to move farther north as an apparent result of changes in Arctic water temperatures. The National Oceanic and Atmospheric Administration has stated that this shift has been going on for the past 40 years, with some stocks nearly disappearing from U.S. waters as the fish "seem to be adapting to changing temperatures and finding places where their chances of survival are greater."[23] In fear of uncontrolled new developments, the North Pacific Fishery Management Council decided in 2009 to ban all commercial fishing in a 200,000-square-mile Arctic area, from the Bering Strait to the disputed U.S.-Canadian maritime border. As a reshifting of fish stocks takes place, increased fishing oppor- tunities are likely to result in disputes over quotas and fishing areas. The U.S. Coast Guard (USCG) is already patrolling the Bering Sea border with Russia, which has been the source of some tension because of overfishing and boundary disputes. Norwegian and Russian cooperation on fishing in the Barents Sea has generally been promoted as a positive example of border cooperation, but incidents between the Norwegian Coast Guard and Russian trawlers have occurred from time to time, such as the arrest of the Russian trawler Sapphire II for illegal dumping of fish in waters around Svalbard in late September 2011. While the company owning the trawler was given a €57,000 fine, both Russian Foreign Minister Sergey Lavrov and Norwegian Foreign Minister Jonas Gahr Støre moved quickly to diffuse the issue and stress that there was "no conflict" between the countries regarding fisheries.[24] With increased fishing activity in the Arctic, such issues are again likely to develop. At the same time, increased activity demands increased capacity from the national coast guards, as a large part of search-and-rescue activity revolves around fishing vessels.

[*Page 7*]

Conley, Heather A., Terry Toland, Jamie Kraut and Andreas Osthagen. **A New Security Architecture for the Arctic: An American Perspective** . **Center for Strategic and International Studies**: Washington, D.C., January 17, 2012 (45p). [**More** (5 quotes)]

Idealist approach to resolving arctic conflict through international institutions or economic interdependence does not hold up to

scrutiny

“The primary argument against the potential for conflict in the Arctic is that political leaders are appealing to international institutions to resolve disputes before they become militarized. A corollary to this argument is that, via the trappings of economic interdependence, Russia’s need for advanced technology to locate and exploit its potentially vast reserves of hydrocarbons will sufficiently weigh in Moscow’s political calculus to prevent Russia from taking militarized action against neighbors to defend its political-economic claims in the region. Given the reality of political objectives, actions, and intentions, coupled with the dearth of reliably interdependent economic ties, this chapter has exposed these “mitigating factors” against conflict as little more than wishful thinking.

While it is undeniable that the Arctic states are using international institutions focused on Arctic issues, they appear to do so out of political convenience—not out of a commitment to peaceful cooperation. The participating nations all actively pursue a combined environmental and safety agenda with their partners through the Arctic Council. Its charter, however, explicitly bans the organization from discussing issues related to military security, a point reinforced by the Ilulissat Declaration of the five Arctic states: that no legal enforcement regime other than the UNCLOS is needed in the region.

[*Page 88*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Conflict in Arctic more likely than not as scholars over-estimate impact of interdependence and international cooperation on resolving disputes

“Based on the methodology established for this analysis, it can be reasonably assessed that conflict in the Arctic is likely. To put this another way, with a score of 18 out of 24 possible points, there is a 75 percent chance that maritime disputes involving the United States and Russia will occur in the Arctic necessitating the show or use of force to achieve a political objective. It should be reiterated that this assessment is acknowledged to be an analytically subjective conclusion and that the intervals of measurement are notably coarse. The evidence presented in this analysis, however, supports this conclusion. Policy-makers should take care not to discount the physical indicators and declared policies of other Arctic nations when judging the seriousness of their intent to protect their various claims in the region. Advocates of a “Pax Arctica” involving regional cooperation ignore the more pragmatic factors underlying international relations and the actual limits of international institutions and economic incentives in restraining actors’ behavior in an anarchic system.

[*Page 103*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Disputes over Arctic shipping between Russia, U.S. and Canada likely by 2030 if not resolved

“Finally, in the longer term, the gradual opening of Arctic waterways to commercial traffic on a seasonal basis by 2030 will increase the need for persistent and pervasive constabulary patrols by all Arctic nations in order to regulate this activity. Not only will more ice-capable patrol vessels be required, but so too will be a robust logistics infrastructure, to include basing, transportation, supply, and communications. This third window for conflict in the Arctic will probably occur in the 2030 to 2045 time frame. The increase in commercial traffic activity will heighten tensions in U.S.-Canadian relations if a political compromise on the status of the Northwest Passage has not been reached, keeping in mind that the ultimate status of Russia’s Northeast Passage would be likewise affected. As Canada is extremely sensitive to matters of Arctic sovereignty and Russia is are unlikely to welcome unrestricted movement through its backyard, it should be expected that the same nationalist sentiment that erupted in the Sino-Japanese row over the disputed Senkaku/Diaoyu Islands would likewise be manifest in these cases as well, leading to a quick, and potentially intense, confrontation involving the United States, Russia, and Canada.

[*Page 108*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

Arctic region could descend into chaos due to lack of clear governing structure to manage resource disputes

“Despite the melting icecap's potential to transform global shipping and energy markets, Arctic issues are largely ignored at senior levels in the U.S. State Department and the U.S. National Security Council. The most recent executive statement on the Arctic dates to 1994 and does not mention the retreating ice. But the Arctic's strategic location and immense resource wealth make it an important national interest. Although the melting Arctic holds great promise, it also poses grave dangers. The combination of new shipping routes, trillions of dollars in possible oil and gas resources, and a poorly defined picture of state ownership makes for a toxic brew.

The situation is especially dangerous because there are currently no overarching political or legal structures that can provide for the orderly development of the region or mediate political disagreements over Arctic resources or sea-lanes. The Arctic has always been frozen; as ice turns to water, it is not clear which rules should apply. The rapid melt is also rekindling numerous interstate rivalries and attracting energy-hungry newcomers, such as China, to the region. The Arctic powers are fast approaching diplomatic gridlock, and that could eventually lead to the sort of armed brinkmanship that plagues other territories, such as the desolate but resource-rich Spratly Islands,

where multiple states claim sovereignty but no clear picture of ownership exists.

Borgerson, Scott G. "***Arctic Meltdown: The Economic and Security Implications of Global Warming*** ." **Foreign Affairs**. Vol. 87, No. 2 (March/April 2008). [**More** (10 quotes)]

Arctic resource disputes unlikely to lead to conflict

Despite the rhetoric, disputes over Arctic resources are unlikely to devolve into conflict as states have to date been operating in a cooperative manner and there are sufficient international forums and structures (including UNCLOS) in place to manage disputes if they should occur.

U.S. sees low level of military threat from disputes in Arctic

"There is no reason to believe that the Arctic region will be characterized by military conflict between and among Arctic and non-Arctic nations. The U.S. Department of Defense maintains that there is a "relatively low level of threat" in the Arctic region because it is "bounded by nation states that have not only publicly committed to working within a common framework of international law and diplomatic engagement, but also demonstrated ability and commitment to doing so over the last fifty years."[9]

The "relatively low level of threat" in the Arctic is reflected in the aforementioned Arctic policy documents. While these documents call for improvements in Arctic infrastructure, they do not call for any significant military buildup in the region. These policy documents also indicate that there is minimal overlap between U.S. national security interests in the Arctic and U.S. accession to UNCLOS.

[*Page 4*]

Groves, Steven. **Accession to Convention on the Law of the Sea Unnecessary to Advance Arctic Interests** . **Heritage Foundation**: Washington, D.C., June 26, 2014 (18p). [**More** (8 quotes)]

Existing security framework and economic incentives likely to defuse any conflict in the Arctic

"With an increasingly globalized world comes a globalized economy. Inherent in such an economy is a security element, which serves to deter states from actions that run contrary to the greater economic good. When coupled with the military deterrent provided by the US, it is all but inconceivable that Russia, or any Arctic state would engage in military activity in the region, which goes beyond a simple show of force.

This suggests that the existing security apparatus in place in the Arctic is sufficient to meet both current and future requirements. That apparatus is built around the sovereign authority of the Arctic Five states, and is bolstered by the Arctic Council. The Council provides not only a forum for mutual

discussion and understanding, but also encourages consistency in Arctic policy development and enforcement. Backing it up is the legislative framework of UNCLOS, which provides the legal backbone from which to seek resolution of maritime boundary disputes. The globalized economy provides an additional deterrent to irresponsible actors, primarily through the actions of risk-averse investors who will sell off investments and thus rob the actors of much needed capital.

[*Page 315*]

Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Despite rhetoric, existing governance and security framework in Arctic sufficient to prevent conflicts

"If one were to form an opinion about the risk of conflict stemming from a perceived 'scramble for the Arctic', such as is portrayed by media sources, and even a few well-respected academic writers, it would be understandable if the reader came away with an opinion that the Arctic is a powder-keg waiting to be ignited by greed-fuelled interests.

Based on the research presented here, it is hoped that a more measured opinion may be formed, which recognizes that while there are numerous sources for potential dispute in the region, there is also the recognition that Arctic stakeholders have much more to gain through cooperation than through confrontation. In spite of isolated moments of inflammatory rhetoric and grandstanding, the relationship between the key Arctic states and stakeholders has been marked by optimism and mutual cooperation. There is an incredible opportunity for governments, industries and indigenous peoples to all benefit from the changes occurring in the Arctic. While the current governance and security architecture can be improved upon to ensure that consistent and ade- quate legislation and enforcement mechanisms are in place, what is needed above all is continued cooperation and goodwill between all the parties that stand to gain from the opportunities presenting themselves in the High North.

[*Page 317*]

Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Despite rhetoric, Canada unlikely to resort to military action to protect Arctic claims

"While some media reports have attempted to link Canada and Russia's increased military focus on the Arctic as evidence of a desire for military confrontation over Arctic resources,[53] there is little in terms of strategic intent that would lend credibility to such claims. In Canada's case, it has long

perceived the need to demonstrate a tangible presence over the vast Arctic territory it claims as its own. The sheer scale of the territory in question, and the costs and logistics associated with maintaining even a modest presence in the Arctic, has historically led to Canada talking tough on Arctic sovereignty, but doing little by way of action. As the Arctic now becomes more accessible, Canada merely recognises the need to match its actions more closely with its rhetoric. If the Canadian government follows through with the majority of the initiatives mentioned above, it would only serve to reinforce Canada's Arctic sovereignty claims and be seen by its own public to be taking action on a highly topical issue. These actions will not destabilize the Arctic, provided that the Canadian government is clear and consistent in communicating its intent.

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Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Arctic tensions currently kept in check by agreement among arctic nations to abide by UNCLOS framework

"Just a half decade ago, the scramble for the Arctic looked as if it would play out quite differently. In 2007, Russia planted its flag on the North Pole's sea floor, and in the years that followed, other states also jock- eyed for position, ramping up their naval patrols and staking out ambitious sovereignty claims. Many observers—including me—predicted that without some sort of comprehensive set of regulations, the race for resources would inevitably end in conflict. "The Arctic powers are fast approaching diplomatic gridlock," I wrote in these pages in 2008, "and that could eventually lead to . . . armed brinkmanship."

But a funny thing happened on the way to Arctic anarchy. Rather than harden positions, the possibility of increased tensions has spurred the countries concerned to work out their differences peacefully. A shared interest in profit has trumped the instinct to compete over territory. Proving the pessimists wrong, the Arctic countries have given up on saber rattling and engaged in various impressive feats of cooperation. States have used the 1982 un Convention on the Law of the Sea (unclos)—even though the United States never ratified it—as a legal basis for settling maritime boundary disputes and enacting safety standards for commercial shipping. And in 2008, the five states with Arctic coasts—Canada, Denmark, Norway, Russia, and the United States—issued the Ilulissat Declaration, in which they promised to settle their overlapping claims in an orderly manner and expressed their support for unclos and the Arctic Council, the two international institutions most relevant to the region.

[*Page 79*]

Borgerson, Scott G. "***The Coming Arctic Boom: As the Ice Melts, the Region Heats Up*** ." **Foreign Affairs**. Vol. 92, No. 4 (July/August 2013): 76-89. [**More** (7 quotes)]

Arctic region presents excellent test case for international cooperation rather than a threat of superpower conflict

"Nonetheless, Russia's gambit accelerated a media obsession with the Arctic. In the more than two years since Russia's North Pole adventure—and against a backdrop of a retreating polar ice cap and rising temperatures[3]—journalists and scholars have come to describe the Arctic's future in alarmist terms. These reports include warnings of "a race for control of the Arctic,"[4] and a "coming anarchy" in which states will "unilaterally grab" as much territory as possible to secure new sources of oil and natural gas.[5] Some describe the Arctic as the site of "an armed mad dash" and a potential source of a future armed conflict, likely involving the United States and Russia.[6] This troubling picture has generated calls for a new international agreement—an "Arctic Treaty"—to provide a comprehensive legal regime for the region.[7] In light of the above, it is easy to see why the casual observer would be left thinking that when it comes to the Arctic, we are operating in a legal vacuum.

But that is simply not the case. Indisputably, the Arctic poses many challenges, but it is not a twenty-first century incarnation of the Wild West. There are institutions and legal frameworks in place through which the challenges of Arctic governance and management can and should be addressed. As discussed below, the centerpiece of that framework is the 1982 United Nations Convention on the Law of the Sea ("UNCLOS" or "Convention").[8] Moreover, within the existing governance structure, Russia's track record with respect to the Arctic—perhaps in contrast to Russia's recent record elsewhere—has arguably been more positive than not. As such, rather than fixating on the Arctic as a flashpoint for confrontation, it may be more useful to consider the Arctic as an opportunity for constructive engagement.

[*Page 226-227*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

Russia has consistently tried to downplay rhetoric of a looming conflict over resource shortages

"Finally, is there a "Russian question" looming behind all of these issues? Whether we choose to proceed by strengthening and extending the existing framework where we must, or to develop new solutions, will Russia choose to participate within that system? As noted at several points above, Russia, by and large, is already doing so. Moreover, Russian officials have been at pains to counteract the characterization of the Arctic described at the beginning of this article: the faulty notion of the Arctic as a future battleground between Russia and the West. For example, the Russian Foreign Ministry has publicly stated that discussion of "a possible military conflict for Arctic resources is baseless" and that the problems facing the region will be resolved "on the basis of international

law."[97] Even the provocative figure at the head of Russia's North Pole expedition has sought to downplay the situation, remarking that "[n]obody's going to war with anybody" and that while Russia will "defend [its] economic interests . . . a conflict in the near future" is unlikely.[98] Moreover, the United States has largely acknowledged that Russia is adhering to the applicable rule of law, in particular with respect to the extended continental shelf.[99] Simultaneously, Russia appears to be engaged with the international community when it comes to the Arctic: through the Arctic Council, through the IMO, and in bilateral and multilateral efforts with its fellow Arctic states.[100]

[*Page 248-249*]

Becker, Michael A. "***Russia and the Arctic: Opportunities for Engagement Within the Existing Legal Framework*** ." **American University International Law Review**. Vol. 25, No. 2 (2010): 225-250. [**More** (6 quotes)]

Prospects for interstate conflict over oil and gas reserves in Arctic remains remote

"The main economic prizes in the Arctic are oil and gas and mineral resources. The primary reserves belong to Russia, and the major exploration activity also is theirs. Recent estimates from the U.S. Geological Survey are that 30% of the remaining world reserves of natural gas and some 10% of the oil are in the Arctic. To date, unresolved issues involving demarcation of sea beds under the UNCLOS are not a major issue in the pace of energy development; rather, the key factors are costs of development and the price cycle of oil and gas. Offshore projects are the most costly and environmentally dangerous, and most of the known reserves of oil and gas are within national Exclusive Economic Zones (EEZs), which extend 200 nautical miles from the coastline. Thus, immediate prospects for interstate conflict over oil and gas reserves appear small.

[*Page 13*]

Yalowitz, Kenneth S., James F. Collins, and Ross A. Virginia. **The Arctic Climate Change and Security Policy Conference: Final Report and Findings** . Institute of Arctic Studies, Dartmouth College: Hanover, New Hampshire, December 1–3, 2008 (36p). [**More** (3 quotes)]

U.S. can't secure claims to Arctic resources through CLCS as a non-party to UNCLOS

The United States cannot currently participate in the Commission on the Limits of the Continental Shelf, which oversees ocean delineation on the outer limits of the extended continental shelf (outer continental shelf). Even though it is collecting scientific evidence to support eventual claims off its Atlantic, Gulf, and Alaskan coasts, the United States, without becoming party to the convention, has no standing in the CLCS. This not only precludes it from making a submission claiming the sovereign rights over the resources of potentially more than one million square kilometers of the OCS, it also denies the United States any right to review or contest other claims that appear to be overly expansive, such as Russia's in the Arctic.

Assertions of legal rights to arctic resources have dubious legal standing while us remains outside of UNCLOS

"The inevitable market incentive to exploit Arctic resources already is experiencing growing pains. In 2008, a Las Vegas based company called Arctic Oil & Gas levied a claim to virtually all the seabed petroleum in the Arctic, which it estimates to be around 400 billion barrels of oil.[n331] While acknowledging that the vast petroleum deposits are the "common heritage of mankind," the firm nevertheless filed a claim with the UN for exclusive Arctic rights.[n332] Even in spite of American abstention from UNCLOS, Arctic Oil & Gas argues that the polar region needs a private "'lead manager' to organize a multinational consortium of oil companies to extract undersea resources responsibly and equitably.[n333]

Nevertheless, it is doubtful that anything will come of such claims given their lack of international recognition under UNCLOS. In the absence of the legal certainty that the Convention provides for sovereign rights over an extended continental shelf, it is unlikely that enough U.S. companies will be willing or able to secure the necessary financing to exploit Arctic resources, or to keep other countries from exploiting them.[n334]

[*Page 240*]

Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

US will have no capacity to challenge CLCS claims unless it is a full

member of UNCLOS

"The Convention provides institutional methods through which the other Arctic States are able to protect their rights under UNCLOS, which may well come at the expense of American interests. Instrumental bodies such as the ISA's executive body, the Council, will assume a highly influential role in the Arctic. In particular, the Council is responsible for promulgating the policies that would apply to Arctic mining. n335 The ability of the U.S. to play a part in the Arctic and protect against potentially inimical mining policies require participation in the Authority, and in the decisionmaking Council in particular. n336

The CLCS presents a similar problem. The CLCS process is kept secret, and only Member States may appoint commissioners to [*241] take part in the decision and review the data submitted by other countries. n337 Acceptance or rejection of a shelf proposal is final, and such a crucial decision may well depend on a variety of subjective factors, such as "the knowledge, the experience, and occasionally the bias of the scientist involved."

Without an American commissioner, the U.S. cannot evaluate the content or feasibility of continental shelf submissions set to be filed by the other Arctic States. The element of time also adds to the sense of urgency, since a State must wait ten years from the date of ratification before submitting a continental shelf claim to the CLCS.

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Clote, Parker. "*Implications of Global Warming on State Sovereignty and Arctic Resources under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Jure*." **Richmond Journal of Global Law & Business**. Vol. 8. (Winter 2008): 195-248. [**More** (12 quotes)]

Seat on CLCS council valuable in that it allows US to take part in discussions and engage other participants

"A seat on the Continental Shelf Commission (CSC) is not an exercise in veto power as the author correctly pointed out. It is far better than that. It is a way to understand intimately and firsthand what other states on the Commission are thinking, planning, and implementing. n50 Without a seat the US has neither eyes nor ears. This means as a matter of practicality that informal networking, so essential in international law, is greatly restricted. Hence such a seat provides the government valuable strategic intelligence for little cost. The collective arguments the author puts forward against the seat are conservative and minimalist and perhaps even nonpurposive and deconstructionist. His arguments provide no substantive basis for not being on the Commission. Membership would not harm the US. It would provide a good deal of potential advantage. We believe that it would be better to have a representative at the table who would understand and report on the dynamics of the CSC instead of being excluded and having the government read about the CSC's works in the newspapers. Some of the most important [*60] marine resources are being exploited n51 and will be found in the future on the world's continental shelves. US industry is and will continue to be in the

capitalised forefront of these developments. A properly codified regulatory system contributed to by the US will be essential to protect US interests. Indeed, as interest and activities in the Arctic Ocean become more and more prevalent by the Russian Federation, Canada and others, the US risks losing valuable positions by not ratifying.

[*Page 59*]

Cartner, John A. C. and Edgar Gold, Q.C. "*Commentary in Reply to "Is it Time for the United States to Join the Law of the Sea Convention"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 1 (January 2011): 49-70. [**More** (7 quotes)]

By remaining outside of convention, US is unable to engage in disputes over Arctic claims within framework

"Related to the increased international activity and interest in the Arctic described above, the fact that the United States has signed but not yet ratified the United Nations Convention on the Law of the Sea[18] will become even more problematic with time and as more states call for international recognition of their Arctic claims (see Box 1.3). For example, the five Arctic coastal states—Canada, Russia, Norway, Denmark (based on its territory Greenland), and the United States—are in the process of preparing Arctic territorial claims for submission to the Commission on the Limits of the Continental Shelf. Russia's claims to the Lomonosov Ridge, if accepted, would grant Russia nearly one-half of the Arctic. By remaining outside of UNCLOS, the United States seriously compromises its ability to take part in negotiations regarding the claims of other nations.[19] UNCLOS provides a legal framework for the settlement of such disputes.

[*Page 25*]

Committee on National Security Implications of Climate Change for U.S. Naval Forces. **National Security Implications of Climate Change for U.S. Naval Forces** . National Research Council: Washington, D.C., 2011 (226p). [**More** (5 quotes)]

U.S. has no standing in CLCS until it ratifies convention

"The United States cannot currently participate in the Commission on the Limits of the Continental Shelf, which oversees ocean delineation on the outer limits of the extended continental shelf (outer continental shelf). Even though it is collecting scientific evidence to support eventual claims off its Atlantic, Gulf, and Alaskan coasts, the United States, without becoming party to the convention, has no standing in the CLCS. This not only precludes it from making a submission claiming the sov- ereign rights over the resources of potentially more than one million square kilometers of the OCS, it also denies the United States any right to review or contest other claims that appear to be overly expansive, such as Russia's in the Arctic. This is especially urgent this year, as the commission will review an influx of claims expected in May 2009, the deadline for twenty- six

states to make their submissions based on the procedural clock that began ticking when they ratified the convention. (The United States would have ten years to make its claim if it were to join the convention.)

[*Page 33-34*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. needs to be party to UNCLOS to defend its rights within the CLCS

"The Continental Shelf: There is an extensive continental margin beyond 200 miles off the coast of Alaska and elsewhere off the coast of the United States. As a party to the Convention, we will be able to submit the results of our scientific studies regarding the seaward limits of the continental margin to the Commission of experts established by the Convention. Once we are satisfied with the outcome of our exchanges with the Commission, we can exercise the right to declare limits that are final and binding on all parties to the Convention. This will increase the certainty of our control and the willingness of private capital to make the substantial investment required to explore and exploit areas as deemed suitable for development.

Moreover, as a party to the Convention, we acquire the right to nominate and participate in the election of members of the Commission, as well as the right to comment on both the procedure and the substance of the Commission's work. These rights are important because we have a major interest in influencing the review of continental margin claims around the world before they become final and binding, in order to ensure that reasonable claims are confirmed and made more secure, and that excessive claims do not limit our own access to the areas in question for economic, scientific, or other purposes. Mr. Chairman, the Canadian and Russian Governments have every right to seek to use the Commission to advance their interests. But Alaska is caught in the middle, and our capacity to protect our interests off Alaska and in the Arctic generally will be enhanced by getting on the inside and making sure our concerns are heeded.

[*Page 6-7*]

Oxman, Bernard H. "***Statement of Bernard H. Oxman: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (6 quotes)]

U.S. ability to conduct maritime interdiction operations will not be curtailed by UNCLOS

The U.S. conducts a wide range of maritime interdiction and related operations with its allies and partners, virtually all of whom are parties to the Convention. If the U.S. were to ratify UNCLOS, it would only strengthen its ability to conduct such operations by eliminating any question of its right to avail ourselves of the legal authorities contained in the Convention.

UNCLOS does not require U.S. to ask permission before boarding a ship, thats already ruled out by 1958 convention

> *[MYTH] As a nonparty, the U.S. is allowed to search any ship that enters our EEZ to determine whether it could harm the United States or pollute the marine environment. Under the Convention, the U.S. Coast Guard or others would not be able to search any ship until the United Nations is notified and approves the right to search the ship.*

- Under the Convention, the UN has no role in deciding when and where a foreign ship may be boarded.
- Under applicable treaty law – the 1958 conventions on the law of the sea – as well as customary international law, no nation has the right to arbitrarily search any ship that enters its EEZ to determine whether it could harm that national or pollute its marine environment. Nor would we want countries to have such a blanket “right,” because it would fundamentally undermine the freedom of navigation that benefits the United States more than any other nation.
- Thus, the description of both the status quo and the Convention’s provisions is incorrect. The Convention makes no change in our existing ability or authority to search ships entering our EEZ with regard to security or protection of the environment.

[*Page 9-10*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

UNCLOS won't impact the way U.S. conducts maritime interdiction operations

Proponents of UNCLOS assert that the treaty does not significantly impact the way the United States

military conducts MIOs.[53] During peacetime, UNCLOS permits the following: the boarding of vessels "that are flying the flag of the boarding state, the boarding of vessels that consent to boarding, the boarding of vessels that are entering coastal state ports, and the boarding of stateless vessels.[54] During wartime or armed conflict, UNCLOS allows boardings in self-defense if under attack or threat of attack and in accordance with other established maritime law and laws of armed conflict.[55] These provisions are sufficient for the United States to continue to carryout MIO missions as currently employed.

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Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

US ratification of UNCLOS would strengthen and preserve our authority for conducting maritime interdiction operations

"Will accession hamper our ability to conduct maritime interdiction operations, outside the piracy realm? The answer here is no, as well. The U.S. conducts a wide range of maritime interdiction and related operations with our allies and partners, virtually all of whom are parties to the Convention. We rely on a broad range of legal authorities to conduct such operations, including the Convention, U.N. Security Council Resolutions, other treaties, port state control measures, flag state authorities, and if necessary, the inherent right of self-defense. Accession would strengthen our ability to conduct such operations by eliminating any question of our right to avail ourselves of the legal authorities contained in the Convention and by ensuring that we share the same international legal authorities as our partners and allies.

[*Page 6-7*]

Locklear, Admiral Samuel J. "***Statement of Admiral Samuel J. Locklear: The Law of the Sea Convention: Perspectives from the U.S. Military***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (7 quotes)]

1958 Convention already regulates U.S. naval rights to board ships and submarines

"Critics' complaints tend to center on provisions that require submarines to surface and show their flag in the territorial sea, as well as those provisions that limit rights to board foreign flag ships. But apparently out of ignorance they never disclose that such provisions are already binding on the United States pursuant to the 1958 convention that was ratified with the Senate's advice and consent almost a half-century ago and with which we have lived since. Nor do the critics note the reciprocal

nature of the law. Provisions against overly broad boarding exist precisely to protect the sovereignty of U.S. flag ships on the high seas. Do the critics really want Chinese submarines submerged off the beaches of New York or Los Angeles? Most importantly, the 1982 convention has considerably improved on the 1958 convention to meet current U.S. resource and strategic needs. Arguments against the convention that ignore the 1958 obligations effectively support those now outdated concepts, foregoing the new strategic rights of transit passage through straits, archipelagic sea lanes passage, the improved regime of innocent passage and many other issues critical to U.S. national security and ocean interests.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

U.S. will be bound by UNCLOS provisions on interdiction regardless through customary international law without being able to guide the discussion

"Nevertheless, opponents of UNCLOS find that United States accession to the treaty would directly contradict the goals of PSI.[31] Specifically, opponents assert that if the United States does not become a party to the Convention, it will be free from any constraints in relation to ocean law, and thus, better suited to pursue the goals of PSI.[32] This argument, however, is weakened by the fact that the United States is already a party to the 1958 Convention on the Law of the Sea, subjecting it to many of the same provisions articulated in the current iteration of UNCLOS.[33] While the 1982 Convention modified many elements of the 1958 Convention, several key provisions remained in place, including many governing activities in territorial seas, continguous zones, and the high seas. Additionally, because UNCLOS is largely rooted in customary law, opponents of UNCLOS assert that the United States is already subject to many of its provisions implicitly.[34] In the absence of a treaty, the United States must rely on and abide by customary law, which is defined by the pattern and practice of states. Since so many nations are already a party to UNCLOS, their practices largely influence the body of customary law on which the United States must rely if it does not ratify UNCLOS.

[*Page 121-122*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

UNCLOS imposes no new restrictions on interdiction over what was agreed to in 1958 convention

The most absurd argument made against the Convention is the notion that it would hinder U.S. efforts to interdict shipments of materials used for nuclear, chemical and biological weapons and the missiles used to deliver them. The opposite is true. Signing the Convention helps stop proliferation.

Opponents contend that because the Convention protects freedom of the seas and freedom of already passage in territorial waters, signing would prohibit the U.S. Navy from stopping suspect shipments.[12] This argument is based on a misunderstanding of both international law and America's current nonproliferation efforts. The Convention offers states limited reasons for violating a ship's freedom of the seas or right of innocent passage, and these reasons do not include carrying weapons. But these constraints on U.S. conduct already exist. Freedom of the seas and the right of innocent passage are codified in the treaties the United States passed in 1958 and subsequently recognized as customary international law. If the United States ever had a right to stop shipments without regard for freedom or the seas and the right of innocent passage, that right is long gone. The Convention imposes no new restrictions on the United States' ability to interdict weapons shipments.

[*Page 3*]

Friedman, Benjamin and Daniel Friedman. **How the Law of the Sea Convention Benefits the United States**. **Bipartisan Security Group**: Washington, D.C., November 2004 (7p). [**More** (4 quotes)]

UNCLOS tribunals will not be able to force U.S. to release vessels apprehended by U.S. military

Myth: The International Tribunal for the Law of the Sea could order the release of a vessel apprehended by the U.S. military.

Reality: The Tribunal has no jurisdiction to order release in such a case. Its authority to address the prompt release of vessels applies only to two types of cases: fishing and[17] protection of the marine environment. Further, even if its mandate did extend further – which it does not – the United States will be taking advantage of the optional exclusion of military activities from dispute settlement. As such, in no event would the Tribunal have any authority to direct the release of a vessel apprehended by the U.S. military.

[*Page 16-17*]

Negroponte, John D. "***Statement of John D. Negroponte: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention***." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [**More** (13 quotes)]

U.S. ratification of UNCLOS is key to protecting existing counter-piracy operations

"Ratifying LOSC will also enhance U.S. counter-piracy efforts by improving America's ability to shape the legal authorities the international community relies on to combat piracy, especially in instances where existing agreements do not account for advancements in technology. The United States, for example, relies increasingly on remote sensing systems and a fleet of low- and high-altitude remotely piloted vehicles to provide persistent surveillance where the United States lacks a sustained maritime presence. These technologies may help U.S. maritime officials track piracy activities and facilitate a faster response. However, as one analyst notes, use of these technologies may not be clearly protected within existing international maritime treaties, including LOSC: "[R]emote sensing from satellites and high-flying surveillance aircraft have for decades undertaken maritime scientific research and surveys in others['] EEZs without the permission – or even the advance knowledge – required by the 1982 UNCLOS."[16] As the United States continues to field remotely piloted or semi-autonomous vehicles and sensors – including maritime ones – it will need to be prepared to challenge efforts to constrain or prohibit their use.

[*Page 3*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

Ratification of UNCLOS won't change U.S. rights to inspect within its EEZ

"[MYTH]: *As a nonparty, the United States is allowed to search any ship that enters our exclusive economic zone to determine whether it could harm the United States or pollute the marine environment. Under the Convention, the U.S. Coast Guard or others would not be able to search any ship until the United Nations is notified and approves the right to search the ship.*[18]

This also is not correct. Under applicable treaty law—the 1958 conventions on the law of the sea—as well as customary international law, no nation has the right arbitrarily to search any ship that enters its exclusive economic zone (EEZ) to determine whether it could harm that nation or pollute its marine environment. Nor would the United States want countries to have such a blanket "right," because it would fundamentally undermine freedom of navigation, which benefits the United States more than any other nation. Thus, the descriptions of both the status quo and the Convention's provisions are incorrect. It makes no change in our existing ability or authority to search ships entering the American EEZ with regard to security or protection of the environment. One final and very important point is that under the Convention the UN has absolutely no role in U.S. military operations, including a decision as to when and where a foreign ship may be boarded.

[*Page 121*]

Schachte, William L. "***The Unvarnished Truth: The Debate on the Law of the Sea Convention*** ." **Naval War College Law Review**. Vol. 61, No. 2 (Spring 2008): 119-127. [**More** (7 quotes)]

Ratifying UNCLOS would expand U.S. ability to conduct MIO and shore up PSI regime

"In addition, some columnists and think tank analysts have argued that U.S. accession to the Convention would interfere with the Proliferation Security Initiative (PSI), under which the United States and more than a dozen allies have agreed to interdict some ships that may present a nonproliferation risk. In fact, the Convention expands the list of justifications for ship interdictions set forth in its predecessor, the 1958 Convention on the High Seas, to which the United States has been a party for more than forty years. Among the many legal bases that may be applicable to interdictions under the PSI are the jurisdiction of coastal states in their territorial seas, the right to board stateless vessels, an agreement concerning high-seas boarding with a flag state (the country of origin of an oceangoing vessel) and the inherent right of self-defense. Indeed several allies have recently expressed concern about the U.S. failure to ratify the Convention, asserting that this failure could weaken the PSI.

[*Page 4*]

Sandalow, David B. **Law of the Sea Convention: Should the U.S. Join?** . **Brookings Institution**: Washington, D.C., August 2004 (7p). [**More** (6 quotes)]

U.S. ratification of UNCLOS would bolster counter-piracy efforts

Ratifying LOSC will also enhance U.S. counter-piracy efforts by improving America's ability to shape the legal authorities the international community relies on to combat piracy, especially in instances where existing agreements do not account for advancements in technology.

UNCLOS imposes burden on states to curtail piracy and facilitates their doing so

"Not only does the Convention provide a clear definition of piracy and basis for capture and prosecution of pirates, it also imposes an affirmative obligation upon parties to make efforts to curtail piracy.[144] Critics of the Convention argue that it actually impedes the United States' ability to chase and capture pirates because a ship must cease pursuit if the ship it is chasing enters its own or a third state's territorial waters.[145] They assert that this provision provides pirates with a safe haven to retreat to undeterred, and that the Convention prevents non-territorial state ships from pursuing the pirates.[146] This is troubling largely because of the strong presence of Somali pirates.[147] For example, under this provision, Somali pirates can attack ships and if they risk getting captured, rush back into their own state's territorial waters where they would be safe. Somalia, a nation plagued by its own problems of lawlessness and poverty, is in no position to apprehend these criminals.[148] In such a circumstance, however, the United States can assert that Article 100 of Part VII of the Convention, which imposes upon member parties the duty to cooperate in the repression of piracy, gives it the authority to continue pursuit.[149] Somalia is a party to the Convention and where it cannot assist in apprehending and trying pirates, it must cooperate with others who can. This includes permitting states that are working to repress piracy by pursuing pirates to do so within Somalia's territorial waters.[150] Furthermore, a December 2008 United Nations Security Council resolution called upon states to actively assist in combating piracy off of the coast of Somalia and gives them the authority to "undertake all necessary measures 'appropriate in Somalia' " in furtherance of this end for a period of one year.[151] In April of 2010, the United Nations Security Council adopted a resolution that calls upon states to criminalize piracy under their domestic law and consider prosecution of and imprisonment of apprehended Somali pirates.[152] This resolution also seeks a report from the Secretary General of the United Nations to present options for purposes of "prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia."[153] Given this explicit guidance to counter piracy coupled with the Convention's anti-piracy provisions, criticism that the Convention would preclude apprehending pirates does not hold up.

[*Page 382-384*]

Ashfaw, Sarah. "***Something for Everyone: Why the United States should Ratify the Law of the***

Sea Treaty ." **Journal of Transnational Law and Policy**. Vol. 19, No. 2 (Spring 2010): 357-399. [**More** (16 quotes)]

U.S. ratification of UNCLOS is key to protecting existing counter-piracy operations

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[*Page 3*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

Remaining outside of UNCLOS regime restricts U.S. counter-piracy options

"The convention provides two essential and immediate components for responding to piracy off the coast of Somalia. First, the convention permits any state to arrest pirates, seize pirate vessels, and prosecute pirates in the courts of the interdicting naval authority. Second, and equally important, the convention protects the sovereign rights of ocean-going states that participate in antipiracy naval operations in the territorial seas of failed states such as Somalia. This is critical for build- ing international naval flotillas for combating the growing pirate problem in the Indian Ocean.

[*Page 33*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. ratification of UNCLOS will not undermine Proliferation Security Initiative

U.S. participation in UNCLOS will in no way undermine its participation in the Proliferation Security Initiative. In fact, ratification will do more to help bolster the PSI regime as critically important democratic Pacific countries have indicated a desire to support our counter-proliferation efforts, but will not do so as long as the U.S. is a non-party to UNCLOS.

Adherence to UNCLOS would not threaten the Proliferation Security Initiative

"Myth: The convention is harmful to the Proliferation Security Initiative (PSI). Again, this is false. The PSI has already been negotiated explicitly in conformance with the convention, and not surprisingly so, since the nations with which we coordinate in that initiative are parties to the convention. This charge apparently rests on the false belief that if the United States does not adhere to the convention, it will be free from any constraints in relation to oceans law. Again, this is a false assumption; we are today a party to the 1958 Geneva Convention that is much more restrictive than the 1982 convention now before the Senate. This charge is also misguided as it fails to understand the critically important interest we have in protecting navigational freedoms on, in and above the world's oceans. The convention allows our vessels to get on station, a capability that is essential before any issue even arises about boarding. Moreover, we emphatically do not want a legal regime that would permit any nation to seize U.S. commercial vessels in the world's seas. That would be a massive loss of U.S. sovereignty! The PSI was carefully constructed with parties to the 1982 convention, using the flag state, port state and other jurisdictional provisions of the 1982 convention precisely to avoid this problem. Nor is this charge at all realistic in failing to note that nothing in the Law of the Sea Convention could or does trump our inherent rights to individual and collective self-defense. Most recently, we note, Under-Secretary of State John Bolton, a principal architect of the PSI, testified to the Senate that adhering to the convention will not harm the PSI.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

All Proliferation Security Initiative partners are already partner to UNCLOS except the United States

The Proliferation Security Initiative (PSI), announced by President Bush on May 31, 2003, is an

international effort promoting the global interdiction of shipments of weapons of mass destruction (WMD) and their delivery systems worldwide.[25] On September 4, 2003, the eleven participating nations released a statement in Paris outlining PSI's initiatives.[26] The aim of PSI is to create an enhanced approach to preventing proliferation of WMD.[27] In order to ensure congruence with other bodies of law, PSI specifically states that it will be implemented as is consistent with national law and international law.[28] All of the PSI partners, with the exception of the United States, are already parties to UNCLOS.[29] This fact demonstrates that state national security interests under the PSI are not put in jeopardy by becoming a party to UNCLOS. Indeed, John Bolton, former United States ambassador to the United Nations, argued that UNCLOS will not impede the goals of the PSI in testimony before the Senate Armed Services Committee, stating: "Ifthe Senate were to ratify the Law of the Sea Treaty and the president were to make the treaty [...] it would not have any negative impact whatsoever on PSI."[30]

[*Page 120-121*]

Ivey, Matthew W. "*National Security Implications in the Global War on Terrorism of the United States Accession to the United Nations Convention on the Law of the Sea*." **Dartmouth Law Journal**. Vol. 7, No. 2 (2009): 117-131. [**More** (9 quotes)]

Nothing in the convention will impact intelligence operations or the proliferation security Initative

"The US-developed PSI is directed toward preventing the illicit transportation by ships of weapons of mass destruction, their delivery systems and related materials. Under the Law of the Sea Convention and customary international law, a number of jurisdictional bases exist for stopping and searching ships suspected of being engaged in some sort of illicit activity. These include jurisdiction exercised by a State with respect to ships flying its flag or within its territorial sea, ports or contiguous zone, and stateless vessels. It is also permissible to stop and search a foreign-flag vessel with the permission of the flag State. The PSI builds on this latter basis of jurisdiction with a series of bilateral agreements by which the United States and its treaty partners agree in advance on a set of orderly procedures for the reciprocal granting of permission for visits and search of suspected ships and cargoes. There is nothing in the Convention that would change the law in any respect with respect to the US practices under the Proliferation Security Initiative. Likewise, with respect to intelligence operations, the Law of the Sea Convention contains no restrictions on US naval surveillance and intelligence operations not already included in the 1958 Convention on the Territorial Sea and Contiguous Zone to which the United States is already a party.

[*Page 117-118*]

Robertson, Horace B. Jr. "***The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession*** ." **International Law Studies**. Vol. 84. (2008): 111-128. [**More** (7 quotes)]

U.S. ratification of UNCLOS would enhance PSI and freedom of navigation efforts

"The reality is that the increased legitimacy obtained through ratification of UNCLOS can be leveraged to enhance PACOM shaping operations in the South China Sea. Specifically, increased legitimacy would improve the legal standing of U.S. operations conducted under the Freedom of Navigation (FON) Program,[5] and break down barriers currently restricting recruitment to the Proliferation Security Initiative (PSI).[6,7] In both cases this could potentially reduce the operational requirements of the theater commander and result in increased multilateral maritime security cooperation.

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Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

US ratification of UNCLOS would immediately improve prospects for PSI by encouraging more nations to participate

"Launched in 2003, "the Proliferation Security Initiative (PSI) is a global effort that aims to stop trafficking of weapons of mass destruction (WMD)."[70] The PSI is not a treaty, but instead relies on preexisting international legal frameworks – including the Law of the Sea Convention – and voluntary commitment to a "Statement of Interdiction Principles" to guide cooperation and prevent proliferation.[71,72] Despite the endorsement of ninety-eight nations, major players have proved wary to join the United States in this partnership.[73,74,75]

Conspicuously absent from PSI are both Indonesia and Malaysia who both border the worlds busiest maritime straight. With nearly 525 million metric tons traveling this corridor annually, the failure to expand PSI to this SLOC puts international interdiction efforts at a significant disadvantage and complicates an already difficult problem in the PACOM AOR.[76] This failure to expand PSI should come as no surprise, however. As former **Vice Chief of Naval Operations Admiral Walsh testified** to in 2007, many critical Pacific countries would like to support PSI, but are unable to "convince their legislatures that PSI interdiction activities will only occur in accordance with international law, including the Law of the Sea Convention, when the leading PSI nation, the United States, refuse to become a party to the Convention."[77] The legitimacy obtained through ratification of UNCLOS would solve this problem immediately. Recruiting countries to PSI is just the first step, however, as enhanced legitimacy has second-order effects.

[*Page 14-15*]

Vanecko, Jonathan J. LCDR, USN. **Time to Ratify UNCLOS: A New Twist on an Old Problem** . Naval War College: , May 4, 2011 (20p). [**More** (9 quotes)]

UNCLOS will not interfere with PSI or interdiction efforts, all provisions are the same as 1958 convention

"I would also like to address the relationship between the Convention and the President's Proliferation Security Initiative, an activity involving the United States and several other countries (all of which are parties to the Convention). The Convention will not affect our efforts under the PSI to interdict vessels suspected of engaging in the proliferation of weapons of mass destruction. The PSI requires participating countries to act consistent with national legal authorities and "relevant international law and frameworks," which includes the law reflected in the 1982 Law of the Sea Convention. The Convention's navigation provisions derive from the 1958 law of the sea conventions, to which the United States is a party, and also reflect customary international law accepted by the United States. As such, the Convention will not affect applicable maritime law or policy regarding interdiction of weapons of mass destruction. Like the 1958 conventions, the Convention recognizes numerous legal bases for taking enforcement action against vessels and aircraft suspected of engaging in proliferation of weapons of mass destruction, for example, exclusive port and coastal State jurisdiction in internal waters and national airspace; coastal State jurisdiction in the territorial sea and contiguous zone; exclusive flag State jurisdiction over vessels on the high seas (which the flag State may, either by general agreement in advance or approval in response to a specific request, waive in favor of other States); and universal jurisdiction over stateless vessels. Further, nothing in the Convention impairs the inherent right of individual or collective self-defense (a point which is reaffirmed in the proposed Resolution of Advice and Consent).

[*Page 5-6*]

Taft, William H. "***Statement of William H. Taft IV (April 8, 2004): Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the U.S. Senate Committee on Armed Services, April 8, 2004. [**More** (11 quotes)]

Effectiveness of PSI would be significantly improved by US accession to UNCLOS

"PSI is explicitly based on, and requires partner nations to act consistently with, national legal authorities and relevant international law frameworks."* That is the heart of PSI. It allows us to bring together a whole host of partners, authorities, and jurisdictions to work cooperatively. Virtually all of our partners in PSI are parties to the Law of the Sea Convention. Clearly, they see no conflict.

Far from impeding PSI, if we accede to the Law of the Sea Convention, it will help our PSI efforts. It will remove the invalid, incorrect, bogus argument that PSI is a renegade regime that flies in the face of international law." The result, if we accede, is that there will be more partners, more intelligence, and more preemptive actions that will help to protect us from serious and significant threats.

[*Page 450-451*]

Baumgartner, William D. "*UNCLOS Needed for America's Security*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 445-451. [**More** (3 quotes)]

U.S. ratification of UNCLOS would encourage more states to participate in PSI

"Post-9/11 terrorists attack, the US has taken several counter-terrorism initiatives to deter the non-state from executing their nefarious plans. In this regard, Proliferation Security Initiative (PSI) was launched by then President Bush during the G-8 meeting at Krakow, Poland on May 31, 2003. Besides other objectives, the PSI seeks to effectively interdict maritime transport of WMDs delivery systems and related material to and from entities of proliferation concern. However, many states have indicated their reluctance to be part of the US –led PSI initiative. It is expected that accession to the LOS Convention would promote the willingness of other countries to cooperate with the US on emerging maritime security architecture - the Proliferation Security Initiative (PSI).

[*Page 17*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

Ratification of UNCLOS would protect and augment work of PSI to interdict WMDs

"Ratifying LOSC will bolster the U.S. ability to create bilateral and multilateral agreements with other countries to counter WMD proliferation, one of the biggest threats to U.S. security according to numerous analysts both in and outside of government.[17] Government efforts to strengthen land-based interdiction efforts are increasing maritime tran- sit of dual-use technologies critical to developing and deploying WMD. In just one striking example, in June 2011 a U.S. Navy destroyer trailed a Belize-flagged ship suspected of carrying missile components to Burma and pressured the vessel to return to its origin in North Korea.[18]

In particular, ratifying LOSC will strengthen programs such as the Proliferation Security Initiative (PSI), since key partner and potential partner countries often voice skepticism over U.S. commit- ments to these transnational programs in light of the U.S. failure to ratify the convention. President George W. Bush launched PSI in 2003 to leverage existing national laws to improve interception of materials in transit and halt WMD-related financial flows. LOSC ratification will give PSI a stronger legal foundation under international law by removing "the bogus argument that PSI is a renegade regime that flies in the face of international law," according to Rear Admiral William D. Baumgartner, former U.S. Coast Guard Judge Advocate General. "The net result will be more partners, more intelligence,

more preemptive actions that help protect us from this most serious threat."[19] Indeed, removing this excuse for other countries' non-participation in programs to counter proliferation would benefit the United States diplomatically and could help in negotiating future innovative solutions and programs.

[*Page 4*]

Rogers, Will. **Security at Sea: The Case for Ratifying the Law of the Sea Convention** . **Center for a New American Security**: Washington, D.C., April 25, 2012. [**More** (11 quotes)]

U.S. reluctance to join UNCLOS directly harms efficacy of Proliferation Security Initiative

"Implementing the maritime and national security strategies in the current geopolitical environment requires that U.S. armed forces be provided not only with the convention's rights, freedoms, and protections necessary to facilitate military operations but also with the legal legitimacy necessary to build partnerships, trust, and confidence with nations around the globe. Currently, American armed forces are ham- strung when the United States publicly solicits other nations to join it in enforcing the rule of law, while at the same time refuses to join the international legal frameworks necessary to establish such rule. The U.S. failure to join the convention has directly prevented expansion of the PSI with some critically important Pacific countries. Although these countries are supportive of U.S. counterproliferation efforts, they indicate that U.S. refusal to join the convention has eroded their confidence that the United States will abide by international law when conducting PSI interdiction activities. Remaining outside the convention risks further damaging American efforts to develop cooperative maritime partnerships, such as PSI, and undermining implementation of U.S. security strategies that require the confidence and trust of other nations.

[*Page 26*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. officials have found no reason to be concerned that U.S. Ratification of UNCLOS would impede PSI

"Some commentators and maritime security experts in the United States have asserted that activities envisioned as being part of the PSI would be inconsistent with UNCLOS, and that U.S. accession to UNCLOS therefore would prevent or inhibit the United States from implementing PSI.[15] There are also Republicans in the U.S. Senate, such as Senator James Inhofe (R-OK) and Senator John Ensign (R-NV), who opposed U.S. accession to UNCLOS on the basis that it could hinder the U.S.-led PSI.[16] However, officials from the U.S. Navy, the Department of Defense, and the Department of State, who testified at the six hearings on UNCLOS held during the 108th Congress,

clarified: that PSI is consistent with UNCLOS; that U.S. accession to the Convention would not present any difficulties for implementation of the Initiative; and that the United States becoming a party to UNCLOS would strengthen the interdiction efforts under the PSI.[17] In January 2005, during the Senate nomination hearing for Condoleezza Rice as U.S. secretary of state, Senator Richard G. Lugar (R-IN) raised a number of law of the sea questions, which included the relationship between the PSI and UNCLOS. Rice pointed out that the Initiative requires participating parties to act consistently with national legal authorities and "relevant international law and frameworks," which includes the law as it is reflected in UNCLOS.[18] John Bolton, during his April 2005 nomination hearing to become U.S. representative to the United Nations, repeated the Bush administration's position saying that U.S. accession to UNCLOS would not have any negative impact whatsoever on the implementation of the Initiative.[19]

[*Page 103*]

Song, Yann-Huei. "***The U.S.-Led Proliferation Security Initiative and UNCLOS: Legality, Implementation, and an Assessment*** ." **Ocean Development & International Law**. Vol. 38, No. 1-2 (2007): 101-147. [**More** (3 quotes)]

On balance, critics' arguments that ratification of UNCLOS would impede PSI do not hold up under scrutiny

"Which view is correct? It is shaky, if not totally ill-founded, for UNCLOS opponents to suggest that the implementation of the PSI will be affected negatively by U.S. accession to UNCLOS. No persuasive arguments exist to the contrary.

Gaffney provided some reasons explaining why U.S. accession to UNCLOS would hinder its ability to pursue PSI's goals.[154] However, he failed to mention the possibility that the United States could stop and board a vessel on the high seas which was flying the flag of a country like Panama, Liberia, the Marshall Islands, Croatia, Cyprus, or Belize, all of which have signed bilateral shipboarding agreements with the United States.[155] In addition, it is also likely that the United States would obtain the consent from a flag state to interdict a vessel on the high seas, if reasonable evidence is provided or it is supported by reliable intelligence that the vessel concerned is indeed carrying or transporting WMD- related cargo. Moreover, while UN Security Council Resolution 1540 does not explicitly authorize the interdiction of a foreign-flagged vessel on the high seas which is suspected of carrying or transporting WMD-related cargo, it can still be argued that action taken under the PSI would not be inconsistent with the call for cooperation to confront the threat posed by WMD proliferation set out in the Resolution. Furthermore, Gaffney argued that the ability of the United States to undertake PSI interdiction action would be affected by Article 88 of UNCLOS, which declares that the high seas are reserved for peaceful purposes, and by Article 301, which obligates states parties to refrain from "the threat or use of force against the territorial integrity or political independence of any State."[156] However, these two provisions can also be cited by the United States as grounds for interdicting foreign- flagged vessels on the high seas if it is reasonably suspected or sufficiently proven that these

vessels are carrying or transporting WMD-related cargoes that are to be used by the "states of proliferation concern" for nonpeaceful purposes or have the potential to affect international peace and security. The foreign-flagged vessels' right to enjoy the freedom of navigation on the high seas in accordance with Article 87 of UNCLOS and the exclusive jurisdiction of the flag state over these vessels on the high seas under Article 92 are to be subject to certain limitations.

Gaffney may be correct where a vessel flying the flag of North Korea and having declared in the ship's manifest that it is transporting Scud missiles to Yemen could not be intercepted without a breach of the UNCLOS.[157] However, interdiction on the high seas is not the only option for stopping the transport of WMD-related goods or technologies from a state of proliferation concern. As the 1993 Yinhe incident demonstrates, the U.S. Navy could follow a suspect vessel and request cooperation from the port state to conduct an investigation once the vessel enters its port. Under UN Security Council Resolution 1540, a port state is obligated to take cooperative action to prevent illicit trafficking in WMD and WMD-related materials.[158]

Gaffney also argued that, if the United States remains nonparty to UNCLOS, it would not be subject to the limitations under the Convention.[159] However, as pointed out by Moore, it is wrong to assume that the United States is free from any constraints in relation to its ocean actions if it does not accede to UNCLOS since the United States is bound by the 1958 Geneva Conventions on the law of the sea which are more restrictive than UNCLOS on issues relating to the PSI.[160]

In sum, the better view is that of the Bush administration regarding the potential impact of U.S. accession to UNCLOS on the implementation of the PSI. The views held by some of the opponents to UNCLOS are arbitrary and shaky, and lack persuasive reasoning. It is incorrect to argue that the PSI is barred by UNCLOS. After all there are 18 states fully participating in PSI and more than 70 countries that have expressed their support for the Initiative, and most of these countries are party to UNCLOS. Moreover, while UNCLOS is considered the most important legal instrument in dealing with the rights and obligations of states in the oceans, there are other international treaties, regimes, and frameworks that can be relied on if interdiction actions against suspect vessels that carry or transport "WMD, their delivery systems and related materials" to and from "states and non-states of proliferation concern" are necessary.

[*Page 124-125*]

Song, Yann-Huei. "***The U.S.-Led Proliferation Security Initiative and UNCLOS: Legality, Implementation, and an Assessment*** ." **Ocean Development & International Law**. Vol. 38, No. 1-2 (2007): 101-147. [**More** (3 quotes)]

Consensus of experts is that U.S. Ratification of UNCLOS would do more to boost credibility and effectiveness of PSI than not

This article concludes that U.S. accession to UNCLOS would not adversely affect the implementation and effectiveness of the PSI. On the contrary, U.S. accession to UNCLOS could help increase the

U.S. credibility and leadership in dealing with the threat to inter- national peace and security posed by WMD proliferation. On August 31, 2005, Admiral James Watkins (retired) and Leon Panetta, chairs of the U.S. Commission on Ocean Policy and Pew Oceans Commission respectively, along with over 70 other national leaders and top ocean law and policy experts, sent a letter to Senate Majority Leader William H. Frist, calling on the Senate to move expeditiously to consider and approve U.S. accession to UNCLOS.[219] The signatories to the letter agreed with President Bush that accession to the UNCLOS supports vital U.S. national security, economic, and international leadership interests. They also stated that accession to the Convention will strengthen the U.S. ability to defend its important maritime rights, in particular, freedom of navigation and overflight, which are essential to U.S. military mobility, and will enhance U.S. national and homeland security efforts. This call is consistent with this article's argument that accession to the UNCLOS will not hurt U.S. security interests in pursuing the goals of the PSI, but instead will enhance them.

[*Page 134-135*]

Song, Yann-Huei. "***The U.S.-Led Proliferation Security Initiative and UNCLOS: Legality, Implementation, and an Assessment*** ." **Ocean Development & International Law**. Vol. 38, No. 1-2 (2007): 101-147. [**More** (3 quotes)]

US already accepts UNCLOS rules in Proliferation Security Initiative but doesn't have ability to guide its development as non-party

"Moreover, current U.S. nonproliferation policy relies on the Convention. The Proliferation Security Initiative, an effort among more than 20 states, led by the United States, to share intelligence and stop weapons shipments, must conform to the Law of the Sea Convention. The other states in the PSI are party to the Convention.13 In their Statement of Interdiction Principles, the PSI parties agree to adhere to international law.14 In effect, this agreement means that when the United States works with allies as part of the PSI, it agrees to observe the rights of innocent passage and freedom of the seas. This agreement costs America nothing, because it already recognizes those rights.

The United States could, of course, forcibly violate established rights of free passage in order to interdict weapons shipments. But this policy would be disastrous for two reasons. First, it would undermine the right of free passage, which is essential to U.S. trade and force projection. Second, it would destroy the Proliferation Security Initiative. The PSI cannot work without the cooperation of our allies, and their cooperation depends on the Initiative's adherence to the Law of the Sea.

Instead of fighting proliferation outside of international law, America can use international law to fight proliferation. One way to allow interdiction of weapons shipments is to alter the Convention to make proliferation grounds for interdiction on the high seas or in coastal waters. It would take a long negotiating effort, but the United States might succeed. By staying outside the Convention, the United States forgoes this opportunity but remains bound by the legal restrictions on interdiction.

[*Page 4*]

Friedman, Benjamin and Daniel Friedman. **How the Law of the Sea Convention Benefits the**

United States . Bipartisan Security Group: Washington, D.C., November 2004 (7p). [More (4 quotes)]

Success and expansion of Proliferation Security Initiative dependent on U.S. ratification of UNCLOS

"On this specific point, it is worth looking at the example of the President's Proliferation Security Initiative, or PSI. PSI began in May 2003, when 10 like- minded countries joined the United States to prevent the proliferation of weapons of mass destruction, their delivery systems, and related materials. Those 11 countries endorsed a series of PSI founding principles, including two essential principles from an operational perspective: One, that all States have broad domestic authorities to act against proliferators and, two, that acting cooperatively, they can use those authorities and international law---including the Law of the Sea Convention--- to prevent proliferation. The Law of the Sea Convention recognizes numerous legal bases for taking action against vessels suspected of engaging in proliferation activities, including port State control measures, flag State authority, and the right of warships to approach and visit commercial vessels.

In just four years, PSI has expanded from its original 11 partner-nations to almost 90, and we have had specific operational successes in preventing the proliferation of weapons of mass destruction under PSI. However, our failure to be a Party to the Law of the Sea Convention is limiting further expansion of PSI. Critically important democratic Pacific countries have indicated a desire to support our counter-proliferation efforts, but they tell us that so long as we are not a Party to the Law of the Sea Convention, they will not be able to convince their legislatures to endorse PSI. How, they ask us, can they convince their legislatures that PSI interdiction activities will only occur in accordance with international law including the Law of the Sea Convention, when the leading PSI nation, the United States, refuses to become a party to the Convention?

[*Page 7-8*]

Walsh, Patrick M. "***Statement of Admiral Patrick M. Walsh: Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention*** ." Testimony before the Senate Foreign Relations Committee, September 27, 2007. [More (4 quotes)]

U.S. accession to UNCLOS necessary for success of the Proliferation Security Initiative

"The Proliferation Security Initiative. Similar to concerns related to intelligence activities, the effect of convention accession on the PSI is best addressed by those executive branch departments responsible for its creation and execution. Ambassador John R. Bolton, undersecretary of state for arms control and international security affairs during the creation of the PSI, has stated: "I don't think that if the Senate were to ratify the Law of the Sea Treaty and the president were to make the treaty,

that it would have any negative impact whatsoever on PSI."[35]

The vice chief of naval operations has provided testimony that indicates joining the convention is necessary for, not harmful to, further PSI success: "[O]ur failure to be a Party to the Law of the Sea Convention is limiting further expansion of PSI. Critically important democratic Pacific countries have indicated a desire to support our counter-proliferation efforts, but they tell us that so long as we are not a Party to the Law of the Sea Convention, they will not be able . . . to endorse PSI."[36]

[*Page 43*]

Borgerson, Scott G. **The National Interest and the Law of the Sea** . **Council on Foreign Relations**: Washington, D.C., May 2009 (82p). [**More** (22 quotes)]

U.S. ratification of UNCLOS would support rather than hinder the work of the Proliferation Security Initiative

"*[MYTH] The Convention adversely affects activities to be undertaken pursuant to the Proliferation Security Initiative.*

- On the contrary, joining the Convention would strengthen PSI efforts.
- PSI's own rules require that PSI activities be consistent with relevant international law and frameworks, which include the Convention's navigation provisions.
- The Statement of Interdiction Principles pursuant to which the PSI operates explicitly specifies that interdiction activities under PSI will be undertaken "consistent with national legal authorities and relevant international law and frameworks." The relevant international law framework for PSI includes customary international law that is codified in the Law of the Sea Convention.
- The Convention provides solid legal bases for taking enforcement action against vessels and aircraft suspected of engaging in proliferation of WMD, e.g., exclusive port and coastal State jurisdiction in internal waters and national airspace; coastal State jurisdiction in the territorial sea and contiguous zone; exclusive flag State jurisdiction over vessels on the high seas (which the flag State may, by agreement, waive in favor of other States); and universal jurisdiction over stateless vessels.
- All of the United States' partners in the PSI are parties to the Convention and accordingly observe its provisions.
- As Admiral Michael Mullen, Vice Chief of Naval Operations, testified before the Foreign Relations Committee, being party to the Convention "would greatly strengthen [the Navy's] ability to support the objectives" of PSI by reinforcing and codifying freedom of navigation rights on which the Navy depends for operational mobility.

Turner, John F. "***Statement of John F. Turner: To examine the "United Nations Convention on the Law of the Sea." (March 23, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 23, 2004. [**More** (11 quotes)]

UNCLOS is not administered by the United Nations

The United Nations has virtually no role in management, implementation, or execution of this treaty. It remains in the convention's title only because the treaty was initially negotiated at the United Nations. In addition, the only international organization UNCLOS creates (the International Seabed Authority) is no different from the hundreds of other international organizations the U.S. is already party to, including the U.S.- Canadian Fisheries Convention or the International Maritime Organization.

Governing structure of UNCLOS regime is not under United Nations control

"Contrary to the isolationists' belief, the United Nations is not involved in implementing, administering, or enforcing UNCLOS. The convention not the United Nations, establishes a number of distinct bodies, separate from the United Nations, to handle specific issues. These include the Commission on the Limits of the Continental Shelf[15] and the International Sea Bed Authority.[16] The Authority is composed of three bodies: the Assembly, the Council, and the Secretariat.[17] Each member nation has one representa- tive in the Assembly.[18] The Council is a body of thirty-six persons. As the largest economy in terms of gross national product, if the United States ratified UNCLOS, the United States would have a permanent place on the Council.[19] The Council nominates persons for the Secretariat and the As- sembly votes on them.[20] An agency called the Enterprise, which works in deep seabed mining, has not been called into action, as mining has yet to start.[21] The final organization is the International Tribunal for the Law of the Sea.[22] The Tribunal consists of twenty-one members elected by the parties to the Convention and is based in Hamburg, Germany. While UNCLOS establishes various bodies, they are distinct from and independent of the United Nations, which is not involved in administering UNCLOS.

[*Page 141-142*]

Bonner, Patrick J. "***Neo-Isolationists Scuttle UNCLOS*** ." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 135-146. [**More** (6 quotes)]

Fears of an overreaching UNCLOS bureaucracy are overwrought

Those who practice and profess international law should be profoundly grateful for this political moment. We can (and must) seek to inform the public about the realities of the institutional and

dispute-settlement regimes in UNCLOS. The truth is, of course, that UNCLOS has relatively weak features in this regard, especially compared with such institutions as the WTO. The International Tribunal for the Law of the Sea (ITLOS) will have virtually no docket of cases, aside from applications for prompt release of vessels and crews and the occasional matter regarding fishing rights.[19] The vast majority of disputes under UNCLOS will be resolved by ad hoc arbitrators, hand-picked by the parties.[20] Likewise, the International Seabed Authority (ISA) is likely to be a rather sclerotic organization, given its limited mandate (with the modifications made to Part XI in 1994)[21] until such time (if ever) that deep seabed mining for manganese nodules has even the remote prospect of profitability. Ironically, the work of one UNCLOS institution that does bear attention – the Continental Shelf Commission, which is the technical body that will rule on any U.S. application to extend its claims in the Arctic – has not yet been fully evaluated. As for the "international tax" that the ISA will assess on continental shelf oil and gas production beyond 200 nautical miles,[22] that provision, ironically, was based on a proposal made by the Nixon Administration as an alternative to the cumbersome regime for manganese nodules.[23]

[*Page 26-27*]

Bederman, David J. "***The Old Isolationism and the New Law of the Sea: Reflections on Advice and Consent for UNCLOS*** ." **Harvard International Law Journal Online**. Vol. 49. (2008): 21-47. [**More** (3 quotes)]

UNCLOS is in no way a power grab by the United Nations

"Critics also argue that the convention will turn the world's oceans over to the United Nations. The United Nations has no decisional authority over any oceans issue in the convention, nor does the treaty create another UN agency. Rather, the three strictly limited organizations that the convention does create report to the state parties to the treaty, not to the United Nations. As with many U.S. arms control agreements, the negotiations proceeded under UN auspices, but the United Nations had no hand in developing the convention. And the negotiations leading to the convention were supported by the United States precisely because of its strategic and resource-based interests at sea. The real threat to these interests has been unbridled coastal state "unilateralism," sometimes referred to as "creeping jurisdiction."[11] This is a threat for which multilateral negotiations provided the best forum for protecting core U.S. oceans interests.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Fears of the vast unaccountable bureaucracy of UNCLOS have been proven unfounded in the 10 years since it has been in force

A handful of opponents continue to voice their concerns about the impact of acces- sion on U.S. sovereignty and security. Doug Bandow, a special assistant to President Reagan in the 1980s who served on the U.S. Law of the Sea delegation, continues to call for the scuttling of the Treaty.[93] Bandow cautions against what he refers to as a "redistributionist bent" embodied in Part XI in the form of a portion of deep seabed royalties being distributed to mining and nonmining nations alike. He also notes that the United States ought to stand against the creation of "new oceans bureacracy."[94] At the same time he derides the advocates' call for Treaty accession as a means of manifesting U.S. leadership. Leadership, suggests Bandow, can be illustrated just as easily by saying no as by saying yes.

Bandow's arguments fail to carry the same weight today as they did ten years ago. The oceans bureaucracy, as he calls it, is not a prospect that might be stemmed. The Law of the Sea Tribunal is up and running. Judges have been appointed and are hearing and adjudicating cases. The Commission on the Limits of the Continental Shelf is estab- lished and employing Convention principles as required by the Convention.[95] As noted above, the United States is currently engaged in mapping its own continental shelf em- ploying Convention principles.[96]

[*Page 205-206*]

Duff, John A. "*A Note on the United States and the Law of the Sea: Looking Back and Moving Forward*." **Ocean Development & International Law**. Vol. 35. (2004): 195-219. [**More** (8 quotes)]

U.S. ratification of UNCLOS would not add new bureaucracy but would give U.S. more influence over existing institutions

"*Myth: Ratifying the Law of the Sea Treaty will create a United Nations bureaucracy.* Fact: Not true. Ratifying the LOTS creates nothing. Ratifying the treaty will give the United States a seat on the already-formed International Seabed Authority. The International Seabed Authority has existed for over 20 years. The ISA is the international authority that grants exploration and mining and drilling permits to all nations. The ISA also creates clear, legally binding, protocols for ships while navigating foreign waters. This is long established, current international law. The U.S. opting not to join the ISA does nothing except prevent America from receiving mining and drilling permits, while also creating a gray area legally for our military and for U.S. companies when dealing with waterways belonging to foreign nations. That is why every U.S. business association, including the US Chamber of Commerce and the National Association of Manufacturers, and every sitting military leader of a U.S. Command – including the Secretaries of the Army, Navy and Air force and the Chairman of the Joint Chiefs of Staff - supports the treaty's ratification.

Andrew Langer. "***The Case for Ratification of the Law of the Sea Treaty*** ." **Real Clear Politics**. (November 28, 2012) [**More**]

Should not dismiss UNCLOS just because it originated from United Nations

"*Myth 6: UNCLOS is an "UN treaty" and sui generis does not serve U.S. interests.*

The Convention is not the United Nations; it simply was negotiated under UN auspices, as are many vital international agreements. Such UN treaties as the Anti-Corruption Convention and the Convention for the Suppression of Terrorist Bombings or the International Ship and Port Facility security Code negotiated under the aegis of the International Maritime Organization enhance, not threaten, U.S. security.

Truver, Scott C. "*UNCLOS Mythbusters*." **U.S. Naval Institute Proceedings**. Vol. 133, No. 7 (July 2007): 52-53. [**More** (4 quotes)]

No reason at all to be concerned about United Nations involvement in UNCLOS

"This brings us to the keystone in the arch of opposition. The treaty is officially titled the United Nations Convention on the Law of the Sea. And anything that bears the imprimatur of the United Nations is immediately and unconditionally dead on arrival in a certain tranche of senatorial offices. Sen. Jim DeMint (R-SC), for example, has suggested the United Nations is "ineffective, they've been wasteful, there's corruption, and there is deep concern that there is a lot of anti-American sentiment."

Here's the thing: The United Nations has virtually no role in management, implementation, or execution of this treaty. It remains in the convention's title only because the treaty was initially negotiated at the United Nations.

The treaty itself does not establish U.N. oversight of any aspect of its implementation. It creates separate management bodies, like the International Seabed Authority, which work to regulate multinational operations in international waters without a direct link to the organization that has attracted so much vitriol from the protectionist wing of the conservative movement.

Apparently, conservative conspiracy theorists' fears about the United Nations's purported push for creation of a world government are stronger than their ties to Big Oil, corporate America, and military contractors. As Secretary Clinton put it, "Whatever arguments may have existed for delaying U.S. accession no longer exist and truly cannot even be taken with a straight face."

The lack of support for this treaty among some GOP lawmakers is stunning. It shows once again that conservatives' ideological opposition to the United Nations is getting in the way of smart planning for our natural resources.

Ben Bovarnick and Michael Conathan. "***Republicans Have 'Out Of Body Experience' Watching Democrats Support Industry On Law Of The Sea*** ." **ThinkProgress**. (July 6, 2012) [**More**]

U.S. participation in ISA is no different from hundreds of other specialized international organizations

"Myth: The convention "is designed to place fishing rights, deep-sea mining, global pollution and more under the control of a new global bureaucracy ..." (13) This is so erroneous that it would he humorous were it not so insistently advanced by critics. The executive branch, which led U.S. negotiations on the convention and supports the Senate's advice and consent, would never have supported such nonsense. The ISA deals solely with mineral resources beyond national jurisdiction, not with fishing, global pollution or navigation, nor with activities in the water column. If U.S. mining firms are ever to mine the deep seabed, particularly sites under no nation's ownership, it is necessary to create enforceable rights to this end. The United States is already party to hundreds of specialized international organizations. The ISA would be an unremarkable addition, one that after 11 years of operation currently has a staff of 28.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

Empirically, ISA has operated in a way that belies claims of it being an overly bureaucratic and bloated agency

"The ISA, the institutional component that led the Reagan administration not to support the Convention in 1982, has remained a obstacle for a few vocal critics of the Convention in America. Although the ISA is the only new body created by the Convention that is explicitly authorized to make policy, its mandate is narrow, related to steps furthering security of tenure for those seeking to explore for minerals or mine on the seabed beyond the limits of national jurisdiction. The Part XI Implementation Agreement, which is now read together with the Convention to govern the ISA's operations, rectified all of the Reagan administration's objections to the original Part XI (the administration's only objections to the Convention). The objectionable provisions related to an asserted lack of guaranteed access for qualified private miners, the possibility of payments to national liberation movements, mandatory technology transfers, production limita- tions, and a review conference that could amend Part XI over the objection of the U.S. or other states. The George W. Bush administration has emphasized the 1994 changes with respect to these provisions. It has also emphasized 1994 changes concerning the U.S. role in how the ISA makes its decisions, changes that give the U.S. an effective veto over ISA decisions. Since its inception, the ISA has operated on a low budget and has confined its activities to its specified mandate, behavior that should reassure skeptics who fear an expensive, bloated international bureaucracy.

[*Page 634*]

Noyes, John. "*U.S. Policy and the United Nations Convention on the Law of the Sea*." **George**

Washington International Law Review. Vol. 39. (2007): 621-638. [**More** (4 quotes)]

Fears of UNCLOS bureaucracy are overwrought and naive

"The critics seem naively to believe that America can simply shoot its way around the oceans, apparently including shooting our NATO allies, such as Canada, with whom we disagree about Arctic straits. Most shamefully, the critics repeat, despite all correction, that the Convention would turn the oceans over to the United Nations. But to the contrary, in its 200 nautical mile economic zones and extended coastal state continental shelves the Convention embodies one of the greatest expansions of national jurisdiction in history and absolutely nothing is turned over to the United Nations. Moreover, the closely cabined International Seabed Authority (ISA), necessary to create bankable property rights for seabed mining, only has jurisdiction over mineral resources of the seafloor in areas beyond national jurisdiction. Far from a menacing international agency poised to take over the world, after a quarter-century of operation the ISA has a staff of 39, considerably smaller than the staff of at least one of the domestic organizations most visibly opposing the Convention. The ISA is simply a small garden variety specialized international agency similar to many in which the United States participates, for example the Great Lakes Fisheries Commission. Even were the critics correct, United States non-adherence to the Convention would not in the slightest end the ISA or change the Convention which is one of the most widely adhered to in the world.

Moore, John Norton. "***Restoring America's Oceans Leadership*** ." **Huffington Post**. (July 27, 2012) [**More**]

UNCLOS does not create new U.N. bureaucracy or turn oceans over to U.N.

"*Myth: The convention would turn the oceans over to the United Nations.*

This is completely and utterly false; not a drop of ocean water nor an ounce of oceans resources would be turned over to the United Nations. To the contrary, the convention disappointed extreme internationalists who believed in "blue helmet" solutions to oceans issues. It placed all coastal resources of the water column and the continental shelf under coastal nation, rather than international, jurisdiction. And it maintained and strengthened freedom of navigation on the world's oceans. These critical issues in the negotiation, by far the most important, hugely strengthened national sovereign rights. Even the ISA that the convention created is an independent international authority, supported by the United States, and is necessary to provide stability of property rights to deep seabed minerals owned by no other nation. Without such an authority providing exclusive property rights to seabed mine sites of the deep ocean floor, seabed mining, including that by U.S. interests, would never be realized. And remember that this body is limited to the mineral resources of the deep seabed beyond national jurisdiction that have yet to be mined, in contrast with the billions of dollars in fisheries, oil and gas production on the continental margins, all of which are under national

jurisdiction.

Schachte, William L and **John Norton Moore**. "*The Senate should give immediate advice and consent to the UN Convention on the Law of the Sea: why the critics are wrong.*." **Journal of International Affairs**. Vol. 59, No. 1 (Fall/Winter 2005) [**More** (18 quotes)]

25 year old ISA is not a precursor to world government, no different than hundreds of other international organizations

"Now, how about this new agency [International Seabed Authority] being a precursor for world government? Well, it has been in existence for twenty-five years. It has a staff of thirty-five, counting the secretaries, and it has a total budget of less than $12 million.[21] World government? I do not think so. This is simply yet another run-of-the-mill international organization. There are hundreds, like the U.S.- Canadian Fisheries Convention, the International Maritime Organization, and many others. This is not something fundamentally different.

[*Page 463-464*]

Moore, John Norton. "*UNCLOS Key to Increasing Navigational Freedom*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 459-467. [**More** (4 quotes)]

Opponents who argue UNCLOS would impose U.N. law on U.S. ignore long negotiation history and U.S. leadership in writing treaty

"In their letter to Senator Reid, the thirty-one signers were concerned with subjugating U.S. sovereignty "to a supranational government that is chartered by the United Nations."[10] Leading conservative activist Phyllis Schlafly described the conservative perspective on the treaty as follows:

> LOST [UNCLOS] is the globalists' dream bill [because] it would put the United Nations in a de facto world government that rules the world's oceans under the pretense that they belong to the 'common heritage of mankind.' That is global speak for allowing the United Nations and its affiliated or- ganizations to carry out a massive unprecedented redistribution of wealth from the United States to other countries.[11]

This perspective ignores the fact that the United States had been in- volved in negotiations on the wording of UNCLOS since the time of Presi- dent Nixon.[12] In 1983, during the Reagan administration, the United States supported the convention with the exception of the deep seabed provisions. President Reagan stated that the United States would recognize the rights of other states in the waters off their coasts as reflected in the convention.[13] After President Reagan refused to endorse ratification due to the deep seabed issues, additional negotiations in the United Nations took place, resulting in the "Agreement Relating to the Implementation of Part XI of UNCLOS," dated 28 July

1994, which satisfied the Reagan conditions. After a yearlong inter-agency review, the Bush administration concluded that all of the concerns raised by President Reagan were addressed by the 1994 Amendments.[14] Thus, rather than UNCLOS being forced on the United States by the United Nations, it was instead negotiated with the full participation of the United States, and later specifically amended to answer the objections of President Reagan.

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Bonner, Patrick J. "***Neo-Isolationists Scuttle UNCLOS*** ." **SAIS Review of International Affairs**. Vol. 33, No. 2 (Summer-Fall 2013): 135-146. [**More** (6 quotes)]

The U.S. would not Benefit from Ratification of UNCLOS

After ten years, UNCLOS has failed to address many of the management and EEZ issues it was designed to resolve

"While UNCLOS has effectively codified many aspects of traditional law and has successfully incorporated several modern issues, such as environment, fisheries, and coastal zone management, these can be regarded as "nice to have" accomplishments but are by no means essential to the political, economic, or military security of the United States. In fact, one of the principal reasons for the establishment of UNCLOS III was to resolve U.S. conflicts with several Latin American states over territorial sea claims in the Pacific Ocean and the repeated seizure of U.S. tuna boats and their crews. After more than ten years of UNCLOS III, ten years of post-UNCLOS III ratification debate, and two more years of negotiation of the agreement, Nicaragua, Peru, Ecuador, and El Salvador still claim 200-mile territorial seas and refuse to become parties to the convention.

> With regard to Nicaragua and Peru, their abstention could be due to their claim to the 200-mile territorial sea, which is not in conformity with the Convention.
>
> The reasons for the absence or non-participation of these states are not clear. Only Turkey explained that it had some difficulties with certain provisions of the Convention. Ecuador and El Salvador may have chosen not to vote because of their claim to the 200-mile territorial sea. (Hayashi, 5-6)

Leitner, Peter. "***A Bad Treaty Returns: The Case of the Law of the Sea Treaty*** ." **World Affairs**. Vol. 160, No. 3 (Winter 1998): 134-150. [**More** (6 quotes)]

U.S. underseas cable systems can be protected by existing laws or bilateral treaties

The U.S. does not need to ratify UNCLOS to protect the interests of its underseas cable industry. Submarine cables are already protected under existing international law and any gaps in this law can be resolved by implementing bilateral treaties with states as needed.

Bilateral investment treaties could resolve existing gaps in UNCLOS law

"In conclusion, these interactions and potential conflicts in the regime applicable to submarine cables regime make further ground arise for the integrated planning and management of activities in ocean and coastal areas.

The scholarship has repeatedly affirmed that such a cooperation and integration of different interests would be best achieved by means of the elaboration of a new international convention. However, it has to be pointed out that disruptions to the integrity of submarine cable systems potentially cost cable companies millions of dollars in repairs and lost revenues from e- commerce and telecommunications.[29] In this perspective, rather then spending efforts to negotiate a new Convention on submarine cables, a solution – at least a partial one – can be represented by increasing the cooperation between all actors involved (privates and States) by means of BITs. This would help minimizing the risks of interferences and protect the interests of all the parties involved. As South-East Asia currently represents the most-relevant market for the lay of submarine cables, particular attention in the following analysis will be given to the BITs practice in the region.

[*Page 17*]

Borgia, Fiammetta and Paolo Vargiu. **When Investment Law Takes Over: Towards a New Legal Regime to Regulate Asia Pacific's Submarine Cables Boom** . University of Leicester School of Law: United Kingdom, 2013 (38p). [**More** (5 quotes)]

Bilateral investment treaties can complement existing UNCLOS regime to fill existing gaps without need to pursue new treaty on underseas cables

"The inadequacy of the regime provided by the law of the sea to effectively protect submarine cables, the relevance of which in national economies increases as time goes by, is hardly questionable. The UNCLOS, in particular, is a 'constitutional' convention, one that needs other

instruments to be put in place in order to ensure the effectiveness of most of its provisions. As stated beforehand, BITs can provide only a partial solution to the problem – in other words, they can represent a solution only in those areas where coastal States exercise their sovereignty. In the high seas and in those areas where the sovereignty of a State is limited by the rights and duties of other States, BITs clearly cannot be a suitable solution. However, BITs and investment law in general can nonetheless represent a model worth following to fill the remaining lacunae of the law of the sea in the regime applicable to submarine cables. The lesson to be learned from investment law is that the multilateral approach is not necessarily the most appropriate. In investment law, the bilateral approach has been proven as successful as it allows each State to pursue their interest at the local level by negotiating the level of protection they deem appropriate in a particular State or region for their nationals. BITs could be a suitable instrument to reach effective and constant protection for submarine cables. Alternatively, bilateral or small multilateral treaties could help to solve once and for all the problem of the current inadequacy of the law of the sea in terms of protection of submarine cables.

[*Page 37-38*]

Borgia, Fiammetta and Paolo Vargiu. **When Investment Law Takes Over: Towards a New Legal Regime to Regulate Asia Pacific's Submarine Cables Boom** . University of Leicester School of Law: United Kingdom, 2013 (38p). [**More** (5 quotes)]

U.S. ratification of UNCLOS is not necessary for development of offshore oil and gas industry

U.S. does not need to ratify UNCLOS to develop hydrocarbon resources beneath the ECS -- development is actively underway already and further development can occur thrigh bilateral agreements with neightboring countries.

Empirically, US companies have leased and developed oil development claims on ECS since 2001 without needing UNCLOS framework

"Reality tells a different story. The ECS area on the U.S. portion of the western gap has been available for development since August 2001. Specifically, the Bureau of Ocean Energy Management (BOEM)[22] offered the northern portion of the western gap for lease almost immedi- ately after the 2000 U.S.–Mexico ECS delimitation treaty was ratified. That treaty entered into force on January 17, 2001. Seven months later, on August 22, BOEM offered the area of U.S. ECS in the western gap in Lease Sale 180. In that lease sale, three U.S. companies (Texaco, Hess, and Burlington Resources Offshore) and one foreign company (Brazil's Petrobras) submit- ted successful bids totaling more than $2 million for seven lease blocks in the western gap.[23] BOEM has offered the ECS blocks in the western gap in 19 lease sales between August 2001 (Lease Sale 180) and March 2010 (Lease Sale 213). In connection with those sales, seven U.S. companies (Burlington, Chevron, Devon Energy, Hess, Mariner Energy, NARCA Corporation, and Texaco) submitted bids to lease blocks in the western gap. Five foreign companies—British Petroleum, Eni Petroleum (Italy), Maersk Oil (Denmark), Petrobras, and Total (France)—also bid on western gap ECS blocks during those sales. BOEM collected more than $47 million in bids in connection with lease sales on those blocks.

Of the approximate 320 blocks located in whole or in part on the western gap ECS, 65 (approximately 20 percent) are currently held under active leases by nine U.S. and foreign oil exploration companies.[24]

The successful delimitation and subsequent leasing of areas in the Gulf of Mexico demonstrate that the United States does not need to achieve universal international recognition of its ECS. The United States identified and demarcated areas of ECS in the western gap in cooperation with the only other relevant nation, Mexico, and that area was subsequently offered for development to U.S. and foreign oil and gas companies.[25] All of this was achieved without U.S. accession to UNCLOS or CLCS approval.

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to**

Develop Oil and Gas Resources . Heritage Foundation: Washington, D.C., May 14, 2012 [More (6 quotes)]

Legal certainty provided by UNCLOS is not a necessary condition for development of oil and gas resources with US EEZ

"Even though approximately 20 percent of the only area of U.S. ECS that has been made available for lease by BOEM is currently under an active lease, the U.S. oil and gas industry has supported and will likely continue to support U.S. accession to UNCLOS in order to achieve even greater "certainty." That is their prerogative, of course, and achieving a maximum amount of certainty is a legitimate and desirable goal for a capital-intensive commercial enterprise. However, the successful delimitation of the ECS in the western gap and the U.S. government's continuing lease sales of ECS blocks would appear to have provided the certainty necessary for several major U.S. and foreign oil exploration companies to secure leases for the development of the U.S. ECS.

[*Page 8*]

Groves, Steven. "*The Law of the Sea: Costs of U.S. Accession to UNCLOS* ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [More (11 quotes)]

US actively surveying extended continental shelf and can negotiate bilateral agreements with nations regarding boundaries outside UNCLOS framework

"The U.S. ECS Task Force is actively collecting data in other areas around the globe where the United States has presumptive areas of ECS. In addition to the Arctic Ocean and the Bering Sea, the task force has surveyed potential ECS areas off the U.S. Atlantic and Pacific Coasts, in the Gulf of Alaska, around the Kingman Reef and Palmyra Atoll, at the Necker Ridge near Hawaii, in the Northern Mariana Islands, and near Guam.[43]

Once the mapping is complete, the United States will be in a position to negotiate ECS boundary treaties with nations that have maritime or continental shelf boundaries appur- tenant to U.S. territories, including Japan and Micronesia (in regard to potential ECS associated with the Northern Marianas); Kiribati (in regard to the Palmyra Atoll); and the Bahamas (in regard to the southern end of the U.S. Atlantic Coast). The United States and Canada will need to negotiate one or more treaties to delimit potential areas of ECS located in the Gulf of Alaska and areas associated with their Atlantic and Pacific maritime borders.

To summarize, despite dire warnings from the proponents of U.S. accession to UNCLOS, actual events demonstrate that the United States need not join the convention to delimit areas of its ECS, secure jurisdiction and control over those areas, and commence development of the hydrocarbon

resources beneath the ECS. The United States is actively doing so in several crucial, resource-rich regions, including the Gulf of Mexico, the Arctic Ocean, and the Bering Sea. Such delimitation has been and will continue to be conducted in cooperation with neighboring countries, including Mexico, Russia, and Canada, regard- less of whether the U.S. is a member of UNCLOS.

[*Page 14*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

US within its rights according to international law to develop on extended continental shelf

"Proponents of UNCLOS offer no evidence that any foreign nation has not recognized or will not recognize the unilateral proclamations made by the United States. yet the same proponents contend that the United States cannot hope to gain recognition of its ECS or assert jurisdiction and control over it unless and until it joins the convention. Law of the sea experts such as Ted McDorman at the University of Victoria disagree with that position:

> It can be asked whether a non- party to the LOS Convention can legally exercise jurisdiction over its adjacent continental margin beyond 200 nautical miles or whether this entitlement is only available to parties to the LOS Convention. The answer is that there appears to exist sufficient state practice ... to support the view that, as a matter of customary international law, states can legally exercise jurisdiction over the continental margin beyond 200 nautical miles irrespective of the State's status as a LOS Convention ratifier.11

No evidence suggests that mem- bership in UNCLOS is necessary, much less essential, either to gain international recognition of the U.S.'s ECS boundaries or to claim, legally and legitimately, jurisdiction and control over its ECS resources. It is telling that proponents of U.S. accession to UNCLOS do not claim that international recognition of the U.S. territorial sea, contiguous zone, or EEZ is contingent upon U.S. accession to the convention, yet they assert that accession is the sine qua non for international recognition of the U.S. ECS.12

[*Page 4*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

U.S. resource extraction industries realize they have more to lose being outside of the treaty and have lined up in favor of it

“Opponents of UNCLOS claim that accession will also harm U.S. commercial interests in the world‘s oceans. The provisions on seabed mining, in particular, are seen as an attempt at international wealth redistribution.65 Additionally, there is a fear that the ISA would have the power to enforce an international tax on resources extracted from the seabed.66

Although these commercial concerns resonate with many economic conservatives, they are among the easiest to debunk, primarily by examining the economic consequences the United States will face if it does not accede. Claims to mineral rights in the Arctic are governed by UNCLOS provisions on an extended continental shelf, and the United States may lose these claims without representation on the ISA or State Party status.67 Additionally, many economic concerns ring hollow in the face of favorable opinions of the treaty by U.S. industries affected by such regulations.68 For example, the oil and gas industries have agreed to pay any tax levied on deep seabed extractions.69

[*Page 361-362*]

Hudzik, Elizabeth M. "***A Treaty on Thin Ice: Debunking the Arguments against U.S. Ratification of the Law of the Sea in a time of Global Climate Crisis*** ." **Washington University Global Studies Law Review**. Vol. 9, No. 2 (2010) [**More** (7 quotes)]

U.S. can make claim to Arctic resources without being party to UNCLOS

U.S. should assert its rights to develop in the Arctic by invoking the existing convention on the high seas

"The United States must stand up, take notice, and resist any effort to grant Russia or any other nation exclusive control over the Arctic's resources. Because the United States is not a party to UNCLOS, it must argue for a solution outside the treaty. This dispute is likely to take place in multi-party negotiations, and it is imperative that the United States shore up its legal positions now.

As it has done for quite a long time, the United States may rely on the doctrine of the freedom of the high seas codified in the Convention on the High Seas to assert that it is permitted to mine and navigate the area that Russia is attempting to claim. In addition to allowing free navigation of the high seas, that doctrine, now a part of international custom, allows any nation to participate in exploitation of the resources of a vast majority of the oceans. By arguing that UNCLOS does not apply to non-parties, the United States will be able to rely on this widely-supported doctrine while extracting oil, natural gas, and minerals from the seabed. An application of this doctrine will provide the United States with the best opportunity to serve its own interests without sacrificing its sovereignty to an international tribunal.

[*Page 865*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

US can still legally assert a claim in the Arctic without being party to UNCLOS

"While I agree completely with **Cartner and Gold** that UNCLOS "reduces uncertainty and confusion for all states parties" claiming an extended continental shelf, the United States must be prepared to act unilaterally if the Senate does not give advice and consent in the near future. Clearly, as indicated in the NWC Global Shipping Game report, accession to UNCLOS would provide greater certainty and predictability "of the future security and political environment that industry desires in order to invest in economic development of the Arctic region." However, even without U.S. accession, if there is money to be made, U.S. industry will invest in the region if the U.S. Navy is there to guarantee and protect access. Therefore, while unilateral action may not be the "best" option, it

remains a viable (and perhaps the only) option and we should not undercut our ability to claim an extended continental shelf based on the 1958 Continental Shelf Convention by allowing Administration officials to incorrectly state that the United States can only claim an extended continental shelf if we join UNCLOS. Fortunately, not all Administration officials are misinformed on the law. While recognizing the importance of UNCLOS, Margaret Hayes, the chair of the Department of State Extended Continental Shelf Interagency Task Force, acknowledged that "the existence of an extended continental shelf does not depend on a coastal nation having joined the convention" and "that there are other ways to establish what the outer limits might be (emphasis added)."

[*Page 491*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

U.S. scuttling of Russia's initial Arctic claim shows it can still influence CLCS as a non member

"The United States was able to play a role in the Commission's non- acceptance of Russia's first claim to the Arctic seabed back in 2001, even though it was not a party to LOST – and, therefore, not at risk of being bound by adverse Commission decisions. This episode demonstrates that, by remaining outside of the Treaty, America can retain its freedom of action (including the use of bilateral diplomacy and more constructive multilateral mechanisms, such as the Arctic Council) and still challenge such over-reaching Russian claims and win.

[*Page 19*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

US successful experience with challenging Russia's claim shows that even as a non party to UNCLOS the US is not a helpless bystander to CLCS

"Indeed, after Russia made its 2001 claim, five nations (Canada, Denmark, Japan, Norway, and the United States) submitted objections to the CLCS. The U.S. objection identified "major flaws" in the Russian claim, including an objection concerning whether the Alpha-Mendeleev and Lomonosov mid-ocean ridges in the central Arctic are a natural component of Russia's continental shelf. However, the U.S. comments also noted that "the Russian submission utilizes the boundary embodied" in the 1990 U.S.–USSR treaty and that the "use of that boundary is consistent with the mutual interests of Russia and the United States in stability of expectations."[36]

The CLCS agreed with the U.S. comments, stating that the U.S.– USSR boundary demarcated in 1990 reflects the boundary of the U.S.–Russia continental shelf in the Bering Sea. The CLCS recommended that Russia "transmit to the Commission the charts and coordinates of the delimitation lines as they would represent the outer limits of the continental shelf of the Russian Federation extended beyond 200 nautical miles in ... the Bering Sea."[37]

In June 2002, in light of the objections to Russia's ECS claim, the CLCS recommended to the Russians that they provide a "revised submission" on Russia's claims in the central Arctic.[38] Russia reportedly will make an amended submission to the CLCS at some point in the future. In addition, Canada and Russia recently signaled that they will cooperate with each other to demarcate their respective ECS boundaries in the Arctic.[39]

The U.S. objections to the Russian ECS submission and the CLCS's subsequent rejection of the Russian claim call into question the repeated assertions by UNCLOS proponents that, absent U.S. accession to the convention, the United States is a helpless bystander in demarcation of Arctic ECS boundaries.[40] In fact, the United States has raised objections to the CLCS on other ECS submissions, such as those made by Australia and Brazil.[41]

[*Page 12*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

US ratification of UNCLOS will not boost capacity to challenge Russian claims, disputes likely to be resolved outside of convention

"Other Nations' Claims to the Arctic Seabed. If the Senate ratified UNCLOS, thereby making the United States a party to the treaty, the United States would have no additional grounds on which to contest Russia's CLCS claim, because the CLCS does not settle disputes among nations with competing claims. Thus, U.S. participation in the UNCLOS regime would add nothing to its legal argument that it is permitted to mine the seabed and navigate the waters that Russia is attempting to claim. UNCLOS does not provide a compulsory dispute resolution technique, and because a dispute among nations is likely to arise, it is probable that the rights to the resources of the Arctic will be decided outside of its framework.

[*Page 856*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

Participation in CLCS through framework of UNCLOS is not necessary to secure claims in Arctic

"Those in favor of UNCLOS ratification have asserted that, unless the United States becomes a party to the treaty, it will not be able to adequately protect its interests. Proponents argue that the United States will be left without a voice when the Arctic region is being divided amongst other nations. They suggest that unless the United States is able to participate in the formal processes codified in UNCLOS, Russia and the other relevant nations who may go before the CLCS will have a substantial advantage in claiming Arctic territory.

But, as discussed above, the CLCS is a semi-secretive process where a nation, whether it is a party to UNCLOS or not, will not be able to contest another nation's scientific findings to the Commission." Moreover, if the matter is indeed settled through multiparty negotiations, the status of UNCLOS in the United States will likely be irrelevant because the matter will be settled outside of the treaty.

[*Page 853*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

U.S. would weaken its bargaining position in disputes over Arctic claims if it ratifies UNCLOS

"The Rights to the Arctic Likely Will Be Decided through Multi-party Negotiations Outside the Scope of UNCLOS. UNCLOS does not create a dispute resolution process through the CLCS, and there is an inherent difficulty ofproving beyond refute that the area at issue is the extension of only one nation's continental shelf. Thus, the most probable result is that the nations with competing claims will negotiate amongst themselves to reach a settlement. This makes it imperative that the United States refrain from any action that may weaken its bargaining position.

By ratifying UNCLOS the United States could substantially erode its bargaining power. By becoming a party to the treaty and thus subject to the adjacent-or-opposite limitation, the United States would weaken its negotiating position if the U.S. continental shelf is not physically connected to the Arctic seabed. If the United States is a party to UNCLOS, then other nations may argue that the United States' only option is to submit a claim to the CLCS as provided in the treaty. If, however, the United States is not a party to UNCLOS, then there would be less pressure from other nations for it to proceed under UNCLOS provisions to ultimately determine the validity of any U.S. claim. Also, as a party to the treaty, the United States would lose credibility in any external settlement negotiations since it would only be subscribing to some of UNCLOS's mandates.

[*Page 857-858*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American*

Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

Russia's claim to arctic ECS hews closely to same lines demarcated in 1990 bilateral treaty

"Much of the supposed distress voiced by UNCLOS proponents stems from Russia's 2001 submission to the CLCS, in which Russia laid claim to a vast area of Arctic ECS. The proponents incorrectly imply that Russia's claim will result in the loss of Arctic resources that rightfully belong to the United States. According to Senator Lisa Murkowski (R–AK), for example:

> [I]f we do not become a party to the treaty, our opportunity to make [a claim to the CLCS] and have the international community respect it diminishes considerably, as does our ability to prevent claims like Russia's from coming into fruition. Not only is this a negligent forfeiture of valuable oil, gas and mineral deposits, but also the ability to perform critical scientific research.[30]

However, Russia's 2001 submission to the CLCS in no way overlaps or infringes on potential areas of U.S. ECS in the Arctic. To the contrary, Russia's claim adheres to a boundary line that the United States and the USSR agreed upon in a 1990 treaty.[31] Specifically, Russia's submission to the CLCS divides its claimed conti- nental shelf and ECS from the U.S. shelf along an agreed boundary line that extends from the Bering Strait northward into the Arctic Ocean.

[*Page 10*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

Minimal benefit over status quo of U.S. having seat on CLCS

"Is having a seat on the[46] CLCS an important enough reason to join the Convention? Would having a seat on the CLCS really put the United States Government in a position to have a say in deliberations over other nations' extended continental shelf claims? Again, the answer to both of those questions is, "no." The CLCS was established to help facilitate the implementation of Article 76. As a body of scientific experts, however, the CLCS does not have veto power over coastal state submissions. It may only make rec- ommendations to the coastal state on matters related to the establishment of the outer limits of its continental shelf. Coastal states may accept or reject these recommendations. Annex II (Article 8) to the Convention and CLCS Rules of Procedure (Rule 53) simply require the coastal state to make a revised or new submission in the case of disagreement with the recommen- dations of the Commission. Additionally, Annex II (Article 2) limits the membership of the CLCS to 21 experts, so there is no guarantee that a U.S. representative would be

elected to the Commission even if the United States was a party to the Convention. Moreover, even if elected, the U.S. repre- sentative would serve in a personal capacity (Annex II, Article 2(1); CLCS Rules of Procedure (Rule 11)) and would be precluded from voting on any submission tendered by the United States (Annex II, Article 5; CLCS Rules of Procedure (Rule 42)). Having a seat at the table on the CLCS would not put the U.S. Government in a position to have a say in deliberations over other nations' claims and would therefore have minimal benefit for the United States.

[*Page 153*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

U.S. rights to develop in the Arctic only come into conflict with Russia and Canada and existing bilateral arrangements are sufficient to manage these disputes

"What of the Arctic? A 2011 Bloomberg BusinessWeek editorial argued:

> "The U.S. continental shelf off Alaska extends more than 600 miles into the Arctic Ocean. American companies have been reluctant to invest in exploiting this underwater terrain, which contains vast untapped reserves of oil and natural gas. That's because the U.S., as a nonparticipant in the sea convention, has no standing to defend its ownership of any treasures that are found there."[32]

Yet this is exactly the same case as in the Gulf of Mexico. Only three nations contest the ownership of resources in the extended North American continental shelf in the Arctic: the United States, Canada and Russia. American relations with Canada are friendly; therefore, a United States-Mexico-style treaty with Canada demarcating appropriate lines north of Alaska should be relatively easy to achieve. Russia might be perceived as a more intractable problem; but a 1990 treaty between the United States and the Soviet Union defines the maritime boundary between the two powers.[33]

Under the Treaty, Russia has claimed vast areas beneath the Arctic Ocean, but these claims in no way infringe upon the 1990 Treaty. Actually, they are a challenge to Canada rather than the United States. South of the Arctic Ocean, the treaty line protects U.S. claims to large areas of extended continental shelf in the Bering Sea and in the Pacific Ocean southwest of the Alaskan Aleutian Islands. Accordingly, there is no barrier (barring the low one of a necessity to negotiate a treaty with Canada) to the United States developing the extended continental shelf in the Arctic and its environs in the same way it has in the Western Gap.

[*Page 7*]

Murray, Iain. **LOST at Sea: Why America Should Reject the Law of the Sea Treaty** . National Center for Policy Analysis: Washington, D.C., March 2013 (20p). [**More** (9 quotes)]

U.S. could rely on bilateral treaties as an alternative to UNCLOS regime

The United States can successfully pursue its national interests regarding its extended continental shelf by negotiating on a bilateral basis with nations with which it shares maritime borders to delimit and mutually recognize each other's maritime and ECS boundaries.

US could rely on reciprocal bilateral treaties as proposed in 1980 DSHMRA act as an alternative to UNCLOS

"In any case, it would have been quite simple to build an alternative to the LOST. In 1980 Congress passed the Deep Seabed Hard Minerals Act to provide interim protection for American miners until Congress ratified an acceptable LOST. The act could simply be amended to create a permanent process for recording seabed claims and resolving con- flicts. Such legislation could then be coordinated with that of the other leading industrialized states. In September 1982 Britain, France, Germany, and the United States signed the Reciprocating States Agreement to provide for arbitration of competing claims. Such an informal system could have been upgraded into a formal treaty, authorizing each nation to oversee its own companies' activities and creating a mechanism for resolving conflicts. No international bureaucracy would have been necessary.

[*Page 4*]

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

US can resolve territorial disputes with each nation bilaterally without being party to UNCLOS

"Moreover, what state is going to complain if the United States claims an extended continental shelf in the Arctic – certainly not any of our Arctic neighbors? We have an existing maritime boundary with the Russian Federation in the North Pacific Ocean, the Bering and Chukchi Seas, and the Arctic Ocean, which is being provisionally applied through an exchange of diplomatic notes pending ratification by the Russian Duma.[14] And talks are ongoing to resolve our long-standing but rather small maritime dispute with Canada in the Beaufort Sea. In May 2010, the Canadian Minister of Foreign Affairs sent a clear message to Washington to begin serious discussion on the issue, indicating that there was no reason why Canada and the United States could not resolve the ongoing boundary dispute "as economic partners and best friends, sharing the longest border in the world."[15] Talks to resolve the dispute began in July 2010.[16] More importantly, a careful read of the 2002 USGS

Arctic report notes that the overwhelming majority of likely oil and gas reserves in the Arctic are located on land, in the 12 nm territorial sea or within the 200 nm EEZ of one of the littoral nations. Most of the Arctic oil and gas reserves are in areas under U.S. and Russian control, respectively. And a strong Navy is the best insurance to keep “outside bidders” like China from infringing on our right to exploit the natural resources on the U.S. extended continental shelf.

[*Page 491-492*]

Pedrozo, Raul. "*A Response to Cartner’s and Gold’s Commentary on “Is it Time for the United States to Join the Law of the Sea Convention?”*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

US actively surveying extended continental shelf and can negotiate bilateral agreements with nations regarding boundaries outside UNCLOS framework

“The U.S. ECS Task Force is actively collecting data in other areas around the globe where the United States has presumptive areas of ECS. In addition to the Arctic Ocean and the Bering Sea, the task force has surveyed potential ECS areas off the U.S. Atlantic and Pacific Coasts, in the Gulf of Alaska, around the Kingman Reef and Palmyra Atoll, at the Necker Ridge near Hawaii, in the Northern Mariana Islands, and near Guam.[43]

Once the mapping is complete, the United States will be in a position to negotiate ECS boundary treaties with nations that have maritime or continental shelf boundaries appur- tenant to U.S. territories, including Japan and Micronesia (in regard to potential ECS associated with the Northern Marianas); Kiribati (in regard to the Palmyra Atoll); and the Bahamas (in regard to the southern end of the U.S. Atlantic Coast). The United States and Canada will need to negotiate one or more treaties to delimit potential areas of ECS located in the Gulf of Alaska and areas associated with their Atlantic and Pacific maritime borders.

To summarize, despite dire warnings from the proponents of U.S. accession to UNCLOS, actual events demonstrate that the United States need not join the convention to delimit areas of its ECS, secure jurisdiction and control over those areas, and commence development of the hydrocarbon resources beneath the ECS. The United States is actively doing so in several crucial, resource-rich regions, including the Gulf of Mexico, the Arctic Ocean, and the Bering Sea. Such delimitation has been and will continue to be conducted in cooperation with neighboring countries, including Mexico, Russia, and Canada, regard- less of whether the U.S. is a member of UNCLOS.

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Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

US can negotiate bilateral agreements with nations that share maritime borders to delimit ECS borders outside of UNCLOS framework

"Despite the claims of UNCLOS proponents, the United States can successfully pursue its national interests regarding its ECS—particularly oil and gas exploitation—with- out first gaining universal interna- tional recognition of its outer limits. While such recognition may be a worthy achievement, it is of no consequence to U.S. national interests whether the 195 nations of the world affirmatively recognize America's jurisdiction over its ECS in the Gulf of Mexico, the Arctic Ocean, and elsewhere.

While achieving unanimous international recognition for the borders of the U.S. ECS is unnecessary, it is important for the U.S. to negotiate on a bilateral basis with nations with which it shares maritime borders to delimit and mutually recognize each other's maritime and ECS boundaries. This process is already underway in regions where the United States has presumptive areas of ECS, including resource-rich areas in the Gulf of Mexico and the Arctic Ocean.

[*Page 5*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

U.S. rights to develop in the Arctic only come into conflict with Russia and Canada and existing bilateral arrangements are sufficient to manage these disputes

"What of the Arctic? A 2011 Bloomberg BusinessWeek editorial argued:

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Yet this is exactly the same case as in the Gulf of Mexico. Only three nations contest the ownership of resources in the extended North American continental shelf in the Arctic: the United States, Canada and Russia. American relations with Canada are friendly; therefore, a United States-Mexico-style treaty with Canada demarcating appropriate lines north of Alaska should be relatively easy to achieve. Russia might be perceived as a more intractable problem; but a 1990 treaty between the United States and the Soviet Union defines the maritime boundary between the two powers.[33]

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way infringe upon the 1990 Treaty. Actually, they are a challenge to Canada rather than the United States. South of the Arctic Ocean, the treaty line protects U.S. claims to large areas of extended continental shelf in the Bering Sea and in the Pacific Ocean southwest of the Alaskan Aleutian Islands. Accordingly, there is no barrier (barring the low one of a necessity to negotiate a treaty with Canada) to the United States developing the extended continental shelf in the Arctic and its environs in the same way it has in the Western Gap.

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U.S. negotiating claims disputes with Canada in Arctic bilaterally

"The major remaining U.S. ECS boundary to be determined in the Arctic is shared by the United States and Canada. As was the case with Russia, the U.S. and Canada have approached the demarcation of this boundary cooperatively. The two nations have a mutual interest in determining the extent of their respective continental shelves and identifying their respective areas of ECS.

To that end, the U.S. and Canada have conducted a series of joint scientific operations in the Arctic to collect bathymetric and seismic data to map the continental shelf.[40] These data will enable the United States and Canada to negotiate a bilateral treaty delimiting their respective continental shelves and areas of ECS in the Arctic Ocean in the same manner as the U.S. and Mexico did in the Gulf of Mexico. United States need not join the convention to demarcate areas of its Arctic EEZ and ECS, secure jurisdiction and control over these areas, and develop the hydrocarbon resources in these areas. Such demarcation has been and will continue to be conducted in cooperation with neighboring Arctic nations regardless of whether the U.S. is a UNCLOS member.

[*Page 10-11*]

Groves, Steven. **Accession to Convention on the Law of the Sea Unnecessary to Advance Arctic Interests** . **Heritage Foundation**: Washington, D.C., June 26, 2014 (18p). [**More** (8 quotes)]

Multiple historical examples of US ability to preserve its ECS rights through bilateral or unilateral agreements

"Yet history has repeatedly and definitively debunked the notion that recognition of U.S. ECS claims is contingent on U.S. membership in UNCLOS or on the approval of an international commission. To the contrary, through bilateral treaties with the Cook Islands, Cuba, Mexico, Russia, the united Kingdom, and Venezuela, the United States has successfully established its various maritime boundaries and the limits of its continental shelf and ECS.

The United States has also acted unilaterally through presidential proclamations and acts of

Congress to set its maritime boundaries and lay claim to the natural resources within its maritime zones and continental shelf:

- In 1945, President Harry Truman issued two proclamations. The first, the Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, claimed jurisdiction and control over the natural resources of the U.S. continental shelf.[27] Truman's second proclamation established a conservation zone for U.S. fishery resources contiguous to the U.S. coast.[28]

- In 1953, Congress codified Truman's continental shelf proclamation by enacting the Outer Continental Shelf Lands Act, which declared that "the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition."[29]

- In 1983, in the wake of his decision not to sign UNCLOS, President Reagan proclaimed the existence of "an exclusive economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast."[30] In 1988, Reagan followed up his EEZ proclamation by extending the breadth of the U.S. territorial sea from 3 nm to 12 nm.[31]

- In 1999, building on Reagan's maritime proclamations, President Bill Clinton extended the U.S. contiguous zone from 9 nm to 24 nm.32 No nation or group of nations, much less the "international community" as a whole, has objected to or otherwise challenged the unilateral proclamations by Presidents Truman, Reagan, and Clinton. No nation disputes that the United States has a 12 nm territorial sea, a 24 nm contiguous zone, a 200 nm EEZ, or jurisdiction and control over the natural resources of its continental shelf and ECS. In fact, foreign nations recognize and respect U.S. maritime claims and boundaries, and vice versa, as long as those claims and boundaries conform to widely accepted international law, including provisions of customary international law reflected in UNCLOS.

[*Page 8-9*]

Groves, Steven. **Accession to Convention on the Law of the Sea Unnecessary to Advance Arctic Interests** . **Heritage Foundation**: Washington, D.C., June 26, 2014 (18p). [**More** (8 quotes)]

UNCLOS regime is not a viable model for governing outer space

UNCLOS could set a bad regulatory precedent for the commercial development of space. Subjecting private space exploration and development to a similar regulatory system would discourage private ventures just now getting underway.

Applying UNCLOS model to outer space would stifle nascent commercial space industry

"Moreover, the LOST could set a bad regulatory precedent for the commercial development of space. The U.N.'s Moon Treaty, which is technically in force, mimics the LOST's common heritage rhetoric, but establishes no institutional regulatory framework. Subjecting private space exploration and development to a LOST-like system would discourage private ventures.

With the only economically viable private space operations limited to launching satellites, the impact of an intergalactic LOST might seem slight. Nevertheless, serious entrepreneurs are entering the industry.15 Making a profit while exploring space is a daunting enough prospect. Attempting to do so when subject to an aggressive regulatory agency likely would be impossible. Mankind would lose not only new technologies, but the very possibility of reaching the heavens.

Many of LOST's costs are obvious, and reason enough to reject the treaty. But the agreement's potentially greatest costs are unknown today. By punishing entrepreneurship directed at transforming the great frontiers of the oceans and space, LOST threatens potentially enormous losses well into the future. The exact impact of the regulatory regime might be unpredictable, since the treaty's exact operation is not certain. But the magnitude of the loss would be enormous.

[*Page 13*]

Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

Ratification of UNCLOS establishes flawed precedent for development of frontier that would carry over into space

"The Law of the Sea Treaty retains its coercive, collectivist philosophical underpinnings. It will have a negative impact on entrepreneurship even if no mining ever occurs. The worst principle is the declaration that all seabed resources are mankind's "common heritage" under the control of a majority of the world's nation states. American ratification would help validate some of these discredited collectivist principles.

Moreover, the treaty could set a bad regulatory precedent for the commercial development of space. Subjecting private space exploration and development to a similar regulatory system would discourage private ventures. By punishing entrepreneurship directed at transforming the great "frontiers" of the oceans and space, the Law of the Sea Treaty threatens potentially enormous losses well into the future.

[*Page 6-7*]

Smith, Fred. "***Statement of Fred Smith: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (5 quotes)]

UNCLOS model could be extended to cyberspace with devastating economic impact

"The same is likely to true of the Internet – an immeasurably important engine of American technological and commercial competitiveness and, increasingly, a key component of U.S. national security. Other countries have already demanded global Internet regulation. For example, in March 2005, China's ambassador to the United Nations called for international management of the Internet. Seven months later, the UN hosted a conference at which many delegates insisted on an end to this country's exclusive control over the assignment of web addresses and e-mail accounts, in favor of having such roles performed by one or more UN agencies.

The problems with such an arrangement are obvious. The Washington Post pointed out that any such agencies would inevitably be caught between free societies that want low barriers to Internet access, and countries such as China and Saudi Arabia, that insist on limiting access. The Post went on to observe: "These clashes of vision would probably make multilateral regulation inefficiently political." As it happens, the same is true of LOST – and would certainly apply with devastating effect to the Internet if LOST becomes the template for multilateral management of the ether's "international commons."

[*Page 17*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

Should reject UNCLOS before its model spreads to other commons including outer space and the internet

It is important to consider as part of the debate over U.S. accession to the Law of the Sea Treaty whether that action would have implications for other so-called "international commons" such as

Antarctica, the moon, Outer Space more generally and the Internet.

“In fact, the logic of LOST – with its supranational order for the control of a medium used by more than one country – will inevitably be seized upon by America’s foes to demand similar arrangements be instituted for Outer Space or even the Internet. And U.S. ratification of LOST will make it difficult for the United States to argue against accepting binding arrangements for other “international commons.” It was for this reason that President Reagan’s Ambassador to the UN, the late Jeane Kirkpatrick, warned the Senate in 2004 not to consent to ratification of LOST, in part on the grounds that America’s interests in Outer Space could be adversely affected by the LOST precedent.

[*Page 16*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

UNCLOS model could be extended into outer space to the detriment of U.S. freedom of action

“It is of particular concern that the LOST model could be used to cripple America’s use of space for national defense. America’s military and intelligence communities have increasingly relied – in fact have become heavily dependent – upon space assets to gather information and support terrestrial forces. Far-sighted U.S. strategists appreciate that space can only become ever-more-important as a theater of operations, with control of activities (commercial as well as military) on earth being determined by control of space.

This country’s adversaries recognize this reality, too, and are attempting to inhibit our use of space – in some cases through active means, in others via the imposition of international laws and regulations (another example of “Lawfare”). U.S. endorsement of LOST would establish a precedent that would undercut American efforts to stave off the latter effort.

[*Page 16*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. ratification of UNCLOS will validate model for international governance of all global commons with adverse consequences for its military space program

Finally, this accord will establish problematic precedents for “managing” other, no-less-strategically-

important “international commons,” including Outer Space. A number of America’s adversaries have long sought to impose arms control or other treaty arrangements that could make it more difficult if not, as a practical matter, impossible for the United States to maintain the access to and control of space required by our national security interests. If this country joins LOST, it will invite these adversaries to adapt the Treaty’s International Seabed Authority as a prototype for determining permissible and impermissible activities in space – likely in ways that will prove inconsistent with the United States’ military and intelligence requirements.

[*Page 20*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. can mine the deep seabed without ratifying UNCLOS

According to U.S. foreign relations law, the United States may engage in deep seabed mining activities even if it does not accede to UNCLOS, provided that such activities are conducted without claiming sovereignty over any part of the deep seabed and as long as the mining activities are conducted with due regard to the rights of other nations to engage in mining.This position is also reflected in the Deep Seabed Hard Mineral Resources Act of 1980.

US companies could still mine deep seabed outside UNCLOS by going through foreign subsidiaries

"U.S. companies may operate through foreign subsidiaries. If a U.S. company insists on engaging in mining only under the convention's auspices despite the inequities associated with the UNCLOS regime, it may do so. Specifically, if the United States continues to remain a non-member of UNCLOS, a U.S. seabed mining company may incorporate a subsidiary entity in a country that is party to the convention. In this manner, the U.S. entity's subsidiary may apply for an exploration contract under the sponsorship of the foreign country and engage in seabed mining through the convention's regime.

The practice of U.S. companies partnering with foreign entities in seabed mining ventures has precedent. As previously noted, all four U.S. private-sector mining consortia originally included foreign partners or ownership interests: KCON had Canadian, Japanese, and british interests; OmA had belgian and Italian interests; OmI had Canadian, Japanese, and German interests; and OmCO had Dutch interests.[90]

[*Page 14*]

Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on the Law of the Sea** . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

US ocean policy already allows development of deep seabed mingling resources within US EEZ

"The U.S. legal position set forth in 1983 on deep seabed mining remains the same today. According to the Restatement of the Law, Third, of the Foreign Relations Law of the United States, the United States may engage in deep seabed mining activities even if it does not accede to UNCLOS, provided that such activities are conducted without claiming sovereignty over any part of the deep seabed and as long as the mining activities are conducted with due regard to the rights of

other nations to engage in mining. As related by the Restatement, “like the fish of the high seas the minerals of the deep sea-bed are open to anyone to take.”

The U.S. position is also reflected in the Deep Seabed Hard Mineral Resources Act of 1980, which Congress enacted two years before the adoption of UNCLOS to provide a framework for U.S. corporations to conduct deep seabed mining until such time as the United States joins an acceptable convention on the law of the sea. The DSHMRA states the U.S. position on the legality of deep seabed mining as follows:

> [I]t is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reasonable regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law.

In sum, the long-held position of the United States, both domestically and internationally, is that U.S. citizens and corporations have the right to explore and exploit the deep seabed regardless of whether or not the United States is a party to UNCLOS.

[*Page 9*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS*** ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

Under 1980 DSMHRA Act, US citizens and corporations are fee to mine deep seabed regardless of whether US is party to UNCLOS

“Indeed, this was the U.S. position prior to UNCLOS III. Years earlier, Congress made clear the U.S. position on the legality of deep seabed mining in the Deep Seabed Hard Mineral Resources Act of 1980 (DSHMRA):

> [I]t is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reason- able regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law.[10]

The U.S. position set forth in 1980 in DSHMRA and again in 1983 at UNCLOS III remains the same today. According to the Restatement of the Law, Third, of the Foreign Relations Law of the United States, U.S. citizens and corporations may engage in seabed mining regardless of whether the U.S. accedes to UNCLOS, provided that they conduct such mining without claiming sovereignty over any part of the seabed and as long as the mining activities are exercised with due regard to the rights of other nations engaged in mining.[11] As related by the Restatement, “like the fish of the high seas the minerals of the deep sea-bed are open to anyone to take.”[12]

[*Page 3*]

Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on**

the Law of the Sea . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

An informal, non-UNCLOS, multilateral organization would be sufficient to protect U.S. interests in mining deep seabed

"Still, treaty supporters point out, the LOST, having gained more than the necessary 60 ratifications from UN member nations, will go into effect in November 1994 irrespective of Washington's ratification decision. However, nations cannot be held to surrender their rights because other states have ratified a treaty. Put bluntly, it matters little whether or not Djibouti, Fiji, or Zambia approves of American mining consortia operating in the Pacific. An ISA without any industrialized states as members would be about as effective as the "international regime" that is supposed to be established under the UN Moon Treaty, which--I am not making this up, to quote humorist Dave Barry--formally took effect 10 years ago in July.[13]

A decentralized and relatively informal system, perhaps with a small international office, that provided for mutual recognition of mine sites and arbitration of conflicts would offer adequate security of tenure for mining companies. In fact, the United States and the Europeans implemented that type of strategy when they rejected the LOST.[14] Other nations, particularly those like China, India, and South Korea, which have indicated an interest in seabed mining, could be invited to join such a system as well. That approach would operate with minimal bureaucracy and cost and would be confined to essentials--most important, developing a stable investment regime.

[*Page 3*]

Bandow, Doug. Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable . **Cato Institute**: Washington, D.C., September 12, 1994. [**More** (5 quotes)]

Most firms rationally understand there is little benefit from gaining international recognition for their seabed claim

"However, most businessmen understand that it makes little difference whether or not, say, Congo, recognizes their right to harvest manganese nodules in the Pacific. Indeed, given the dynamics of seabed mining, it probably doesn't even matter if other industrialized nations with firms capable of mining the ocean floor recognize one's claim. In all but the most unusual cases, the seabed's irregular geography and surplus of nodules make "poaching" uneconomical—it would make more sense to develop a new site than to attempt to overrun someone else's.

[*Page 4*]

Bandow, Doug. Don't Resurrect the Law of the Sea Treaty . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

US has already negotiated bilateral agreements with all nations adjoining its claims in the CCZ

"In sum, the United States has agreements with almost every nation that the Authority has licensed to explore the CCZ (belgium, China, France, Germany, Japan, russia, and the United Kingdom), all of which remain in force and effect at the present day.[29] Those nations have made a commitment to the United States that they will not interfere with or infringe on the claims by the United States or its companies in the CCZ. None of the nations has denounced or withdrawn from the agreements or has otherwise indicated that it does not respect its international commitments to recognize U.S. claims in the CCZ.

Among the nations that have sponsored claimants in the CCZ, only four—Nauru, Kiribati, South Korea, and Tonga—are not party to a seabed agreement with the United States. The U.S. should remedy this by nego- tiating memoranda of understanding with those nations along the same lines as the 1991 agreements with China and the Soviet Union. Although the claims of Nauru, Kiribati, South Korea, and Tonga do not overlap the areas currently claimed by the United States, the agreements would establish a bilateral commitment from each of those nations not to infringe on U.S. claims in the CCZ and to cooperate in the event of a dispute.

[*Page 6*]

Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on the Law of the Sea** . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

DSHMRA act has already given US industries the legal authority they need to conduct deep seabed mining operations

"Groves said the Deep Seabed Hard Mineral Resources Act (DSHMRA) of 1980 set forth the mechanism for com- panies like Lockheed Martin to obtain its licenses to engage in deep seabed mining and to renew their claims in the eastern Pacific Ocean. These licenses were obtained by Lockheed nearly 40 years ago and are known as legacy claims that pre-date the Law of the Sea, he maintains.

Under U.S. and international law, Groves said Lockheed Martin has every right and ability to engage in deep seabed mining.

"These [legacy claims] go back to pre-Law of the Sea Treaty. They had to be specifically written into the annexes of the Treaty, and so we [the United States] have those claims," Groves said, underscoring the argument that DSHMRA already covers rights and titles over claims in international waters.

“Lockheed Martin has just decided at this point in time that it is not economically feasible for them to do it. Now what they do, and what’s their right as a company to do, is lobby the Senate, making a claim. This is not a fact, this is not set in granite, this is a claim that they need the treaty in order to get the necessary certainty to engage in the expensive process of deep seabed mining.”

[*Page 17*]

Daisy R. Khalifa. "***Point/Counterpoint*** ." **Sea Power**. (July 1, 2012) [**More**]

Most significant seabed mineral deposits lie within EEZ

“A study by Christopher Garrison indicates that the overwhelming majority of seabed mining activities have taken place within the 200 nm limit, which is subject to coastal state rather than ISA jurisdiction and regulation.9 Even the ISA has acknowledged that “no sustained operations have taken place for the commercial recovery of solid minerals in water depths greater than 200 metres.”10 ISA fact sheets also indicate that the best potential for cobalt-rich crust mining is located in the EEZs of the United States (Johnston Island and Hawaii), the Marshall Islands and the Federated States of Micronesia.11 Similarly, the largest known deposit of polymetallic sulphides is located in the Red Sea within the EEZ of the coastal states and the first commercial mining of polymetallic sulphides is scheduled to occur within the EEZs of Papua New Guinea, Fiji and Tonga in 2010.12 None of these potential mining areas are subject to regulation or control by the ISA.

[*Page 154-155*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

Deep seabed mining is not currently technologically viable

Deep seabed mining has not taken off because the technology to exploit the seabeds is not at a state where it would be economically viable to do so.

Still an open question as to whether or not deep seabed mining will ever be economically viable

"Although the ISA has issued several self-serving statements that the "21st century is likely to see systematic efforts worldwide to develop the resources of the deep seabed,"4 the fact remains that it is questionable whether deep seabed mining will ever become economically viable, at least in the Area. With regard to cobalt-rich crusts, according to ISA fact sheets, prospective miners will first have to develop "detailed maps of crust deposits and a comprehensive, small-scale picture of seamount topography, including seismic profiles." Yet, very few of the seamounts in the Area that potentially contain the richest deposits of cobalt crusts have been mapped and sampled in detail. More importantly, it has been determined that crusts containing the greatest concentration of minerals are found in shallow waters in areas under coastal state, not ISA, jurisdiction.5 Similarly, according to ISA fact sheets, only five percent of the 60,000 km of oceanic ridge worldwide that could contain deposits of polymetallic sulphides has been surveyed in any detail.6 Moreover, ISA fact sheets acknowledge that most technology for exploring and exploiting the seabed has been developed for use in shallower waters.7 This is particularly true for cobalt-rich crust mining, which is much more difficult than manganese-nodule mining – research and development of mining technology for crusts exploitation is in its infancy.8 Finally, proposed environmental standards being developed by the ISA to minimize the effects of deep seabed mining on the marine environmental will undoubtedly significantly raise the costs of deep seabed mining operations.

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Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

Commercial mining of rare earth metals from sea floor still a decade away

"Kato says that he doesn't know whether the resource is commercially viable. "I'm a geoscientist, not an economist," he notes.

But Gareth Hatch, an industry analyst and founder of the Technology Metals Research consultancy in Carpentersville, Illinois, is sceptical. "People talk about mining on the asteroids or the Moon. This isn't

that hard, but it's similar," says Hatch. Current on-land mines, and sites picked out for future mines, have rare-earth concentrations of about 3–10%, he points out. The much lower concentrations at the Chinese clay mine mentioned by Kato and his colleagues are only economically viable because the material is much easier to access than it would be in hard rock. That's not true for mud located below 4 or 5 kilometres of water, which would require expensive ship time and equipment to pull up. "There are better options," he says.

Craig Smith, an oceanographer at the University of Hawaii at Manoa, notes that companies are exploring the idea of mining manganese nodules from the sea floor to exploit their commercially-valuable contents, including copper and nickel as well as rare earths. Commercial mining of nodules is "probably a decade away", says Smith. Ocean mud could prove another possible source of the increasingly valuable elements.

Nicola Jones. "***Sea holds treasure trove of rare-earth elements*** ." **Nature**. (July 3, 2011) [**More**]

Existing customary international law is sufficient to protect U.S. interests without ratifying UNCLOS

U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the non-deep seabed mining provisions of the 1982 Law of the Sea Convention, and as supplemented by diplomatic protests and assertion of rights under the Freedom of Navigation Program, have served so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.

Empirically, UNCLOS has been no more effective than customary international law at reducing excessive claims and maritime conflict

"In theory, I agree with Messrs. **Cartner and Gold** that "customary law . . . is not as good as conventional law" because customary law is subject to change and written words of a treaty should provide more certainty. However, I do question their follow-on conclusions that customary law is "certainly not as efficient in resolving disputes between sovereigns for maintaining global order" and that UNCLOS, "being nearly universal, takes away a great deal of the uncertainty in the application of customary law for all cases." Although I concur that UNCLOS was a great achievement and that the United States got much of what it wanted in the treaty text, like any other "framework" agreement, it is subject to widely varying interpretation or even misapplication by States Parties. As a result, UNCLOS has unfortunately not had a dispositive calming influence on dispute settlement or pre- vented the continued proliferation of excessive maritime claims.

Today, excessive maritime claims continue to proliferate, particularly in the area of straight baselines and coastal state jurisdiction in the EEZ. Although the international community has witnessed a decline in the num- ber of excessive territorial sea claims (only nine remain today) , there are still three States Parties to the Convention that continue to claim a territorial sea in excess of 12 nm, even though UNCLOS Article 3 specifically and clearly limits the breadth of the territorial sea to 12 nm.[22] In addition, over 40 nations restrict the right of innocent passage for warships in one way or another, even though efforts during The Third United Nations Conference on the Law of the Sea (UNCLOS III) to provide coastal states such authority failed to achieve majority support. Furthermore, the plain language of Article 17 specifically states "ships of all States . . . enjoy the right of inno- cent passage."[23] Although all of these illegal claims have been the subject of diplomatic protests or operational challenges by the United States, U.S. accession to UNCLOS will not cause these nations to rollback these excessive claims.

[*Page 495-496*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States*

to Join the Law of the Sea Convention?"." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

Even as a non-party to UNCLOS, US navigational rights have been protected for decades through customary international law

"In 1993, the Department of Defense issued an Ocean Policy Review Paper on "the currency and adequacy of U.S. oceans policy, from the strategic standpoint, to support the national defense strategy." The paper concluded that U.S. national security interests in the oceans have been protected even though the U.S. is not party to UNCLOS:

> U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the non-deep seabed mining provisions of the 1982 Law of the Sea Convention, and as supplemented by diplomatic protests and assertion of rights under the Freedom of Navigation Program, have served so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.

Almost 20 years later, there is no evidence that suggests a change in circumstances such that U.S. accession to UNCLOS has become essential to the successful execution of the U.S. Navy's global mission.

[*Page 12*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS*** ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

Ratification of UNCLOS would trade existing stability provided by customary international law for rule by tribunals

"Supporters note that many of the treaty's "freedom of the seas" provisions favor U.S. interests. But the United States already receives the benefits of these provisions because, as Negroponte and England acknowledged, they are "already widely accepted in practice." They maintain that ratifying the convention would nonetheless provide "welcome legal certainty." In recent years, however, the United States has not received much legal certainty from international tribunals dominated by non-American judges, and what it has received has not been very welcome. There is little reason to expect different results from these tribunals.

President Bush invokes a different rationale for ratifying the convention, arguing that it would "give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted." What this really means is that American views of the law of the sea, even on issues

related to national security, could be outvoted by a majority in an international forum. How can this make us safer?

Jack Goldsmith and Jeremy Rabkin. "***A Treaty the Senate Should Sink*** ." **Washington Post**. (July 7, 2007) [**More**]

Customary international law already protects U.S. navigation rights

"Those who support UNCLOS, in partic- ular the U.S. Navy, argue that it is essentially a deal: The U.S. gets valuable legal rights of navigation in return for ceding to the ISA some regulatory powers that, since the 1994 agreement, are economically modest and politically unthreatening.

An obvious retort to this is that the U.S. already enjoys navigation and other rights under customary international law and earlier conventions. We gain nothing new by signing the treaty. The Navy responds that we would be on stronger ground in assert- ing our rights against challenge if we were supported by ITLOS (the International Tribunal for the Law of the Sea) in Ham- burg. But signatories to UNCLOS are bound to respect our rights under customary law anyway. Small powers are unlikely to challenge those rights. If a great power were to do so, the U.S. Navy is the only force capable of enforcing them. And that is so whether or not we are signatories to UNCLOS.

[*Page 22*]

John O'Sullivan. "*LOST is Right*." **National Review**. (September 10, 2007) [**More**]

Should favor flexibility and evolving nature of customary international law over certainty of UNCLOS

"The principal argument in favor of ratification seems to rest on the assumption that the world needs a comprehensive treaty to clarify and unify the law of the sea; that the alternative is chaos. In my opinion, this argument for ratification is overstated. The legal result of not ratifying the UNCLOS is not chaos in the law of the sea; it is the continued development of that dynamic body of law. Indeed, in areas of changing values and technology our own common law works best without codification.

Sometimes certainty is the highest interest of law-makers. With regard to the law of the sea, however, the fate of the four United Nations Law of the Sea Conventions coming out of Geneva in 1958 is pertinent evidence that other factors that influence the behavior of states can be more important than certainty. The United States ratified all four of those Conventions in 1961 and first violated them when we extended our exclusive fisheries zones to twelve miles in 1966. If the law raises certainty to a higher position than is tolerable in light of those factors favoring change, change occurs nonetheless and the law is degraded.

Alfred P. Rubin. "***Monster from the Deep: Return of UNCLOS*** ." **The National Interest**.

(September 1, 1994) [**More**]

All important provisions of UNCLOS for freedom of navigation rights provided by customary international law

"With regard to freedom of movement: President Reagan's 1983 Ocean Policy Statement stated that UNCLOS "contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice . . .."[16] The International Court of Justice reached a similar conclusion in the 1984 Gulf of Maine case, albeit in the context of the continental shelf and EEZ articles, indicating that the Convention's provisions were reflective of customary international law.[17] In short, today, all of the important provisions of UNCLOS dealing with freedom of movement, such as the rights of innocent passage, transit passage, archipelagic sea lanes passage, and high seas freedoms seaward of the territorial sea, are considered by virtually all nations as a reflection of customary international law that is binding on all nations. Both our commercial shipping and military forces have exercised and enjoyed these rights for the past 25 years, during which time the United States has not been a party to UNCLOS. Clearly, the United States does not have to become a party to the Convention to exercise its navigational rights and freedoms worldwide. Iran is the only country that continues to maintain that the right of transit passage through the Strait of Hormuz applies only to State Parties to the Convention. What we need more than membership in another treaty is a coherent national policy that supports freedom of navigation and a strong Navy that can challenge excessive coastal state claims that purport to curtail our freedom of movement and restrict our access to the world's oceans.

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Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

U.S. ratification of UNCLOS will not help resolve Arctic disputes with Russia

Strategic environment and level of cooperation between Russia and the United States in the Arctic will be based on the state of their bilateral relations in general, and not on the U.S. decision of whether or not to ratify the UN Law of the Sea.

US ratification of UNCLOS will not boost capacity to challenge Russian claims, disputes likely to be resolved outside of convention

"Other Nations' Claims to the Arctic Seabed. If the Senate ratified UNCLOS, thereby making the United States a party to the treaty, the United States would have no additional grounds on which to contest Russia's CLCS claim, because the CLCS does not settle disputes among nations with competing claims. Thus, U.S. participation in the UNCLOS regime would add nothing to its legal argument that it is permitted to mine the seabed and navigate the waters that Russia is attempting to claim. UNCLOS does not provide a compulsory dispute resolution technique, and because a dispute among nations is likely to arise, it is probable that the rights to the resources of the Arctic will be decided outside of its framework.

[*Page 856*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

Russia will defend its claims in the Arctic but is unlikely to resort to military means

"From Russia's security strategy,[40] and evidence of Russia's pragmatism in its approach to the Arctic, it is possible to draw two broad security conclusions: First, Russia is unlikely to engage in any military confrontation that could potentially damage its economic security. This is consistent with Russia's broadly conciliatory approach to the Arctic, despite its often-inflammatory rhetoric, and symbolic actions such as placing a Russian flag on the seabed beneath the North Pole. Russia's approach is underpinned by a belief that it has both the law, and scientific evidence in its favour, and that it therefore has a legal right to a significant unclaimed portion of Arctic seabed, particularly along the Lomonosov Ridge. If Russia's claim to the CLCS is eventually successful, it stands to gain approximately 460,000 square miles, or half of the Arctic's seabed and the rich resources contained therein.[41] The second conclusion this author can draw is that should Russia fail to gain the Arctic

resources it expects through legal and procedural means, there is so much at stake in terms of Russia's economic security, that other Arctic actors need to plan for the contingency that Russia might attempt to assert its control over Arctic resources and territory through alternate means.[42]

[*Page 304*]

Sharp, Todd L. "*The Implications of Ice Melt on Arctic Security*." **Defence Studies**. Vol. 11, No. 2 (June 2011): 297-322. [**More** (6 quotes)]

Bilateral relations between U.S. and Russia will be more important to Arctic security than U.S. non-party status to UNCLOS

"If the U.S. Senate ratifies the Convention on the Law of the Sea of 1982, Russia will not witness any significant changes in bilateral relations in the Arctic. It is obvious that the U.S. intends to apply the Convention only when it coincides with its national interests. Potential conflicts will be resolved through bilateral negotiations rather than UNCLOS provisions directly.

Since the Convention does not oblige all contentious issues to be decided within its rules and institutions, the United States can either appeal to precedent or refuse to discuss an inconvenient problem in terms of the Convention. Apparently, some Russian experts underestimate the fact that under international law, common law prevails over codified law. This allows the U.S. to bypass the Convention and is all the more reason to not consider it a universal source of law on Arctic issues.

In line with this logic, experts from the Ministry of Defense and the Department of State submitted their official conclusions to the U.S. Senate in which they found that ratification would not impose any restrictions on the military.

Moreover if the Convention was ratified, the U.S. could appeal to the right of transit in territorial waters enshrined in the Convention as grounds for legal military presence not only in the Barents Sea, but also anywhere in the world. In case of complaints about the inadmissibility of covert presence or military activities in territorial waters, the United States could exercise the right of self-interpretation, challenging what is meant by military activities in the particular case (Article 298-1 of the Convention).

U.S. military activities cannot be a matter of contention within the framework of the Convention. Similarly, Russia will not receive any positive changes to the delimitation of the Bering Sea or defining the boundary line in the Chukchi Sea and beyond the exclusive economic zone towards the pole.

Thus, strategic environment and level of cooperation between Russia and the United States in the Arctic will be based on the state of their bilateral relations in general, and not on the U.S. decision of whether or not to ratify the UN Law of the Sea.

Valery Konyshev. "***Can UN Law of the Sea stop militarization in Arctic?*** ." **Russia Direct**. (January 6, 2014) [**More**]

Russia has effectively removed option of resolving border disputes through UNCLOS in its signing statements under Article 298

“Secondly, as mentioned previously, Article 4 of the Convention asserts a ten-year limit for Parties to submit “excessive” continental shelf claims to the CLCS for adjudication. Adjudication, however, only provides an internationally recognized delineation of the claim and not a final delimitation where such a claim may be disputed by a state with an opposite or adjacent coast. Such disputes must be settled by mutual agreement of the contesting parties, or submitted to one of the aforementioned bodies for a binding resolution.

In the case of Russia in particular, upon acceding to the UNCLOS in 1997 and in accordance with Article 298 therein, it declared that it

> "does not accept the procedures, provided for in Section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes concerning the interpretation or application of articles 15, 74 and 83 of the Convention, relating to sea boundary delimitations, or those involving historic bays or titles; disputes concerning military activities, including military activities by government vessels and aircraft, and disputes concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction; and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.[151]

In effect, Moscow declared that it would accept delimitation of disputed boundaries only on a bilateral basis, negotiated outside the UNCLOS regime. Russia’s pending resubmission[152] to the CLCS of its excessive continental shelf claims has been interpreted as merely a diplomatic maneuver of convenience to gain recognition for its claims and not an earnest effort to use the UNCLOS as a peaceful dispute resolution mechanism.

[*Page 69-70*]

Aerandir, Wesley. **Breaking the Ice: Potential U.S.-Russian Maritime Conflict in the Arctic** . Naval Postgraduate School: Monterey, CA, December 2012 (123p). [**More** (6 quotes)]

No major disagreement over ECS claims between U.S. and Russia

“In the Arctic, much of the supposed distress voiced by UNCLOS proponents stems from Russia’s vast claim of Arctic ECS that it submitted to the CLCS in 2001. The proponents incorrectly imply that Russia’s claim will result in the loss of Arctic resources that belong to the United States. According to Senator Lisa Murkowski (R–AK), for example, the U.S. failure to accede to UNCLOS would cause “a negligent forfeiture of valuable oil, gas and mineral deposits.”[35]

But the United States has not and will not "forfeit" a drop of Arctic oil to Russia or any other nation. For one thing, Russia's claimed ECS area does not overlap any part of the U.S. Arctic ECS. To the contrary, Russia's claim respects a boundary that the United States and the uSSR negotiated in 1990 —the "Baker– Shevardnadze line."[36]

The Russian claim extends the Baker–Shevardnadze line from the Bering Strait all the way to the North Pole, likely resulting in an excessive ECS claim in the central Arctic. However, Russia's potentially excessive claim is located to the north of the limits of the U.S. ECS area. While the Russian claim may overlap with Canada's ECS claim, it does not overlap any U.S. ECS area.[37]

In short, there is no conflict between the United States and Russia regarding the division of Arctic resources, including hydrocarbons. even if there were a conflict, Russia's claim cannot be approved by the CLCS and would not be recognized by the United States (or Canada). Both UNCLOS and the CLCS's procedural rules prevent the commission from considering any ECS area where there are overlapping claims: "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute."[38]

The United States may object to excessive ECS claims made by any member of UNCLOS even though the U.S. is not a party to the convention. Indeed, after Russia made its 2001 claim, the United States, Canada, Denmark, Japan, and Norway each filed objections with the CLCS. In June 2002, as a result of the objections, the CLCS recommended to Russia that it provide a "revised submission" on its Arctic ECS claim.[39] Russia reportedly will make an amended submission to the CLCS at some point in the future.

Groves, Steven. **Accession to Convention on the Law of the Sea Unnecessary to Advance Arctic Interests** . **Heritage Foundation**: Washington, D.C., June 26, 2014 (18p). [**More** (8 quotes)]

U.S. ratification of UNCLOS won't help resolve disputes in South China Seas

Ratification of UNCLOS will neither sway China nor guarantee U.S. navigational rights in the South China Seas any more than continued U.S. naval presence through the Freedom of Navigation program.

Maritime disputes with China won't be solved by legal wrangling but asserting rights through diplomacy and establishing a pattern of state practice

“Proponents of UNCLOS ratification claim that the United States can’t counter China’s claims without ratifying UNCLOS itself. Yet the United States already acts in accordance with international law and custom, whereas China, which has ratified UNCLOS, uses UNCLOS to flaunt the law.

By twisting the UNCLOS into pretzels, China is changing the rules of the game. The liberal order made rules to accommodate the rights and interests of those who decided to participate in it. It turns out China doesn’t much like those rules and is attempting to overturn them – especially those rules that protect freedom of navigation and those that make it difficult for China to pursue its territorial ambitions in Asia. Ratifying UNCLOS isn’t an effective way to combat that effort. These disputes are about power politics and neither China nor the United States will allow them to be settled in court – UNCLOS approved or otherwise.

Rather, the United States must continue doing what it has always done. It should continue to operate naval vessels in international waters – including in other countries’ EEZs – where and when it wants to do so. Operations should run the gamut of peaceful activities – surveillance activities, exercises, and so on.

And Washington must clearly state its intention to continue abiding by centuries-old customary international law pertaining to freedom of the seas including provisions of UNCLOS that are consistent with those practices. In interactions with Chinese counterparts, American diplomats should repeatedly and consistently restate the American position – there should be no question as to where the United States stands.

As it does so, the U.S. should engage China in diplomacy, pointing out – among other matters – that China itself conducts military activity in other countries’ EEZs. We need rules of the road with China to manage competition, not wishful thinking about what U.N. bodies can resolve.

It has always been practice that has determined international law of the oceans. China understands this, and is working to shift law and custom through its own practices. Only by continuing to act on the high seas as it always has can the United States hope to maintain a system of international rules

that serves its own interests. Ratifying UNCLOS could very well have the opposite effect.

Dan Blumenthal & Michael Mazza. "***Why to Forget UNCLOS*** ." **The Diplomat**. (February 17, 2012) [**More**]

Chinese aggressive claims in South China Seas motivated by three strategic goals

“China likewise has security interests in its extensive South China Sea claims. As noted above, Beijing has reinterpreted international law to assert that it can deny access to its EEZ by foreign military vessels. Successful realization of China’s claims is the first step toward keeping foreign military assets out of those waters. There are three broad reasons why it wishes to do so.

Firstly, sovereignty over the South China Sea would grant China significant, additional strategic depth. At present, from China’s point of view, its coastal cities – key centers of economic activity – are vulnerable to attack from the sea. Keeping foreign warships and military aircraft distant from China’s shores would make it easier for the PLA to defend China’s southern coastline. It would also enable China to more easily project power close to its neighbors’ shores and thus threaten U.S. allies like the Philippines and friends such as Singapore and Indonesia.

Second, China is highly dependent on resource imports from the Middle East. In 2010, 47 percent of China’s oil imports came from the Middle East; 30 percent came from Africa[AJH2] . These imports pass through chokepoints that China doesn’t control, notably the Malacca Strait, but also the Lombok and Sunda Straits in Indonesian waters. Chinese defense officials have referred to this situation as the “Malacca dilemma.”

Chinese sovereignty over the South China Sea would allow it to more easily project power into those straits and, on the flip side, make it more difficult for the United States to do so. This would make it more difficult for the United States to conduct operations in these vital waters against China, while making it easier for China to operate against the United States – and our allies Japan, South Korea, and Taiwan. It would also enable the Chinese navy to more easily project power into the Indian Ocean, where American and Indian vessels have long operated unimpeded.

Third, Chinese control over the South China Sea would make it easier for the PLA Navy to project power into the Pacific Ocean. Such control would, in particular, make it more difficult for the United States to monitor Chinese submarines deploying from their underground base at Hainan Island. A Chinese Navy that can more easily sail into the Pacific is one that can more easily threaten U.S. assets and U.S. territories in the region.

Dan Blumenthal & Michael Mazza. "***Why to Forget UNCLOS*** ." **The Diplomat**. (February 17, 2012) [**More**]

China attempting to use UNCLOS to bind participants to its interpretation of military activities clause, U.S. should not play along

"Traditionally the freedom of the high seas has included the use of the seas for military maneuvers or exercises, including the use of weapons. This freedom – including the freedom to operate in EEZs – was supposed to be incorporated into UNCLOS . But the language in the provisions pertaining to conduct of military activity in EEZs leaves far too much wriggle room for mischief.

For example, China says that foreign warships must obtain its approval before they can do anything but pass through its exclusive economic zone. A Chinese Defense Ministry spokesman, Senior Col. Geng Yansheng, stated in 2010: "We will, in accordance with the demands of international law, respect the freedom of passage of ships or aircraft from relevant countries which are in compliance with international law" (emphasis added). Chinese officials are trying to limit U.S. naval activity in China's EEZ's to "passage" from one destination to another.

This means that the Chinese are claiming that heretofore lawful activities(task-force maneuvering, flight operations, military exercises, weapons testing and firing, surveillance and reconnaissance operations and other intelligence-gathering activities, and military marine data collection or military surveys)conducted in EEZs should now be treated as prejudicial to Chinese rights, including China's duty to protect the marine environment. If these interpretations gain currency, UNCLOS will prove prejudicial to the rights of maritime nations such as the United States. Law should provide clarity, but UNCLOS is unclear as to what military activities are allowed in a country's EEZ. China is cynically exploiting the law's vagaries to further its political goals and its desire to project power.

Herein lies a major danger in U.S. ratification of UNCLOS. In adopting, promoting, and acting on new interpretations of international law, China is attempting to upset the status quo and establish new norms of maritime behavior. By signing up to UNCLOS, the United States might unintentionally signal approval of these errant interpretations.

Dan Blumenthal & Michael Mazza. "***Why to Forget UNCLOS*** ." **The Diplomat**. (February 17, 2012) [**More**]

U.S. Navy's freedom of operation in South China Sea could be more constrained after ratification of UNCLOS

"America is the dominant hegemonic Power in Asia Pacific and possesses the dominant power projection38 capabilities in the region and seems committed to continue using them in a restrained manner.39 The littoral counties in the region, especially China, however, are developing the ability to deploy forces with the military capacity to threaten U.S. power projections. In particular, China's rapidly increasing economic power has caused widespread concern over China's ambitions to enhance —blue water capability‖ for influence beyond its borders. These developments in China are of special concern to the US national interests, especially in the South-China Sea.40 In this regard,

the recent statement by the Secretary of State Hillary Clinton41 in the ASEAN Regional Forum caused a lot of diplomatic tensions between the US and China. The said statement referred to the US interests in resolving territorial disputes off China‘s southern coast as —a leading diplomatic priority,ll thereby indicating the US intention to intercede in a region.

However, this is not the first time that the US has shown its interest in the maritime affairs in the Asia-pacific region, especially in South China Sea. The 2009 Impeccable incident is reflective of the US intensions to maintain its hegemony through power projections, even by circumventing the marine scientific research (MSR) provisions of the 1982 LOS Convention.

In the light of these observations, the US accession to the LOS Convention will have significant implications for the US interest in the South China Sea. Most notably, the LOS Convention would be applicable to the US completely as it does not allow making reservations at the time of accession. In addition, the US would be obliged to refrain from any acts that would defeat the object and purpose of the convention. Thus, by becoming a party to the Convention, the US would be constrained in the freedom to take inapt actions in the South China Sea without giving due considerations to its possible legal consequences. This may diminish the unchallenged naval power of the US in the Asia-Pacific.

[*Page 17-18*]

Kumar, Sunil Agarwal. **Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications** . National Maritime Foundation: , April 15, 2011. [**More** (7 quotes)]

Resolution of U.S. China dispute over freedom of navigation in EEZ unlikely to be through legal discussion as both sides have valid strategic concerns

“Each side devises elaborate argumentation to justify a position by reference to terms and passages from UNCLOS, implying a common acquiescence to the primacy of inter- national law generally and to the UNCLOS regime specifically. Neither side challenges the legitimacy of international law in general or UNCLOS in specific. That the two disputants contend in such civil, legalistic discourse might encourage one to conclude that reason has surpassed passion, except that vessels from each state, dispatched by authorities determined to defend a principled position, meet in defiant encounters at sea, jeopardizing maritime harmony, menacing bilateral relations, and endangering the lives of duty-bound sailors. Thus, it provides only modest comfort that conversation about the EEZ is possible, even if it is through dialogue that both sides prefer to resolve the present controversy.

A resolution of the EEZ issue is unlikely to emerge from a discussion of law, because the law is not really the problem. Sino-U.S. relations are strained because of the ways in which the strategic aims of Beijing and Washington collide and chafe against one another during a period of rapid transition of stature and perceived power.

Simply put, the PRC—reflexively anxious about its comparative weakness in the face of far more robust U.S. military power—worries about how the United States and its allies may undermine those assets that the PRC has managed to develop to offset the existing military asymmetry between them. Beijing seems committed to expanding strategic depth by raising the cost to the United States of operating close to the PRC's shores.

In line with this objective, the PRC evidently resents U.S. intelligence and surveillance activities. It hopes to push foreign forces as far from shore as is possible, especially those with prying eyes capable of gathering information about assets Beijing prefers to keep secret.

[*Page 108-109*]

Wachman, Alan M. "***Playing by or Playing with the Rules of UNCLOS?*** ." in Military Activities in the EEZ: A U.S.-China Dialogue on Security and International Law in the Maritime Commons, edited by **Dutton, Peter A**. U.S. Naval War College: Newport, Rhode Island, December 2010. [**More** (4 quotes)]

No evidence that U.S. ratification of UNCLOS would convince China to back down on its SCS claims any more than U.S. enforcement of customary international law through freedom of navigation program

"Ratification of UNCLOS will neither sway China nor guarantee U.S. navigational rights in the SCS which are advanced not by membership in a treaty, but by maintaining a strong Navy, conducting persistent naval operations against China's excessive maritime claims, supporting key U.S. allies, and adhering to long-standing principles of the customary international law of the sea.

The customary international law of the sea— which includes the principles of freedom of the seas, "innocent passage" through territorial waters, and passage rights through international straits and archipelagoes—existed long before UNCLOS was adopted in 1982. The convention merely codified and elaborated upon these widely accepted principles. While not a party to UNCLOS, the United States— unlike China—actually honors the convention's provisions. The United States demarcates legitimate maritime boundaries, respects the rights of coastal states within their EEZs and territorial seas, and adheres domestically to the regimes regarding the contiguous zone and EEZ.

No evidence suggests that China, or any other state, would respect its obligations under UNCLOS to a greater extent if the United States became a party. Nor is there any evidence that ratification of UNCLOS would enhance U.S. military capability. The Freedom of Navigation program, the primary means of the U.S. confronting China's exces- sive claims, does not rely on U.S. membership in UNCLOS.

[*Page 6-7*]

Groves, Steven and Dean Cheng. **A National Strategy for the South China Sea** . **Heritage Foundation**: Washington, D.C., April 24, 2014 (15p). [**More** (3 quotes)]

U.S. should not make ratifying UNCLOS a precondition for challenging China on SCS dispute

"Regardless, the United States cannot afford to wait to join UNCLOS before bringing a decisive res- olution to the challenges in the SCS. The Senate Foreign relations Committee has taken the convention under consideration on many occasions, including hearings in 1994, 2003, 2004, and 2007. The committee held four hearings in 2012, but then-chairman Senator John Kerry (D–MA) did not attempt to offer the convention for a committee vote due to stiff opposition by the convention's detractors.

There is no realistic possibility that the United States will ratify UNCLOS in the near term, or perhaps ever. U.S. policymakers should instead concentrate their efforts on developing and implementing a specific strategy to address intractable problems, such as those the United States faces in the SCS.

[*Page 8*]

Groves, Steven and Dean Cheng. **A National Strategy for the South China Sea** . **Heritage Foundation**: Washington, D.C., April 24, 2014 (15p). [**More** (3 quotes)]

Multiple reasons to doubt U.S. accession to UNCLOS would help resolve territorial disputes in South China Sea

"Opponents of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- China's ability to cite international law (including UNCLOS) in defending its position on whether coastal states have a right to regulate foreign military activities in their EEZs73 shows that UNCLOS does not adequately protect U.S. interests relating to navigational rights in EEZs; the United States should not help lock this inadequate description of navigational rights into permanent international law by becoming a party to the treaty.

- The United States becoming a party to the treaty would do little to help resolve maritime territorial disputes in the SCS and ECS, in part because China's maritime territorial claims, such as those depicted in the map of the nine-dash line, predate and go well beyond what is allowed under the treaty and appear rooted in arguments that are outside the treaty.

- The United States can adequately support the ASEAN countries and Japan in matters relating to maritime territorial disputes in the SCS and ECS in other ways, without becoming a party to the treaty.

- The United States can continue to defend its positions on navigational rights on the high seas by citing customary international law, by demonstrating those rights with U.S. naval deployments (including those conducted under the FON program), and by having allies and

partners defend the U.S. position on the EEZ issue at meetings of UNCLOS parties.

[*Page 34*]

O'Rourke, Ronald. **Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress** . Congressional Research Service: Washington, D.C., April 11, 2014 (59p). [**More** (4 quotes)]

UNCLOS is irrelevant to resolution of South China Sea dispute because China is basing its legal arguments on disputed historical claims

"Commander of U.S. Pacific Command (PACOM) Admiral Robert F. Willard testified this week before the Senate Armed Services Committee that "…China does not make legal claims to this entire body of water…" (the several bodies of water that China calls its "near seas"). When it comes to at least one of these seas—the South China Sea—the statement is meaningless.

Admiral Willard notes—and he would know—that China does "seek to restrict or exclude foreign, in particular, U.S., military maritime and air activities" in the South China Sea. A number of incidents over the last couple years point vividly to this problem. And China often uses legal arguments to explain its behavior.

But China's underlying sovereignty claims are not just "legal." They are historical. In 2009, the Chinese circulated the famous nine-dash map that lays out its historical claim to virtually all of the South China Sea. That provoked a complaint from Indonesia. Indonesia is not generally considered one of the claimants in the South China Sea dispute. However, it objected because while it sees no threat in China's legal claims, the historical claims represented by the nine-dash map include Indonesian waters.

Now the Philippines has formally registered an objection to the Chinese sovereignty grab, to which the Chinese have responded by citing both the legal and historical bases for their claims.

This brings us back to Admiral Willard's statement. The legal basis of China's claims to the South China Sea is meaningless as long as it maintains an alternative historical case. This also means that UNCLOS—which Admiral Willard gently urged the Senate to ratify—is irrelevant to settlement of the dispute. In fact, the treaty's filing deadlines and apparent wiggle room on things like "Exclusive Economic Zones" (EEZ) and baseline determinations seem to have exacerbated the conflict.

Walter Lohman. "***U.N. Doesn't Give America Its "Seat at the Table" in Maritime Disputes*** ." **Heritage Blog**. (April 14, 2011) [**More**]

China is resisting multilateral negotiation efforts over South China Seas disputes

"The dispute in the South China Sea is even more complex. Drawing on ancient maps and historical accounts, the Chinese and Taiwanese insist that the sea's two island chains, the Spratlys and the Para- cels, were long occupied by Chinese fisherfolk, and so the entire region belongs to them. The Viet- namese also assert historical ties to the two chains based on long-term fishing activities, while the other littoral states each claim a 200-nautical mile EEZ stretching into the heart of the sea. When com- bined, these various claims produce multiple over- laps, in some instances with three or more states involved—but always including China and Taiwan as claimants. Efforts to devise a formula to resolve the disputes through negotiations sponsored by the Association of Southeast Asian Nations (ASE- AN) have so far met with failure: While China has offered to negotiate one-on-one with individual states but not in a roundtable with all claimants, the other countries—mindful of China's greater wealth and power—prefer to negotiate en masse.

[*Page 29*]

Klare, Michael T. "*The Growing Threat of Maritime Conflict*." **Current History**. Vol. 112, No. 750 (January 2013): 26-32. [**More** (4 quotes)]

U.S. ratification of UNCLOS won't help pressure China to change its position in the South China Seas

"I understand the force of this argument. The U.S. already adheres the key principles in UNCLOS, so joining UNCLOS will allow the U.S. to push back more effectively against China's aggressive and expansionary activities.

But is there really any evidence that formal accession would change China's view of the U.S. position on UNCLOS issues? China is already a member of UNCLOS and other countries (like Japan and the Philippines) are also members of UNCLOS. But I don't think UNCLOS has really bolstered their effectiveness in pushing back against China. Moreover, as Professor Dutton explains, China has a radically different interpretation of its authority to regulate foreign ships and aircraft in its Exclusive Economic Zone under UNCLOS. How will joining UNCLOS help the U.S. change China's interpretation of UNCLOS?

As a practical matter, UNCLOS does have a way of compelling member states to conform their interpretations: mandatory dispute settlement in the International Tribunal for the Law of the Sea or in Annex VII arbitration. But as China and Russia have demonstrated in recent years, these mechanisms are not likely to be a serious constraint, especially on questions that touch sovereignty (which is how China frames most of its activities). I suppose if the U.S. joins UNCLOS, and subjects itself to UNCLOS dispute settlement, that might make a difference. But I don't think it would be a very large one (after all, Japan, China, and the Philippines are all already subject to UNCLOS dispute

settlement, which has accomplished little so far).

Julian Ku. "***Will Ratifying UNCLOS Help the U.S. Manage China? I Doubt It*** ." **Opinio Juris**. (January 16, 2014) [**More**]

UNCLOS has empirically not been successful

Empirically, after 30 years there is a significant and consistent pattern of non-compliance with UNCLOS provisions.

UNCLOS has failed to achieve its goals due to non-compliance by many states

“In 1982 it may have been reasonable, if perhaps somewhat optimistic, to hope that the LOSC would, in the words of its preamble, establish a “legal order for...the oceans which...will promote the peaceful uses of the seas and oceans, . . . the conservation of their living resources and the . . . preservation of the marine environment.” Thirty years later it is clear that the LOSC has failed to achieve those goals. This is in part due to continuing non-compliance with many of its provisions. Such non-compliance is a matter of serious concern for all the reasons suggested earlier. It could—and should—be addressed by States parties making more use of Part XV of the LOSC (perhaps non-governmental organizations could persuade or help States to bring test cases); by considering more use of retorsion and counter-measures; and by developing compliance mechanisms for other treaties that indirectly help to promote compliance with the LOSC. In some cases assistance in capacity building may also be appropriate,

[*Page 820*]

Churchill, Robin. "*The Persisting Problem of Non-compliance with the Law of the Sea Convention: Disorder in the Oceans*." **The International Journal of Marine and Coastal Law**. Vol. 27. (2012): 813-820. [**More** (3 quotes)]

Growing problem of non-compliance with UNCLOS in the Arctic

“Due to the significance placed on obtaining jurisdiction over the North Pole, and given recent violations of the norms of the Law of the Sea Convention, some experts see risks of noncompliance with any recommendations from the commission that would negate a country's submission.

One significant recent violation is Russia's refusal to participate in the dispute-resolution proceeding called by the Netherlands over Russia's arrest of environmental activists who disrupted the activities of a Gazprom drilling platform in the Pechora Sea and seizure of the Dutch-flagged ship Arctic Sunrise last year.

“That's a very clear disrespect for international law. You are a party to the Law of the Sea

Convention, and thereby you are bound to the dispute-settlement procedure," Molenaar said.

Another similar example is China's refusal to participate in a dispute-resolution procedure requested by the Philippines over an area in the South China Sea outside China's exclusive economic zone that China claims for itself.

Such disregard for an international treaty can have broad impacts on various multilateral bodies and negotiation processes and bring about wider distrust and noncompliance.

"The risk is disrespect for agreed multilateral procedures. There is a risk in the background that Russia or even Canada will not act in accordance with the recommendations of the [commission], and this fear I think is more justified because of this nonappearance in the Arctic Sunrise case, and maybe even the recent developments in Ukraine" where Russia is viewed as violating the borders of Ukraine's sovereign territory.

Jenny Johnson. "***Who Owns the North Pole? Debate Heats Up as Climate Change Transforms Arctic*** ." **Bloomberg News**. (April 4, 2014) [**More**]

Multiple examples of state noncompliance with UNCLOS

"For reasons of space, I cannot attempt here any detailed or comprehensive survey of non-compliance with the LOSC, nor is it necessary to my case to do so. It is sufficient to give a number of varying and persisting examples to show that non-compliance continues to be a problem.

- Some States parties, including Bangladesh, Egypt, Myanmar and Viet- nam, have drawn straight baselines in ways that do not meet the require- ments of Article 7, even on the most generous interpretation of the admittedly imprecise provisions of that Article.[1]
- Four States parties (Benin, Philippines, Somalia and Togo) still claim a territorial sea with a breadth in excess of the 12 nautical miles permitted by Article 3.
- 12 States parties, including China, Haiti, India, Pakistan and Saudi Arabia, have included security as one of the matters in respect of which they claim to exercise jurisdiction in their contiguous zones, contrary to Article 33.
- A few States parties, including Japan, have sought to delimit an exclusive economic zone (EEZ) and continental shelf from uninhabitable rocks, contrary to Article 121(3).
- A considerable number of flag State parties are in breach of their obliga- tion under Article 94 to exercise effective jurisdiction and control in respect of the seaworthiness of ships having their nationality, as revealed by the record of inspections and detentions of unseaworthy ships carried out by port States under various regional Memoranda of Understanding (MoU) on port State control. In particular, such States include those on the black list of flag States, and possibly even those on the grey list, pub- lished each year by the Paris and Tokyo MoUs.[2]
- The biennial reports on the State of World Fisheries and Aquaculture published by the FAO show that for the past decade or more nearly 30% of fish stocks are over-exploited.[3] This indicates that some coastal States parties (notably the European Union (EU))[4] are in breach of their obliga- tion under Article 61(2) to ensure that the maintenance of the living resources of

their EEZs is not endangered by over-exploitation; and that some States parties are in breach of their obligation under Articles 117– 119 to conserve the living resources of the high seas. Furthermore, it has been estimated that as much as one-third of the total global marine fish catch is taken illegally.[5] Not all such illegality is necessarily a breach of the LOSC, but a good deal certainly is.

- A number of States parties are in breach of their obligations under Article 194(5) by failing to take the necessary measures to protect and preserve rare or fragile ecosystems, for example by permitting fishing using explo- sives in the vicinity of tropical coral reefs or by permitting bottom trawl- ing on seamounts and areas of cold-water coral reefs in their EEZs.

[*Page 814-815*]

Churchill, Robin. "*The Persisting Problem of Non-compliance with the Law of the Sea Convention: Disorder in the Oceans*." **The International Journal of Marine and Coastal Law**. Vol. 27. (2012): 813-820. [**More** (3 quotes)]

Should not downplay the widespread noncompliance with UNCLOS

"Some may seek to downplay the significance of non-compliance with the LOSC by arguing that a certain level of non-compliance is to be expected in any legal system: as long as it is kept within reasonable bounds, there need be no undue concern. I believe that this is too sanguine a view. There are just over 160 parties to the LOSC, at least one-third of which (and quite possibly more) are in breach of at least one significant provision of the LOSC. Such a degree of non-compliance undermines the integrity and legitimacy of the LOSC. Furthermore, non-compliance provokes disputes, denies States parties some of their LOSC rights, threatens good order at sea, and harms the marine environment.

[*Page 815*]

Churchill, Robin. "*The Persisting Problem of Non-compliance with the Law of the Sea Convention: Disorder in the Oceans*." **The International Journal of Marine and Coastal Law**. Vol. 27. (2012): 813-820. [**More** (3 quotes)]

UNCLOS is inadequate for protection of U.S. underseas cables

UNCLOS does not provide adequate protection for underseas cables against malicious attack or terrorist threat and should be modified.

UNCLOS lacks necessary provisions to ensure protection of underseas cables

"As previously stated,[25] given the importance of submarine cables to the world economy and to all States, additional measures are necessary to protect cables. The majority of the cable damages are caused by human intervention, but there is no obligation under the UNCLOS on coastal States to adopt laws and regulations to protect submarine cables in the territorial sea. Moreover, even if Article 113 UNCLOS requires States to establish rules on the breaking or injury of cables in the high seas or EEZ by their nationals or by a ship flying their flag, if such break was done wilfully or with negligence, this provision is inadequate, as there is no countermeasure if States do not implement it. Furthermore, it does not deal adequately with the threat as well as theft of cables by terrorists or other voluntary acts.

[*Page 15-16*]

Borgia, Fiammetta and Paolo Vargiu. **When Investment Law Takes Over: Towards a New Legal Regime to Regulate Asia Pacific's Submarine Cables Boom**. University of Leicester School of Law: United Kingdom, 2013 (38p). [**More** (5 quotes)]

UNCLOS introduces a number of unresolved issues for the underseas cable industry

"Currently, the main concerns relating to submarine cables are in the perspective of multiple ocean use introduced by UNCLOS. The conflicts between cables and other ocean uses, the overlapping of maritime zones, the legality of exclusion zones around cables, compensation for lost or damaged fishing gear due to cable interactions, legal liability for damaging cables, and unclear jurisdiction and interdepartmental coordination in the cable licensing and regulatory processes are only some of the potential conflicts to be resolved by States.

In particular, with regard to the laying of submarine cables, doubts can be also expressed about the interaction between the interest of coastal States to regulate their maritime spaces and the possibility to lay submarine cables by other States or individuals. Furthermore, in the maritime zones outside of the sovereignty of coastal States, the freedom to lay cable is often opposed to environmental issues as well as the interest to have safe navigation. Laying activities may interfere with the repair of

submarine cables as well as navigation for fishing. In addition to this, coastal States often impose taxes on cables laid on the continental shelf or other excessive regulations.[24]

This lack of precision in the regulations for the laying of submarine cables leads also to enhance the weakness of the measures of protection available in the field.

[*Page 14-15*]

Borgia, Fiammetta and Paolo Vargiu, **When Investment Law Takes Over: Towards a New Legal Regime to Regulate Asia Pacific's Submarine Cables Boom** . University of Leicester School of Law: United Kingdom, 2013 (38p). [**More** (5 quotes)]

U.S. failure to ratify UNCLOS has not been detrimental

Many of the risk scenarios critics predicted would happen in 1982 if the U.S. failed to ratify UNCLOS have not occurred and the U.S. is no worse off 30 years later for not having ratified the treaty.

Lawlessness proponents claim will result from failure to ratify Law of Sea has not occurred

"Critics of the U.S. refusal to sign in 1982 predicted ocean chaos, but not once has an American ship been denied passage. No country has had either the incentive or the ability to interfere with U.S. shipping. And if they had, the treaty would have been of little help. In 1998 Law of the Sea Treaty supporters agitated for immediate ratification because several special exemptions for the United States were set to expire; Washington did not ratify, and no one seems to have noticed. Now Lugar worries that Washington could "forfeit our seat at the table of institutions that will make decisions about the use of the oceans." Yet last October Assistant Secretary of State John F. Turner told the Senate Foreign Relations Committee that America has "had considerable success" in asserting "its oceans interests as a nonparty to the Convention."

Law of the Sea Treaty proponents talk grandly of the need to "restore U.S. leadership," but real leadership can mean saying no as well as yes. Ronald Reagan was right to torpedo the Law of the Sea Treaty two decades ago. Creating a new oceans bureaucracy is no more attractive today.

Bandow, Doug. "***Sink the Law of the Sea Treaty*** ." **Weekly Standard**. (March 15, 2004) [**More**]

Chaos predicted by proponents of UNCLOS if the U.S. didn't sign has not appeared in last few decades

"Critics of the U.S. refusal to sign in 1982 predicted ocean chaos, but as noted earlier, not once has an American ship been denied passage. No country has had either the incentive or the ability to interfere with U.S. ship- ping, and, if one or more had, the LOST would have been of little help. In 1998 treaty supporters agitated for immediate ratification because several special exemptions for the United States were set to expire. Washington did not ratify and no one seemed to notice.

Ironically, problems cited by U.S. shippers -- creation of a “particularly sensitive sea area” off of Europe, for instance—have involved alleged misinterpretations of the treaty, not America’s lack of membership.[67] And foreign shippers have attempted to use the LOST to escape application of U.S. environmental controls.[68] Joining the treaty would provide no panacea.

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

U.S. does not need to ratify UNCLOS to preserve freedom of navigation rights

It is not essential or even necessary for the United States to accede to UNCLOS to benefit from the certainty and stability provided by its navigational provisions. Those provisions either codify customary international law that existed well before the convention was adopted in 1982 or "refine and elaborate" navigational rights that are now almost universally accepted as binding international law.

US does not need to ratify UNCLOS to lock in freedom of navigation rights

"Assertion #1: The U.S. needs to join UNCLOS to "lock in" the navigation rights it currently enjoys under customary international practice. Implied in this argument is the presumption that other nations, the vast majority of which are UNCLOS participants, will ignore their obligations under the treaty and forgo the concurrent privileges regarding navigation rights afforded by customary international practice just because the U.S. is not a party to the treaty. This, according to the Bush Administration, will manifest itself in the form of some coastal states demanding notification by U.S. ships entering their waters or airspace.

Fact: These states have reciprocal interests in navigation rights that will discourage them from making such demands. Second, the few irresponsible states that may decide to make such challenges are not going to be dissuaded by the "locking in" argument or U.S. appeals to the navigation provisions of UNCLOS.

[*Page 2*]

Edwin Meese, III, Baker Spring, and Brett D. Schaefer. "***The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits*** ." **Heritage Foundation WebMemo**. (May 16, 2007) [**More**]

International law has been less effective at preventing nations from making excessive claims than U.S. naval supremacy

"Moreover, at a time when Washington is combating lawless terrorism, it should be evident that the only sure guarantee of free passage on the seas is the power of the U.S. Navy, combined with friendly relations with the states, few in number, that sit astride important sea lanes. Coastal nations make policy based on perceived national interest, not abstract legal norms. Remember the luckless USS Pueblo in 1968? International law did not prevent North Korea from seizing the intelligence ship;

approval of the Law of the Sea Treaty would have offered the Pueblo no additional protection. America was similarly unaided by international law in its 2001 confrontation with China over our downed EP-3 surveillance plane.

Nor has signing the Law of the Sea Treaty prevented Brazil, China, India, Malaysia, North Korea, Pakistan, and others from making ocean claims deemed excessive by others. Indeed, last October Adm. Mullen warned that the benefits he believed to derive from treaty ratification did not "suggest that countries' attempts to restrict navigation will cease once the United States becomes a party to the Law of the Sea Convention."

Bandow, Doug. "***Sink the Law of the Sea Treaty*** ." **Weekly Standard**. (March 15, 2004) [**More**]

U.S. does not need the Law of the Sea treaty to guarantee navigation rights

"The U.S. enjoys navigation rights by customary international practice. The fact that the U.S. is not a convention member does not mean that other states will begin to demand notification by U.S. ships entering their waters or airspace. Indeed, the U.S. is not a signatory to the convention today and yet has freedom of the seas because current participants are required to grant the U.S. navigation rights afforded by customary international practice. In addition, these states have reciprocal interests in navigation rights that will discourage them from making such demands on American ships in the future.

[*Page 2*]

Baker Spring, Steven Groves and Brett D. Schaefer. "***The Top Five Reasons Why Conservatives Should Oppose the U.N. Convention on the Law of the Sea*** ." **Heritage Foundation WebMemo**. (September 25, 2007) [**More**]

US can enjoy all navigational freedoms ensured by UNCLOS without acceding to it

"Yet proponents of U.S. accession to UNCLOS maintain that the United States cannot fully benefit from these navigational rights unless it is a party to the convention, which “provides” and “preserves” these rights. This is simply incorrect. The United States enjoys the same navigational rights as UNCLOS parties enjoy.

At the December 1982 final plenary meeting of the Third United Nations Conference on the Law of the Sea, some nations took the opposite position, contending that any nation that chose not to join the convention would forgo all of these rights. On March 8, 1983, the United States, exercising its right to reply, expressly rejected that position:

> Some speakers discussed the legal question of the rights and duties of States which do not become party to the Convention adopted by the Conference. Some of these speakers alleged that such States must either accept the provisions of the Convention as a "package deal" or forgo all of the rights referred to in the Convention. This supposed election is without foundation or precedent in international law. It is a basic principle of law that parties may not, by agreement among themselves, impair the rights of third parties or their obligations to third parties. Neither the Conference nor the States indicating an intention to become parties to the Convention have been granted global legislative power....
>
> The United States will continue to exercise its rights and fulfil its duties in a manner consistent with international law, including those aspects of the Convention which either codify customary international law or refine and elaborate concepts which represent an accommodation of the interests of all States and form part of international law.

In sum, it is not essential or even necessary for the United States to accede to UNCLOS to benefit from the certainty and stability provided by its navigational provisions. Those provisions either codify customary international law that existed well before the convention was adopted in 1982 or "refine and elaborate" navigational rights that are now almost universally accepted as binding international law.

[*Page 14-15*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS***." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

UNCLOS protections for navigational freedoms are not unambiguous

"Nor is the treaty unambiguously favorable to transit rights. The document introduces some new limitations on navigation involving the EEZs, territorial seas, and water surrounding archipelagic states. Even seemingly innocent restrictions might have a negative impact; Alfred Rubin of Tufts University worried that the ban on "research or survey activities" could limit U.S. naval transit rights.[49]

At other times the LOST's language is ambiguous—regarding transit rights for sub- merged submarines, for instance—which ultimately limits the value of the treaty guarantee. Ambassador Pardo complained that the treaty "is often studiously unclear, and predictability suffers."[50] Louisiana State University law professor Gary Knight argued that "the difficulty of establishing our legal right to EEZ navigation [through other nations' exclusive economic zones] and submerged straits passage [for submarines] would be no more difficult under an existing customary international law argument than under the convoluted text of the proposed UNCLOS."[51] In short, there is only a modest theoretical advantage for which to trade away the mining provisions.

[*Page 11*]

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

Even as a non-party to UNCLOS, US navigational rights have been protected for decades through customary international law

"In 1993, the Department of Defense issued an Ocean Policy Review Paper on "the currency and adequacy of U.S. oceans policy, from the strategic standpoint, to support the national defense strategy." The paper concluded that U.S. national security interests in the oceans have been protected even though the U.S. is not party to UNCLOS:

> U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the non-deep seabed mining provisions of the 1982 Law of the Sea Convention, and as supplemented by diplomatic protests and assertion of rights under the Freedom of Navigation Program, have served so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.

Almost 20 years later, there is no evidence that suggests a change in circumstances such that U.S. accession to UNCLOS has become essential to the successful execution of the U.S. Navy's global mission.

[*Page 12*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS*** ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

Convention principles of freedom of navigation,likely to be abrogated by nations when it is in their best interest and many already have

"However, when countries perceive their vital national interests to be at stake—Great Britain in World War I and Iran during its war with Iraq in the 1980s, for instance—they rarely allow juridical niceties to stop them from interdicting or destroying international commerce. In a crisis, most maritime nations are ready to sacrifice abstract legal norms in pursuit of important policy goals.

Indeed, LOST membership has not pre- vented Brazil, China, India, Malaysia, North Korea, Pakistan, and others from making ocean claims deemed by others to be exces- sive—and, thus, illegitimate—under the treaty. In testimony last October, Admiral Mullen warned that the benefits he believed were

derived from treaty ratification did not “sug- gest that countries’ attempts to restrict navigation will cease once the United States becomes a party to the Law of the Sea Convention.”55

[*Page 11*]

Bandow, Doug. **Don’t Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

International law unlikely to dissuade Iran from taking steps to close Strait of Hormuz

“Consider the luckless USS Pueblo. Inter- national law did not prevent North Korea from illegally seizing the intelligence ship; had there been a LOST in 1968, it would have offered the Pueblo no additional protection. America was similarly unaided by international law in its con- frontation with China over the U.S. EP-3 sur- veillance plane operating in international air- space in 2001.

Schachte contends that “if you look at the Persian Gulf situation, for example, we didn’t have problems with Iran or Oman in using the Strait of Hormuz, because they recognized that the language of the treaty was clear.”58 Yet Iran, which bombed Kuwaiti oil tankers during its war with Iraq, is unlikely to be deterred by an international treaty, however unambiguous its provisions. If Iran, or any other maritime state, believed it to be in its vital interest to prevent the passage of U.S. ships, then its signature on the LOST would not likely prevent it from act- ing: rather, the country would be primarily concerned about America’s willingness and ability to force passage. And in a world from which the Soviet Union has disappeared, the Russian navy is rusting in port, China has yet to develop a blue-water navy, and Third World conflicts are no longer viewed as threatening the United States, Washington is rarely going to have to fight its way through contested international waterways. Countries will be inclined to let the ships pass rather than face the wrath of the U.S. Navy.

[*Page 12*]

Bandow, Doug. **Don’t Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

U.S. navy will need to regularly assert and protect its freedom of navigation rights whether US is party to UNCLOS or not

“Even if the LOST offered a definite and positive interpretation of navigation provi- sions, the legal protections for free transit would provide little practical gain. Benjamin and Daniel Friedman contend: “By signing the Convention, the United States gives added weight and stability to customary rights, and pushes recalcitrant states to respect navigational freedoms.”[52] Administration representatives make the same argument: “The navigation and overflight freedoms we require through customary international law are better served by being a party to the Convention that codifies those freedoms,”

testified Adm. Michael G. Mullen, then vice chief of naval operations for the Joint Chiefs of Staff.[53]

That's true, but it doesn't go very far. The now-retired Admiral Schacte acknowledged in Senate testimony: "The Convention alone is not enough, even [with the United States] as a party. Our operational forces must continue to exercise our rights under the Convention."[54] That is, to protect American navigation rights from foreign encroachments, the U.S. Navy must regularly conduct military operations on the basis of the international transit freedoms claimed by Washington, regardless of whether or not the United States ratifies the LOST. Meanwhile, the LOST is unlikely to influence countries that have either the incentive or the ability to interfere with U.S. shipping. In practice, few do: nations usually have far more to gain economically from allowing unrestricted passage.

[*Page 11*]

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

All important provisions of UNCLOS for freedom of navigation rights provided by customary international law

"With regard to freedom of movement: President Reagan's 1983 Ocean Policy Statement stated that UNCLOS "contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice . . .."[16] The International Court of Justice reached a similar conclusion in the 1984 Gulf of Maine case, albeit in the context of the continental shelf and EEZ articles, indicating that the Convention's provisions were reflective of customary international law.[17] In short, today, all of the important provisions of UNCLOS dealing with freedom of movement, such as the rights of innocent passage, transit passage, archipelagic sea lanes passage, and high seas freedoms seaward of the territorial sea, are considered by virtually all nations as a reflection of customary international law that is binding on all nations. Both our commercial shipping and military forces have exercised and enjoyed these rights for the past 25 years, during which time the United States has not been a party to UNCLOS. Clearly, the United States does not have to become a party to the Convention to exercise its navigational rights and freedoms worldwide. Iran is the only country that continues to maintain that the right of transit passage through the Strait of Hormuz applies only to State Parties to the Convention. What we need more than membership in another treaty is a coherent national policy that supports freedom of navigation and a strong Navy that can challenge excessive coastal state claims that purport to curtail our freedom of movement and restrict our access to the world's oceans.

[*Page 156*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

U.S. allies will help protect navigational freedoms regardless of U.S. accession to UNCLOS

"**Convention advocates further contend that even if the LOST is flawed, only participation in the treaty regime can prevent future damaging interpretations, amendments, and tribunal decisions.** Bernard Oxman, a University of Miami Law School professor who also serves as a judge ad hoc on the International Tribunal for the Law of the Sea, contends that "what we gain by becoming party is increased influence over" the interpretation of the convention's rules.[63] Senator Lugar worries that failing to ratify the treaty means the United States could "forfeit our seat at the table of institutions that will make decisions about the use of the oceans."[64] David Sandalow of the Brookings Institution warns that if the United States stays out of the LOST, it risks losing some of its existing navigation freedoms through "backsliding by nations that have put aside excessive maritime claims from years past."[65]

However, America's friends and allies, in both Asia and Europe, have an incentive, with or without the LOST, to protect navigational freedom. So long as Washington maintains good relations with them—admittedly a more difficult undertaking because of strains of the war in Iraq—it should be able to defend U.S. interests indirectly through surrogates. **If the nations that benefit from navigational freedom are unwilling to aid the United States while Washington is outside the LOST, they are unlikely to prove any more steadfast with Washington inside it**. Assistant Secretary Turner admitted as much when he told the Senate Foreign Relations Committee in October 2003 that the United States had "had considerable success" in asserting "its oceans interests as a non-party to the Convention."[66]

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

Freedom of navigation program is sufficient to protect U.S. navigation rights

The United States actively protects its Freedom of Navigation rights by protesting excessive maritime claims made by other nations and by conducting operational assertions with U.S. naval forces to physically dispute such claims. These diplomatic and military protests were formally operationalized as the Freedom of Navigation (FON) Program in March 1979 during the Carter Administration.

U.S. Department of Defense has repeatedly affirmed value of freedom of navigation program

"More than a decade after the adoption of UNCLOS, the Department of Defense issued an Ocean policy review paper on "the currency and adequacy of U.S. oceans policy, from the strategic standpoint, to support the national defense strategy," which concluded that U.S. national security interests in the oceans have been protected even though the U.S. is not party to UNCLOS:

> U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the non-deep seabed mining provisions of the 1982 law of the Sea Convention, and as supplemented by diplomatic pro- tests and assertion of rights under the Freedom of Navigation program, have served so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.[22]

This is not to say that the Department of Defense does not support U.S. accession to UNCLOS—it certainly does. However, the Department of Defense does not, and cannot, say that U.S. membership in UNCLOS is absolutely essential to the preservation of navigational rights or that the United States is incapable of protecting those rights unless it accedes to the convention.

The U.S. Navy thrived for more than 180 years from its birth in 1775 through two world wars and developed into a global maritime power, all without membership in UNCLOS. in 1958, the principles of high seas freedom and innocent passage through territorial waters were codified in the first round of law-of-the-sea conventions. Between 1958 and 1982, the Navy continued to fulfill its mission on a global scale. UNCLOS was adopted in 1982, duplicat- ing the navigational provisions of the 1958 conven- tions and "crystallizing" the concepts of transit pas- sage and archipelagic sea-lanes passage. Since 1982 through the end of the Cold War and to the present day, the Navy continues to prosecute its mission as the world's preeminent naval power.

Groves, Steven and Dean Cheng. **A National Strategy for the South China Sea** . **Heritage Foundation**: Washington, D.C., April 24, 2014 (15p). [**More** (3 quotes)]

U.S. can maintain its freedom of navigation rights in Arctic through continued application of FON program

"In the early 1990s, the Defense Department began to publish its operational assertions in annual reports. These reports indicate that from fiscal year (FY) 1993 to the present the U.S. Navy conducted hundreds of FON operations to dispute various types of excessive maritime claims made by 48 nations.[23] The United States has issued a limited number of FON protests regarding excessive maritime claims in the Arctic Circle, including protests of Russian "historic waters" claims in the Laptev and Sannikov Straits and Canadian regulations on transit through the Northwest Passage.[24]

The U.S. has made clear that it will act in accordance with the customary international law of the sea, including the navigational provisions of UNCLOS, and will recognize the maritime rights of other nations in the Arctic Ocean and elsewhere. When other nations assert claims contrary to customary international law, the United States actively contests such claims through the FON Program. No evidence suggests that any Arctic nation plans to hinder U.S. military mobility in the Arctic Ocean by making excessive maritime claims. Nor is there evidence that any Arctic or non-Arctic nation intends to disregard U.S. sovereignty over its territorial sea off Alaska.

[*Page 7*]

Groves, Steven. **Accession to Convention on the Law of the Sea Unnecessary to Advance Arctic Interests** . **Heritage Foundation**: Washington, D.C., June 26, 2014 (18p). [**More** (8 quotes)]

U.S. not losing ability to guide maritime law by not being party to UNCLOS

Even as a non-party to UNCLOS, the U.S. will still retain its maritime leadership role and can influence the future of the law of the sea through the International Maritime Organization.

Any changes to UNCLOS are more likely to occur at the International Maritime Organization, not through United Nations

"Bottom line: any changes or reinterpretation of UNCLOS will more likely occur at the IMO, not the United Nations. Although UNCLOS may be amended through the simplified procedure set out in UNCLOS Article 313, it only takes one State Party to derail that procedure. Article 313(2) provides that "if . . . a State Party objects to the proposed amendment or to the pro- posal for its adoption by the simplified procedure, the amendment shall be considered rejected." The only other way to amend the Convention is through the convening of a diplomatic conference under Article 312. As we saw with Third United Nations Conference on the Law of the Sea (UNCLOS III), getting consensus on sensitive maritime issues took nine long years and difficult negotiations to complete. Any proposed amendments to the Convention would probably face similar scrutiny by the State Parties at the conference.

[*Page 164*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

US not losing opportunity to guide development of UNCLOS, it can always make accession dependent on amendment

"UNCLOS proponents have also recently argued that it is imperative that the United States join the Convention before it is amended by the states parties. Failure to do so, they argue, may later force the United States to accept a modified Convention "as is" with amendments that are contrary to U.S. interests.[17] Such an argument is untenable at best and ignores a plain reading of Article 316 of the Convention, which provides in part:

> 4. A State which becomes a Party to this Convention after the entry into force of an amendment . . . shall, failing an expression of a different intention by that State: (a) be considered as a Party to this Convention as so amended; and (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the

amendment (emphasis added).

In other words, if the United State were to accede to UNCLOS after an unfavorable amendment had entered into force, Washington could simply indicate that the United States would not be bound by that amendment. Such efforts to sensationalize the importance of joining UNCLOS by making incorrect statements of the law not only detract from the debate but also significantly undercut the legitimacy of the need to accede to the Convention.

[*Page 492-493*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

International Maritime Organization is more important to global ocean policy than UNCLOS and U.S. remains leader in IMO

"Like **Borgerson and Pickering**, Messrs. **Cartner and Gold** argue that, "without ratification of UNCLOS, the US has even less maritime standing in the community of nations, and its contributions will rapidly be marginalized or seen as irrelevant." U.S. Administrations have been making this same argument for the past 20 years, yet I see no evidence of lost U.S. standing in fora like the International Maritime Organization (IMO), where U.S. leadership remains strong. As discussed in my earlier article, the IMO, not the Meeting of States Parties to UNCLOS, will shape the law of the sea of the future. That is where the United States needs to maintain its focus and level of effort. Under the capable leadership of the U.S. Coast Guard, U.S. delegations have successfully adopted a series of new and amended IMO instruments that enhance maritime safety, maritime security and maritime trade. My only concern is the apparent shift in focus at the IMO from a maritime nation to a coastal nation perspective that fails to balance national security interests with environmental and homeland security interests. This change in focus has been driven, in part, by concerns over strengthening maritime homeland security following 9/11 and by the shift in ocean policy leadership in the United States from NSC to CEQ.[37]

[*Page 502*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

U.S. is not losing out in Arctic by not being party to UNCLOS

By relying on the Convention and the doctrine of the high seas, the United States may bypass the UNCLOS regime altogether and begin exploration and exploitation of the Arctic area immediately.

U.S. should assert its rights under the Convention of the High Seas to mine and develop in the Arctic, independent of UNCLOS

"If UNCLOS has not become customary international law and thus does not bind the United States with respect to the Arctic area, then the United States is free to argue that the Convention on the High Seas allows it and other nations to freely mine the seabed and navigate the waters of the Arctic. The freedom to navigate the high seas is explicitly guaranteed by the Convention. The United States must argue that the Convention governs the dispute and provides all nations the ability to navigate the Northwest Passage free from interference from Canada or any other nation claiming to own the area. As a result, the United States would be claiming that the Northwest Passage is part of the "common heritage" and that any nation could navigate through it.

The most significant benefit to the United States' argument that the doctrine of the high seas still governs the Arctic Ocean and its seabed is that the United States would be able to exploit the vast natural resources through deep sea mining activities. Unlike the freedom to navigate the high seas, the freedom to mine that area is not explicitly guaranteed, although it is clearly protected. By securing the right to mine and exploit the resources beneath the Arctic Ocean, the United States would be taking a step to guarantee its energy independence and encouraging U.S. businesses to invest in deep sea mining. These two things will, of course, be critical to the U.S. economy in the foreseeable future.

By relying on the Convention and the doctrine of the high seas, the United States may bypass the UNCLOS regime altogether and begin exploration and exploitation of the Arctic area immediately. As a further benefit, the United States will not have to ratify UNCLOS in order to secure these rights. In fact, if the United States does ratify UNCLOS as many have called for, it may be relinquishing these rights completely if no valuable territory is an extension of its continental shelf. Thus, it is clearly in the United States' interest not to ratify UNCLOS and to contest the Russian land claim outside that regime's jurisdiction.

[*Page 860-861*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

US not out of running in race for Arctic resources, it can still submit claim if it ratifies UNCLOS

"Though the United States has not ratified UNCLOS, this does not mean that they are out of the running in the race for Arctic territory. Due to the lengthy CLCS review process, oil and gas drilling activity in the extended continental shelf regions by any country is likely a long way away.[51] It also appears that the United States is not abandoning UNCLOS, and in "[p]rospects for the U.S. Senate to ratify the Convention on the Law of the Sea [continue to] improve."[52] The stalled bill in the U.S. Senate has not aggrieved the energy industry, as "energy industry officials have made it clear to U.S. agencies that they are not interested in undertaking exploration and production beyond the 200-nautical-mile exclusive economic zone without a firm international legal framework recognizing any extended claims."[53] However, the prospect of the United States joining the game may be even more distant because the CLCS is far from a "firm international legal framework."[54] For now, the only certainty is that the United States must make major political progress by either ratifying the UNCLOS treaty or attempting to resolve any concerns regarding Arctic lands in another forum. Further, the United States must engage other nations in order to become a major player in the Arctic territorial battle.

[*Page 154-155*]

Coston, Jacqulyn. "*What Lies Beneath: The CLCS and the Race to Lay Claim over the Arctic Seabed*." **Environmental and Energy Law and Policy Journal**. Vol. 3, No. 1 (2008): 149-157. [**More** (3 quotes)]

U.S. scuttling of Russia's initial Arctic claim shows it can still influence CLCS as a non member

"The United States was able to play a role in the Commission's non- acceptance of Russia's first claim to the Arctic seabed back in 2001, even though it was not a party to LOST – and, therefore, not at risk of being bound by adverse Commission decisions. This episode demonstrates that, by remaining outside of the Treaty, America can retain its freedom of action (including the use of bilateral diplomacy and more constructive multilateral mechanisms, such as the Arctic Council) and still challenge such over-reaching Russian claims and win.

[*Page 19*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. participation in Ilulissat agreement undermines claim that its

non-party status to UNCLOS is hurting its ability to guide Arctic policy

"The U.S. relies on its sovereign power and diplomacy when pursuing territorial claims in the Arctic. The United States is not a party to the United Nations Convention on the Law of the Sea Treaty (LOST) and therefore is not bound by any procedures and determinations concluded through LOST instruments. Instead, the U.S. is pursuing its claims "as an independent, sovereign nation," relying in part on Harry S. Truman's Presidential Proclamation No. 2667, which declares that any hydrocarbon or other resources discovered beneath the U.S. continental shelf are the property of the United States.[25] The U.S. can defend its rights and claims through bilateral negotiations and in the multilateral venues such as through the Arctic Ocean Conference in May 2008, which met in Ilulissat, Greenland.

Many have argued, including the Bush Administration, that the U.S. will not have leverage or a "seat at the table" to pursue or defend its Arctic claims on condition that the U.S. is not a party to LOST. However, U.S. attendance at the conference in Ilulissat significantly weakened this argument. Even though the U.S. is not a LOST party, other Arctic nations "are unable to assert credible claims on U.S. territory in the Arctic or anywhere else in the world" because President Truman already secured U.S. rights to Arctic resources with his proclamation.[26]

[*Page 7*]

Cohen, Ariel , Ph.D., Lajos F. Szaszdi, Ph.D., and Jim Dolbow. **The New Cold War: Reviving the U.S. Presence in the Arctic** . **Heritage Foundation**: Washington, D.C., October 30, 2008 (13p). [**More** (3 quotes)]

U.S. can make claim to Arctic resources without being party to UNCLOS

U.S. should assert its rights to develop in the Arctic by invoking the existing convention on the high seas

"The United States must stand up, take notice, and resist any effort to grant Russia or any other nation exclusive control over the Arctic's resources. Because the United States is not a party to UNCLOS, it must argue for a solution outside the treaty. This dispute is likely to take place in multi-party negotiations, and it is imperative that the United States shore up its legal positions now.

As it has done for quite a long time, the United States may rely on the doctrine of the freedom of the high seas codified in the Convention on the High Seas to assert that it is permitted to mine and navigate the area that Russia is attempting to claim. In addition to allowing free navigation of the high seas, that doctrine, now a part of international custom, allows any nation to participate in exploitation of the resources of a vast majority of the oceans. By arguing that UNCLOS does not apply to non-parties, the United States will be able to rely on this widely-supported doctrine while extracting oil, natural gas, and minerals from the seabed. An application of this doctrine will provide the United States with the best opportunity to serve its own interests without sacrificing its sovereignty to an international tribunal.

[*Page 865*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

US can still legally assert a claim in the Arctic without being party to UNCLOS

"While I agree completely with **Cartner and Gold** that UNCLOS "reduces uncertainty and confusion for all states parties" claiming an extended continental shelf, the United States must be prepared to act unilaterally if the Senate does not give advice and consent in the near future. Clearly, as indicated in the NWC Global Shipping Game report, accession to UNCLOS would provide greater certainty and predictability "of the future security and political environment that industry desires in order to invest in economic development of the Arctic region." However, even without U.S. accession, if there is money to be made, U.S. industry will invest in the region if the U.S. Navy is there to guarantee and protect access. Therefore, while unilateral action may not be the "best" option, it

remains a viable (and perhaps the only) option and we should not undercut our ability to claim an extended continental shelf based on the 1958 Continental Shelf Convention by allowing Administration officials to incorrectly state that the United States can only claim an extended continental shelf if we join UNCLOS. Fortunately, not all Administration officials are misinformed on the law. While recognizing the importance of UNCLOS, Margaret Hayes, the chair of the Department of State Extended Continental Shelf Interagency Task Force, acknowledged that "the existence of an extended continental shelf does not depend on a coastal nation having joined the convention" and "that there are other ways to establish what the outer limits might be (emphasis added)."

[*Page 491*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

U.S. scuttling of Russia's initial Arctic claim shows it can still influence CLCS as a non member

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[*Page 19*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

US successful experience with challenging Russia's claim shows that even as a non party to UNCLOS the US is not a helpless bystander to CLCS

"Indeed, after Russia made its 2001 claim, five nations (Canada, Denmark, Japan, Norway, and the United States) submitted objections to the CLCS. The U.S. objection identified "major flaws" in the Russian claim, including an objection concerning whether the Alpha-Mendeleev and Lomonosov mid-ocean ridges in the central Arctic are a natural component of Russia's continental shelf. However, the U.S. comments also noted that "the Russian submission utilizes the boundary embodied" in the 1990 U.S.–USSR treaty and that the "use of that boundary is consistent with the mutual interests of Russia and the United States in stability of expectations."[36]

The CLCS agreed with the U.S. comments, stating that the U.S.– USSR boundary demarcated in 1990 reflects the boundary of the U.S.–Russia continental shelf in the Bering Sea. The CLCS recommended that Russia "transmit to the Commission the charts and coordinates of the delimitation lines as they would represent the outer limits of the continental shelf of the Russian Federation extended beyond 200 nautical miles in ... the Bering Sea."[37]

In June 2002, in light of the objections to Russia's ECS claim, the CLCS recommended to the Russians that they provide a "revised submission" on Russia's claims in the central Arctic.[38] Russia reportedly will make an amended submission to the CLCS at some point in the future. In addition, Canada and Russia recently signaled that they will cooperate with each other to demarcate their respective ECS boundaries in the Arctic.[39]

The U.S. objections to the Russian ECS submission and the CLCS's subsequent rejection of the Russian claim call into question the repeated assertions by UNCLOS proponents that, absent U.S. accession to the convention, the United States is a helpless bystander in demarcation of Arctic ECS boundaries.[40] In fact, the United States has raised objections to the CLCS on other ECS submissions, such as those made by Australia and Brazil.[41]

[*Page 12*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

US ratification of UNCLOS will not boost capacity to challenge Russian claims, disputes likely to be resolved outside of convention

"Other Nations' Claims to the Arctic Seabed. If the Senate ratified UNCLOS, thereby making the United States a party to the treaty, the United States would have no additional grounds on which to contest Russia's CLCS claim, because the CLCS does not settle disputes among nations with competing claims. Thus, U.S. participation in the UNCLOS regime would add nothing to its legal argument that it is permitted to mine the seabed and navigate the waters that Russia is attempting to claim. UNCLOS does not provide a compulsory dispute resolution technique, and because a dispute among nations is likely to arise, it is probable that the rights to the resources of the Arctic will be decided outside of its framework.

[*Page 856*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

Participation in CLCS through framework of UNCLOS is not necessary to secure claims in Arctic

"Those in favor of UNCLOS ratification have asserted that, unless the United States becomes a party to the treaty, it will not be able to adequately protect its interests. Proponents argue that the United States will be left without a voice when the Arctic region is being divided amongst other nations. They suggest that unless the United States is able to participate in the formal processes codified in UNCLOS, Russia and the other relevant nations who may go before the CLCS will have a substantial advantage in claiming Arctic territory.

But, as discussed above, the CLCS is a semi-secretive process where a nation, whether it is a party to UNCLOS or not, will not be able to contest another nation's scientific findings to the Commission." Moreover, if the matter is indeed settled through multiparty negotiations, the status of UNCLOS in the United States will likely be irrelevant because the matter will be settled outside of the treaty.

[*Page 853*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

U.S. would weaken its bargaining position in disputes over Arctic claims if it ratifies UNCLOS

"The Rights to the Arctic Likely Will Be Decided through Multi-party Negotiations Outside the Scope of UNCLOS. UNCLOS does not create a dispute resolution process through the CLCS, and there is an inherent difficulty ofproving beyond refute that the area at issue is the extension of only one nation's continental shelf. Thus, the most probable result is that the nations with competing claims will negotiate amongst themselves to reach a settlement. This makes it imperative that the United States refrain from any action that may weaken its bargaining position.

By ratifying UNCLOS the United States could substantially erode its bargaining power. By becoming a party to the treaty and thus subject to the adjacent-or-opposite limitation, the United States would weaken its negotiating position if the U.S. continental shelf is not physically connected to the Arctic seabed. If the United States is a party to UNCLOS, then other nations may argue that the United States' only option is to submit a claim to the CLCS as provided in the treaty. If, however, the United States is not a party to UNCLOS, then there would be less pressure from other nations for it to proceed under UNCLOS provisions to ultimately determine the validity of any U.S. claim. Also, as a party to the treaty, the United States would lose credibility in any external settlement negotiations since it would only be subscribing to some of UNCLOS's mandates.

[*Page 857-858*]

Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American*

Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

Russia's claim to arctic ECS hews closely to same lines demarcated in 1990 bilateral treaty

"Much of the supposed distress voiced by UNCLOS proponents stems from Russia's 2001 submission to the CLCS, in which Russia laid claim to a vast area of Arctic ECS. The proponents incorrectly imply that Russia's claim will result in the loss of Arctic resources that rightfully belong to the United States. According to Senator Lisa Murkowski (R–AK), for example:

> [I]f we do not become a party to the treaty, our opportunity to make [a claim to the CLCS] and have the international community respect it diminishes considerably, as does our ability to prevent claims like Russia's from coming into fruition. Not only is this a negligent forfeiture of valuable oil, gas and mineral deposits, but also the ability to perform critical scientific research.[30]

However, Russia's 2001 submission to the CLCS in no way overlaps or infringes on potential areas of U.S. ECS in the Arctic. To the contrary, Russia's claim adheres to a boundary line that the United States and the USSR agreed upon in a 1990 treaty.[31] Specifically, Russia's submission to the CLCS divides its claimed conti- nental shelf and ECS from the U.S. shelf along an agreed boundary line that extends from the Bering Strait northward into the Arctic Ocean.

[*Page 10*]

Groves, Steven. **U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources** . **Heritage Foundation**: Washington, D.C., May 14, 2012 [**More** (6 quotes)]

Minimal benefit over status quo of U.S. having seat on CLCS

"Is having a seat on the[46] CLCS an important enough reason to join the Convention? Would having a seat on the CLCS really put the United States Government in a position to have a say in deliberations over other nations' extended continental shelf claims? Again, the answer to both of those questions is, "no." The CLCS was established to help facilitate the implementation of Article 76. As a body of scientific experts, however, the CLCS does not have veto power over coastal state submissions. It may only make rec- ommendations to the coastal state on matters related to the establishment of the outer limits of its continental shelf. Coastal states may accept or reject these recommendations. Annex II (Article 8) to the Convention and CLCS Rules of Procedure (Rule 53) simply require the coastal state to make a revised or new submission in the case of disagreement with the recommen- dations of the Commission. Additionally, Annex II (Article 2) limits the membership of the CLCS to 21 experts, so there is no guarantee that a U.S. representative would be

elected to the Commission even if the United States was a party to the Convention. Moreover, even if elected, the U.S. repre- sentative would serve in a personal capacity (Annex II, Article 2(1); CLCS Rules of Procedure (Rule 11)) and would be precluded from voting on any submission tendered by the United States (Annex II, Article 5; CLCS Rules of Procedure (Rule 42)). Having a seat at the table on the CLCS would not put the U.S. Government in a position to have a say in deliberations over other nations' claims and would therefore have minimal benefit for the United States.

[*Page 153*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

U.S. rights to develop in the Arctic only come into conflict with Russia and Canada and existing bilateral arrangements are sufficient to manage these disputes

"What of the Arctic? A 2011 Bloomberg BusinessWeek editorial argued:

> "The U.S. continental shelf off Alaska extends more than 600 miles into the Arctic Ocean. American companies have been reluctant to invest in exploiting this underwater terrain, which contains vast untapped reserves of oil and natural gas. That's because the U.S., as a nonparticipant in the sea convention, has no standing to defend its ownership of any treasures that are found there."[32]

Yet this is exactly the same case as in the Gulf of Mexico. Only three nations contest the ownership of resources in the extended North American continental shelf in the Arctic: the United States, Canada and Russia. American relations with Canada are friendly; therefore, a United States-Mexico-style treaty with Canada demarcating appropriate lines north of Alaska should be relatively easy to achieve. Russia might be perceived as a more intractable problem; but a 1990 treaty between the United States and the Soviet Union defines the maritime boundary between the two powers.[33]

Under the Treaty, Russia has claimed vast areas beneath the Arctic Ocean, but these claims in no way infringe upon the 1990 Treaty. Actually, they are a challenge to Canada rather than the United States. South of the Arctic Ocean, the treaty line protects U.S. claims to large areas of extended continental shelf in the Bering Sea and in the Pacific Ocean southwest of the Alaskan Aleutian Islands. Accordingly, there is no barrier (barring the low one of a necessity to negotiate a treaty with Canada) to the United States developing the extended continental shelf in the Arctic and its environs in the same way it has in the Western Gap.

[*Page 7*]

Murray, Iain. **LOST at Sea: Why America Should Reject the Law of the Sea Treaty** . National Center for Policy Analysis: Washington, D.C., March 2013 (20p). [**More** (9 quotes)]

U.S. is not losing out by not having a seat on CLCS

Even if U.S. had a seat on CLCS, they would have limited ability to influence the direction or decisions of the CLCS as members are required to act independently from their governments and in secrecy.

Should not overstate the impact that US will be able to have with a full seat on CLCS

"More importantly, having a "seat at the table" is just that – one nation, one vote. And, clearly, the last two decades have witnessed a continued decline in U.S. diplomatic and economic influence in multilateral negotiations (e.g., Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997); Kyoto Protocol to the UN Framework Convention on Climate Change (1997); Rome Statute of the International Criminal Court (1998); 2008 Oslo Convention on Cluster Munitions, to name a few.) Additionally, do the authors really believe that Canada and Russia will change their positions regarding the status of the waters of the Northwest Passage and the Northern Sea Route/Northeast Passage or that they will rescind their illegal straight baselines in the Arctic if the United States joins the Convention? Or that China will change its position regarding the legality of military activities in the EEZ or that Beijing will rescind its illegal straight baselines along its entire coast or relinquish its illegal claims to the South China Sea islands and their surrounding waters? U.S. accession to the Convention will have absolutely no impact on these or other nations' illegal maritime claims. The only way to effectively challenge these excessive claims and prevent them from becoming ingrained in customary law is through routine, firm and tar- geted diplomatic protests by the State Department and frequent operational challenges by DoD ships and aircraft. But to do that, we need to maintain naval superiority, and have the political will to exercise it.

[*Page 494*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

CLCS process flawed by its secretive nature that prevents thorough examination of claims

"Despite UNCLOS's mandate that the CLCS examine a nation's claim to a physically connected continental shelf, problems arise with the Commission's structure. Sessions of the CLCS are secret."' The only nation that is privy to the CLCS deliberations is the one that submitted the scientific data

purporting to support an extended continental shelf claim.[20] Because the CLCS "considers itself bound by States' requests to keep their submissions information confidential,"[21] the executive summaries of the CLCS sessions do not contain any details. Moreover, the CLCS process itself seems to be the only check on possible abuse by a nation making a fraudulent or erroneous extended continental shelf claim. Written interventions by nations that are not opposite from or adjacent to a submitting state are not allowed.

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Warren, Jason Howard. "*Don't be Left out in the Cold: An Argument for Advancing American Interests in the Arctic Outside the Ambits of the United Nations Convention on the Law of the Sea*." **Georgia Law Review**. (2007-2008): 833-865. [**More** (6 quotes)]

Members of CLCS are bound by agreement not to act as agent of their respective governments, undermining "seat at the table" argument

"While I agree with **Cartner and Gold** that membership on the CLCS would not harm US interests, they once again over-dramatize the importance of having a "seat at the table." Statements like: "without a seat the US has neither eyes nor ears;" "informal networking . . . [would be] greatly restricted;" "a seat provides the government valuable strategic intelligence for little cost"; and "it would be better to have a representative at the table who would understand and report on the dynamics of the CLCS;" are not only inaccu- rate, but also reflect the authors' lack of understanding of how the CLCS operates. The CLCS scientific and technical guidelines are publicly available on the Internet.[19] Members of the CLCS take an oath to "perform [their] duties as a member of the Commission . . . honorably, faithfully, impartial- ly and conscientiously (emphasis added)."[20] Additionally, "in the performance of their duties, members of the Commission shall not seek or receive instructions from any Government or from any other authority external to the Commission [and] they shall refrain from any action which might reflect negatively on their position as members of the Commission (emphasis added)."[21] What Cartner and Gold appear to be suggesting is that a U.S. member of the CLCS should act as a double-agent for the U.S. Government, secretly passing information to Washington on the deliberations of the Commission. Such behavior would clearly violate the member's "solemn declaration" under Rule 10, significantly undermining U.S. credibility, and bringing discredit on the U.S. Government.

[*Page 493-494*]

Pedrozo, Raul. "*A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?"*." **Journal of Maritime Law & Commerce**. Vol. 42, No. 4 (October 2011): 487-510. [**More** (11 quotes)]

By ratifying UNCLOS, U.S. could still be outvoted in CLCS decisions but then be obligated to abide by the ruling

“Since LOST explicitly declares that a country’s continental shelf does not include underwater ridges, the Commission’s readiness once again take up the Russian case begs the question: As so often happens in UN agencies, will political considerations influence the outcome?

The Commission currently has only two Arctic members, Russia and Norway. A simple majority vote by non-Arctic states – perhaps engineered by Russian pressure and/or bribes – could result in decisions that would be binding on all member nations. If the United States were a state party to LOST, it would likely still be outvoted, yet be obliged to accept the Commission’s unsatisfactory dictates.

In this case, the consequences of such a decision would be preposterous – even absurd: Russia would have sole economic rights to the vast natural resources of the central Arctic Ocean. This would essentially give Russia a virtual monopoly over the North Pole region.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. ratification of UNCLOS would be disadvantageous

Ratification of UNCLOS would expose U.S. to broad liability for environmental damage in international courts

By ratifying UNCLOS, the U.S. would be exposed to climate change lawsuits and other environmental actions brought against it by other members of the convention and the economic and political ramifications of such lawsuits could be dire.

US accession to UNCLOS would uniquely expose it to baseless climate change lawsuits

"Currently, there is no forum in which to initiate a viable international climate change lawsuit against the United States. The U.S. withdrew from the compulsory jurisdiction of the International Court of Justice (ICJ) in 1985 and is not as yet a party to the United Nations Convention on the Law of the Sea (UNCLOS).[2]

However, if the United States accedes to UNCLOS, thereby reversing a 30-year policy of remaining outside of the convention, the U.S. would be exposed to climate change lawsuits and other environmental actions brought against it by other members of the convention. The eco- nomic and political ramifications of such lawsuits would be dire.

This paper demonstrates that accession to UNCLOS would unnecessarily expose the United States to baseless and opportunistic international lawsuits, including suits based on the theory of anthropogenic climate change.

Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Climate change activists looking forward to having venue of ITLOS tribunal to bring climate change suits against US

"In sum, the United States is undoubtedly at the top of the list of potential defendants against climate change suits brought by environmental lawyers and academics, native peoples such as the Inuit, and UNCLOS states parties such as Tuvalu. Moreover, UNCLOS's compulsory dispute resolution tribunals are regularly cited as viable international forums for bringing an international climate change action against the United States.[101]

Thus far, the United States has denied potential climate change claimants their day in international

court by withdrawing from compulsory ICJ jurisdiction and by refusing to accede to UNCLOS. Clearly, accession to the convention would open the door to these litigants as well as to their advocates in the international academic, environmental, and nongovernmental organization communities.

[*Page 18*]

Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

UNCLOS unique from other environmental agreements in the scale of the external judicial review it imposes

"The United States has a stake in working with other nations to protect the global environment. For that purpose, it has entered into a number of conventions and agreements, such as, for example, conservation agreements to preserve fish stocks in international waters. But it is one thing to agree to a common standard and another thing to be bound by the decisions of an ongoing regulatory council in which the United States can be easily outvoted. It is one thing to agree to submit particular disputes to international arbitration, with the consent of both parties. It is entirely another thing to establish an ongoing court, with mandatory jurisdiction over important matters and an open-ended claim to "advise" on the law apart from particular disputes. It is something else again to embrace a court that, being permanent, may be prey to all the temptations of judicial activism, to extending its authority by enlarging its jurisdiction and winning popularity by playing favorites in its judgments.

The United States has traditionally respected limits on what it can agree to do by treaty. In the past, it has refused to ratify treaties that delegate so much authority to international institutions. By ratifying UNCLOS, we would not only open ourselves to immediate risks and complications regarding actions on the seas, we would also make it harder to resist more ambitious schemes of global governance in the future. We have said in the past that we cannot submit to such impositions on our own sovereignty. President Reagan made this point in rejecting UNCLOS in 1982, pointing to the open-ended regulatory powers of the Authority. If we ratify UNCLOS, we make it much harder to explain—to others, as to ourselves—why we cannot embrace further ventures in "global governance," like the International Criminal Court or the Kyoto Protocol. We would feed demands for similar international control schemes for Antarctica or Outer Space.

[*Page 10*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

Environmentalists anxious to use UNCLOS to sue U.S. government over environmental damage

"Although LOST focuses on the high seas, it includes language covering domestic pollution. The provisions are surprisingly expansive, or "stunning in their breadth and depth," as Steven Groves of the Heritage Foundation observed in a new study. A decade ago Ireland relied on LOST to sue Great Britain over the commissioning of a mixed oxide plant because of the latter's alleged impact on the Irish Sea. The plant had been approved not only by Britain, but also the European Union (EU). Ireland dropped the suit, but only because the EU sued Ireland for not filing its case in the European Court of Justice.

Many environmentalists believe that LOST could be used against the U.S. in the same way. A few years ago an environmental activist mistakenly sent me an email after our debate on the treaty. He acknowledged that it might be difficult to convince Americans that the treaty would not similarly bind America when the World Wildlife Federation and Citizens for Global Solutions were promoting LOST by claiming that the convention would stop Russia from polluting the Arctic. He worried that this inconsistency suggested that the treaty was in fact "some kind of green Trojan Horse."

It is. Groves noted that "Some environmental activist groups have already demonstrated a propensity for supporting, participating in, and in some cases actually filing climate change lawsuits against U.S. targets, as well as taking other legal actions relating to the marine environment in U.S. courts and international forums."

Bandow, Doug. "***Dragging America into Court: Law of the Sea And Global Litigation*** ." **Cato Commentary**. (March 19, 2012) [**More**]

Nations are already attempting to use UNCLOS to sue other countries over climate change

"Two decades ago environmental lawyers Durwood Zaelke and James Cameron wrote about the possibility of low-lying islands suing industrialized states over rising sea levels. Unfortunately, the prospect of international lawsuits is more than the gleam of an academic's eye.

The Pacific island state of Palau announced last September that it would seek a ruling from the International Court of Justice barring nations from allowing emissions from their territory to cause climate change affecting other countries. Palau indicated that it would rely on LOST as well as the Kyoto Protocol. A decade ago Fiji, Kiribati, Nauru, and Tuvalu, also Pacific islands, threatened to sue under LOST, though as yet have not filed. Groves suggested that mountainous nations could similarly sue over shrinking glaciers. One could imagine other states claiming damages based on drought, desertification, or other alleged consequences of global warming.

The issue of climate change is extraordinarily complex. The best evidence is that the planet is warming, but the role of human activity and impact on the environment are far less certain and remain highly controverted. Nor is it possible to demonstrate causation between any particular emission and any particular consequence. There may be good political reasons to mitigate the distress of island countries, but such matters belong in international negotiations, not international courts.

Bandow, Doug. "***Dragging America into Court: Law of the Sea And Global Litigation*** ." **Cato Commentary**. (March 19, 2012) [**More**]

Multiple avenues exist under UNCLOS for our adversaries to attack U.S. in court

"However, as Groves warned, acceding to the treaty "would expose the U.S. to lawsuits on virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or even through the atmosphere. Regardless of the case's merits, the U.S. would be forced to defend itself against every such lawsuit at great expense."

Litigation could occur in several venues: the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal, and a "special" arbitral tribunal. There would be no appeals and all suffer from political elements which would interfere with the delivery of genuine "justice." Indeed, noted Groves, the U.S. "has suffered adverse judgments in high-profile international lawsuits in the past."

LOST would reinforce the litigation danger by creating obligations directly enforceable by U.S. courts. Annex III, Article 21(2) of the treaty states that tribunal decisions "shall be enforceable in the territory of each State Party." In a 2008 case Supreme Court Justice John Paul Stevens contrasted another treaty with LOST, which, he wrote, did "incorporate international judgments into international law." As a result, U.S. judges would become international enforcers.

Bandow, Doug. "***Dragging America into Court: Law of the Sea And Global Litigation*** ." **Cato Commentary**. (March 19, 2012) [**More**]

Ratification of UNCLOS would leave US at the mercy of international litigators anxious to use UNCLOS to establish liability

"Finally, the LOST may encourage the UN to venture into unexplored territory. The UN's Division for Ocean Affairs and the Law of the Sea boldly announced that the LOST "is not . . . a static instrument, but rather a dynamic and evolving body of law that must be vigorously safeguarded and its implementation aggressively advanced."[69] If international jurists exhibit the same creativity as shown by some judges domes- tically, the LOST might prove to be dangerously dynamic.

In 2001 Douglas Stevenson, representing the Seamen's Church Institute, an advocacy group for mariners, complained about "trends that erode traditional seafarers' rights," such as that to medical care, as well as to protection from abandonment by insolvent and irresponsible ship owners. Stevenson explained, "When mariners' health, safety or welfare is in jeopardy, we look to the United Nations Convention on the Law of the Sea to protect them."[70] There are obviously real and tragic abuses of seamen, but what the "international community" should do as part of the LOST about such

issues is not obvious. Washington might find itself facing unexpected obligations if it signs on.

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Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

Law of the Sea treaty will be used by environmentalists to push precautionary principle and sustainable development into international law

"The environment is another issue of interest. University of Miami law professor Bernard H. Oxman, a long-time LOST advocate, argues that, "The Convention is one of the rare treaties to articulate a basic environmental norm in unqualified form."[19] There is nothing intrinsically wrong with articulating environmental norms—if they are justified, are qualified to account for competing interests, and are in accordance with each participant country's governing institutions. But that is unlikely to emerge from a highly political process like the LOST negotiations.

Indeed, the Treaty risks endorsing some very bad environmental policy approaches. For example, South African Ambassador Sandile Nogxina, speaking on behalf of the African Group to celebrate the 10th anniversary of the LOST system, declared that, "The concept of sustainable development is a principle which the African group embraces."[20] At the same ceremony, South Korea's Jung Hai-ung, representing the Asian group, opined "that the precautionary approach set out in Agenda 21, chapter 17, should be applied to the seabed activities."[21] The Netherlands formally pushed the Council "to apply a precautionary approach to seabed exploration."[22]

All of these terms incorporate much larger political agendas. Biasing the process against development globally would have profound impacts on all peoples, and especially those in the poorest lands who most need the results of economic growth, international investment and trade, and globalization. Serious application of the precautionary principle would halt economic development, since it is impossible to prove a negative— that a new process or technology involves no risk. Trade-offs are inherent to any economic endeavor, with a thoughtful balancing of potential costs and benefits.

[*Page 15*]

Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

US could be subject to international liability for climate change damage under UNCLOS

“Acceding to UNCLOS would commit the U.S. to controlling its pollutants, including alleged “harmful substances” such as carbon emissions and other greenhouse gases (GHG), in such a way that they do not negatively impact the marine environment. The U.S. would also be obligated to adopt laws and regulations to prevent the pollution of the marine environment from the atmosphere and could be liable under international law for failing to enact legislation necessary to prevent atmospheric pollution. Moreover, such domestic laws and regulations “shall” take into account “internationally agreed rules, standards and recommended practices and procedures.” The “internationally agreed rules, standards and recommended practices” that could be invoked by UNCLOS litigants may include instruments such as the U.N. Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol.

A consensus has emerged within the international environmental and legal community that the United States is the best target for an international climate change lawsuit. One law professor has characterized the United States as a likely target because it is a developed nation with high per capita and total GHG emissions, adding that the “higher the overall historic and present contribution to global emissions by the defending party, arguably the better the chance of a successful outcome.”

[*Page 11*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS*** ." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

UNCLOS tribunal ruling against US on climate change could have broad impact on economy

“If the United States received an adverse judgment in an UNCLOS climate change lawsuit, the tribunal could order remedies similar to those imposed by the Trail Smelter tribunal—a regime of regulations, compli- ance measures, and even reparations. In anthropogenic climate change parlance, such a regime would be akin to mitigation measures (i.e., actions to reduce the level of U.S. GHG emissions).

A comprehensive GHG mitigation regime imposed on the U.S. would seriously affect the American econ- omy because carbon emissions and other GHG are produced throughout the United States by several signifi- cant sectors of the economy, includ- ing the electricity generation, transportation, industrial, residential, and commercial sectors. Like the “cap-and-trade” regulations that have been debated in Congress, the imposition of international Trail Smelter– style regulations on every U.S. power plant, refinery, automobile, chemical plant, and landfill would harm the U.S. economy.[118]

[*Page 22*]

Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Climate change activists could gain even if they don't ultimately prevail in court by using ITLOS forum to put more pressure on US

"A claimant in a climate change lawsuit against the United States would face several legal and evidentiary challenges in proving its case in an UNCLOS tribunal, including jurisdictional hurdles, causation issues, and the question of equi- table apportionment of damages.126 Nevertheless, regardless of whether the U.S. might ultimately prevail in such a case, acceding to the conven- tion is fraught with political danger.

Advocates of international climate change lawsuits see them as an acceptable way to achieve their environmental ends, including U.S. capitulation to a comprehensive climate change treaty:

> Litigation or the threat thereof would emphasise the urgency of the need to agree [to] binding commitments on climate change and would put additional pres- sure on the negotiations process. Negotiators may feel more of a responsibility vis-à-vis the inter- national community and have an additional lever in relation to their national governments. A high-profile court case would also engage a variety of actors in the debate and provide new momentum to find consensual solutions inside and outside the UNFCCC talks ... . Inter-State climate change litigation may help to create the political pressure and third-party guidance required to re-invigorate the international negotiations, within or outside the UNFCCC.127

One law professor believes that "litigation will very likely play a role" in determining who will bear the costs of climate change and singles out the United States for special treatment, stating that "litigation efforts need to be primarily focused on the United States as the major hindrance to beginning the remedial process" (i.e., by failing to ratify the Kyoto Protocol).128 Other proponents of the theory of anthropogenic cli- mate change understand that there are precedents for using internation- al courts to achieve purposes other than legal redress. For instance, the World Trade Organization "has simi- larly been strategically employed by governments to influence negotia- tions and clarify State obligations."129

[*Page 23-24*]

Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Justice John Paul Stevens found in Supreme Court case of Texas v Medellin that decisions of UNCLOS tribunal would be enforceable within US

The domestic enforceability of UNCLOS tribunal judgments was confirmed by U.S. Supreme Court Justice John Paul Stevens in Medellin v. Texas, a landmark case in 2008.27 In Medellin, Justice

Stevens, writing in a concurring opinion, cited Article 39 of Annex VI for the proposition that UNCLOS

> “members—presum- ably including the United States if it accedes to the convention—are obli- gated to comply with the judgments of the convention’s tribunals.

The Medellin case concerned whether the ICJ’s judgment in 2003 against the United States in the Case Concerning Avena and Other Mexican Nationals (the Avena case) is domestically enforceable. Justice Stevens concluded that the relevant treaties in the Avena case—the U.N. Charter and the Vienna Convention on Consular Relations (VCCR)—did not require the Supreme Court to enforce the ICJ’s ruling. Justice Stevens contrasted the permissive language of the U.N. Charter and the VCCR with the explicit language of UNCLOS and concluded that the convention would indeed oblige the Supreme Court to enforce the judg- ments of UNCLOS tribunals within the United States.28

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Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Acceding to UNCLOS would expose US to environmental lawsuits over climate change

> “In sum, by acceding to UNCLOS the United States would unnecessar- ily expose itself to baseless environ- mental lawsuits, including a claim that its GHG emissions have caused harm to other nations. Because of its membership in the convention, the U.S. could be compelled to appear before a tribunal to defend itself in any such lawsuit. International courts and tribunals, including those created by UNCLOS, have not hesitated to assert jurisdiction and pass judgment in controversial social, political, and environmental law- suits. The judgment of an UNCLOS tribunal in a climate change lawsuit would be final, unappealable, and enforceable in the United States.

[*Page 20*]

Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Environmental activists could use treaty provisions to sue U.S. for action under treaty

> “Those who are concerned that the marine environment is being damaged by pollution could put their case before the Tribunal, but the obligations of Part XII would have a special effect on the United States, where citizens may sue to ensure the government follows its laws. Under the U.S. Constitution, international treaties have the force of law. Ratifying LOST would therefore enable

environmental groups to sue to ensure the release of toxic substances is minimized “to the fullest possible extent” if there is a chance the material will enter the marine environment.

Consider: The nation’s coal-fired power plants release mercury into the atmosphere. Some of this mercury consolidates in rivers, and eventually reaches the ocean. As a result, fish that swim in the ocean have slightly higher levels of mercury in their systems. Sharks that eat these fish have even higher mercury concentrations. The concern that pregnant mothers who eat shark meat are damaging the cognitive development of their unborn children has led environmentalists to demand that the U.S. Environmental Protection Agency issue regulations to reduce the risk to unborn children.

However, consider what the Treaty text implies. There is no requirement to prove that the emissions actually cause significant harm. If the substance emitted is “harmful” to any degree, states are simply required to minimize emissions “to the fullest possible extent.” To all practical purposes, taking the Treaty at its word would require the closure of most if not all coal-fired electricity generation in the United States.

This kind of activism has not taken place in any of the other signatory states, likely because they offer fewer opportunities for concerned citizens to require their governments to follow the spirit and word of the Treaty. In the United States, however, environmental groups would probably sue the day after formal ratification, and the courts would be unlikely to throw out their challenges.

Murray, Iain. **LOST at Sea: Why America Should Reject the Law of the Sea Treaty** . National Center for Policy Analysis: Washington, D.C., March 2013 (20p). [**More** (9 quotes)]

U.S. ratification of UNCLOS will be used as a "backdoor" by environmental groups to force regulations on the U.S.

UNCLOS has a number of provisions requiring state parties to do all they can to protect the environment that could be used by environmental groups to force regulations and treaties on to the U.S.

UNCLOS has already been used as a backdoor mechanism to change environmental policies of member nations

"Opponents of the Law of the Treaty believe that environmentalists are using the treaty as a vehicle to achieve through international institutions that which they can't achieve through domestic ones - namely, more onerous environmental standards. This is consistent with the statements and actions of environmental groups to-date. Greenpeace, for example, has said, "The benefits of the U.N. Convention on the Law of the Sea are substantial, including its basic duties for states to protect and preserve the marine environment and to conserve marine living species."35 The Natural Resource Defense Council (NRDC), for its part, cited the Law of the Sea Treaty's environmental provisions as an argument in its challenge of the Navy's use of so-called "intense active sonar" several years ago. The NRDC said, in part, "The United Nations Law of the Sea Convention... requires States 'to assess the potential effects... on marine environment'... of systems such as high intensity active sonar, and to take all measures 'necessary to prevent, reduce and control pollution of the marine environment from any source'... The danger to marine life from... sonar... is clearly documented." The Navy ultimately agreed to scale back its use of this sonar technology.

Ratification of the Law of the Sea Treaty appears to carry with it the risk that the United States - and other parties to the treaty - may lose control of their environmental laws.

Nations have already attempted to use the Law of the Sea Treaty's environmental provisions to affect the environmental policies of others. In 1999, Australia and New Zealand appealed to the International Tribunal of the Law of the Sea (ITLOS) to shut down Japan's experimental southern blue fin tuna fishing program, citing Articles 64 and 116-119. Although the Tribunal ultimately decided that it lacked jurisdiction in the case, Australia and New Zealand did gain a temporary injunction on the program.36 More recently, Ireland sought ITLOS's help in forcing the United Kingdom to abandon its planned opening of the Sellafield MOX plant, a nuclear fuel reprocessing plant in northern eastern England, arguing that it would contribute to pollution of the North Sea. Although ITLOS did not rule in Ireland's favor, it ordered both Ireland and the United Kingdom to enter into consultations.37

David Ridenour. "***Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage*** ." **National Policy Analysis**. (August 1, 2006) [**More**]

Ratification of UNCLOS would give UN tribunals control over U.S. environmental laws

“The Treaty would also significantly reduce the United States’ discretion in applying laws. America’s constitutional system gives its courts significant powers of judicial review. In the area of international rules on environmental pollution, however, accession to LOST would delegate those powers to the Tribunal or a similar court. That is the missed meaning of Article 213, on enforcement with respect to pollution from land-based sources:

> “States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.”

As Christopher C. Horner, attorney and senior fellow with the Competitive Enterprise Institute, has noted, “That is a power grab not even the Kyoto Treaty dared attempt. The United States rejects Kyoto; why would we join Kyoto with a court?”[46]

[*Page 11-12*]

Murray, Iain. **LOST at Sea: Why America Should Reject the Law of the Sea Treaty** . National Center for Policy Analysis: Washington, D.C., March 2013 (20p). [**More** (9 quotes)]

U.S. participation in UNCLOS will undermine national sovereignty

Benefits to U.S. from UNCLOS support for freedom of navigation rights is outweighed by loss of sovereignty

"The most persuasive argument for the Law of the Sea Treaty is the U.S. Navy's desire to shore up international navigation rights. It is true that the Treaty might produce some benefits, clarifying some principles and perhaps making it easier to resolve certain disputes. But our Navy has done quite well without this treaty for the past two hundred years, relying often on centuries-old, well-established customary international law to assert navigational rights. Ultimately, it is our naval power that protects international freedom of navigation. The Law of the Sea Treaty would not make a large enough additional contribution to counterbalance the problems it would create.

[*Page 47*]

Rumsfeld, Donald. "***Testimony of Former Secretary of Defense Donald Rumsfeld*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (3 quotes)]

Ratifying the Law of the Sea treaty will undermine U.S. sovereignty

"President Reagan rejected the Law of the Sea Convention in 1982 and cited several major deficiencies, none of which have been remedied. Reagan was concerned that the U.S., though a major naval power, would have little influence at the International Seabed Authority that the convention created. Although the Authority is supposed to make decisions by consensus, nothing prevents the rest of the "international community" from consistently voting against the United States, as regularly occurs in similar U.N. bodies, such as the General Assembly. In addition, President Reagan was troubled by the fact that the International Seabed Authority has the power to amend the convention without U.S. consent. That concern has also not been remedied in the intervening years.

Baker Spring, Steven Groves and Brett D. Schaefer. "***The Top Five Reasons Why Conservatives Should Oppose the U.N. Convention on the Law of the Sea*** ." **Heritage Foundation WebMemo**. (September 25, 2007) [**More**]

UNCLOS represents a subjugation of American foreign policy to United Nations

“ation in UNCLOS, it is taking a giant step forward in the continuing delegation of U.S. foreign policy to the United Nations. Recent milestones along this path include U.S. initiatives to multinationalize peacekeeping operations such as that in Bosnia, "humanitarian relief" operations as in Somalia and Rwanda, and actual belligerent military operations like the Gulf war.

Ironically, this "contracting out" of U.S. foreign policy is quietly taking place against the backdrop of a growing domestic debate on whether to repeal the War Powers Act, which places strict limits on the president's ability to use military force in support of foreign policy objectives. Would the lifting of War Powers Act restrictions lead the president to commit U.S. forces to ever more complicated and dangerous UN-sponsored military operations? Would the potential military commitments hidden in UNCLOS have a greater likelihood of developing? Will the United States eventually find itself in the position of "world policeman," being assigned roles and missions dictated by others?

Many of those in favor of repealing the War Powers Act argue that meddlesome congressional oversight and second-guessing of presidential prerogatives are burdensome constraints. Imagine the second-guessing and interest group politics imposed by 170 nations and their bloated bureaucracy of international civil servants as the "contracting out" of U.S. foreign policy continues.

The International Seabed Authority and UNCLOS represent the surrender, with little or no compensation, of a variety of tangible U.S. security and sovereignty equities over a geographic area encompassing 70 percent of the earth's surface. The administration is attempting to bind this nation to a treaty and a bureaucratic organization whose basic operating principles are inimical to U.S. interests and that, to date, is officially recognized only by third world and landlocked states.

Leitner, Peter. "***A Bad Treaty Returns: The Case of the Law of the Sea Treaty*** ." **World Affairs**. Vol. 160, No. 3 (Winter 1998): 134-150. [**More** (6 quotes)]

UNCLOS creates multiple institutions that would abrogate U.S. sovereignty

“Problem #1: Loss of Sovereignty. Traditionally, treaties, with only narrow exceptions, have been defined as formal agreements between and among sovereign states that help define their relations to each other as sovereign states. They are inherently political agreements. The option to change such relations and the concomitant power to discontinue adhering to the terms of a treaty is solely the prerogative of the sovereign.

First and foremost, the Convention represents a departure from that tradition. It establishes institutions with executive and judicial powers that in some instances are compulsory. For example, Section 4 of the Treaty establishes the International Sea-Bed Authority. The authority basically is given the power to administer to the “area” under the jurisdiction of the treaty, which includes all the world’s oceans and seabed outside national jurisdiction. This is a granting of executive powers to the authority that supersedes the sovereign power of the participating states. Of even greater concern, Part XV of the Convention establishes dispute settlement procedures that are quasi-judicial and

mandatory. Once drawn into this dispute settlement process, it will be very difficult for the U.S. extricate itself from it.

[*Page 4*]

Middendorf, William J. "***Statement of William J. Middendorf: On The United Nations Convention on the Law of the Sea (April 8, 2004)*** ." Testimony before the Senate Armed Service Committee, April 8, 2004. [**More** (5 quotes)]

UNCLOS would establish global rule of law over states subordinating their powers to a new authority

“Proponents of the Convention acknowledge the far-reaching political and legal ramifications of U.S. adherence to the treaty. University of Virginia School of Law Professor John Norton Moore, a supporter of the Convention who testified before the Senate Foreign Relations Committee on October 14, 2003, stated that he sees it as a means for fostering the rule of law in international affairs. In fact, he states that adherence to the Convention is “one of the most important law-defining international conventions of the Twentieth Century.”

This is quite an assertion. In fact, it is the most troubling aspect of the Convention because the conduct of international relations for centuries has been a more a political than a legal process. Unacknowledged in the language about fostering the rule of law in international relations is the reality that in this particular case it entails subordinating the powers of the participating states to the dictates of an international authority. When it comes to the essential powers for the conduct of international relations, the use of force, and the exercise of diplomacy, they are not readily divisible but they are readily transferable. The Convention is a vehicle for transferring these essential powers from the participating states to the international authority established by the treaty itself. It represents the establishment of the rule of law over sovereign states more than it is establishing a rule of law made by them.

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Middendorf, William J. "***Statement of William J. Middendorf: On The United Nations Convention on the Law of the Sea (April 8, 2004)*** ." Testimony before the Senate Armed Service Committee, April 8, 2004. [**More** (5 quotes)]

U.S. would be obligated to transfer technology under UNCLOS

Although the 1994 treaty modifications have toned down some of the most direct mandatory technology transfer requirements, the treaty still places at risk some very sensitive, and militarily useful, technology which may readily be misused by the navies of ocean mining states. These include: underwater mapping and bathymetry systems, reflection and refraction seismology, magnetic detection technology, optical imaging, remotely operated vehicles, submersible vehicles, deep salvage technology, active and passive military acoustic systems, classified bathymetric and geophysical data, and undersea robots and manipulators.

Pernicious effect of technology transfer provision still in effect even after 1994 agreement

"Further, this approach carries an immediate risk to U.S. national security. Allegedly to ensure that the benefits of deep sea mining are properly shared, UNCLOS requires all states to "cooperate in promoting the transfer of technology and scientific knowledge" relevant to exploration and recovery activities in the deep seas.[17] The 1994 supplementary agreement endorses these provisions, qualifying them only with vague assurances that technology transfer should be conducted on "fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights."[18] It remains to be seen whether the Authority will assert claims to impose technology transfers in this field. It could do so by making such transfers a condition for approving permits for exploration or recovery by Western firms, since all such activity requires approval of the Authority.[19] Yet even without direct demands from the Authority, the Chinese government, by invoking these provisions, managed to obtain microbathymetry equipment and advanced sonar technology from American companies in the late 1990s. China claimed to be interested in prospecting for minerals beneath the deep seas. Pentagon officials warned against sharing this technology with China, given its potential application to anti-submarine warfare. But other officials in the Clinton Administration insisted that the United States, having signed UNCLOS—even if not yet having ratified it—must honor UNCLOS obligations on technology sharing. Future administrations may be more vigilant, but the Authority may, in the future, be more insistent. That is the logic of a treaty that makes mining by firms in one country contingent on the approval of the governments in other countries.

[*Page 7-8*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

Entrepreneurs likely to be deterred from investing in technology and

research necessary for deep seabed mining by excessive royalties requirements

"Nevertheless, operations might eventually become economically feasible as technologies evolve and market conditions change. Seabed mining is in some senses a distant cousin of the undersea oil exploration that is already occurring in shallower ocean waters. But such developments are unlikely to go on with the Law of the Seat Treaty in its current form, and it may even threaten innovations to harvest resources such as oil from deeper ocean sources. As noted previously, the LOST requires sharing the revenues of oil drawn from the Outer Continental Shelf from 200 or more nautical miles beyond U.S. shores. Seven percent of revenues is a significant levy, heavy enough to discourage more costly or risky exploration and production.

Today, it is hard to imagine any entrepreneur investing capital sufficient to create a viable deep seabed mining operation. The underwater environment is forbidding, in ways potentially as challenging as space. The great depths, incredible pressure, and uneven seabed make the creation of a workable, let alone an economical, mining operation extremely difficult. But absent intrusive regulation, entrepreneurs have accomplished the seemingly impossible before.

[*Page 11*]

Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

Technology transfer provisions of UNCLOS could be used to acquire militarily significant dual-use technologies

"At issue is not only technology useful for seabed mining. Dual-use technologies with military applications, for instance, might also fall under ISA requirements. Peter Leitner, a Department of Defense adviser, points out that those technologies might include "underwater mapping and bathymetry systems, reflection and refraction seismology, magnetic detection technology, optical imaging, remotely operated vehicles, submersible vehicles, deep salvage technology, active and passive military acoustic systems, classified bathymetric and geophysical data, and undersea robots and manipulators."[42] Acquisition of those and other technologies could substantially enhance the undersea military activities of potential rivals, most notably China, which already has purchased some mining-capable technologies from U.S. concerns. The justification for granting U.S. government approval for past transfers to China, explains Leitner, was Beijing's status as a miner under the LOST.[43]

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Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

Even with amendments, 1994 agreement still puts sensitive military technology at risk of transfer

“Although the 1994 treaty modifications have toned down some of the most direct mandatory technology transfer requirements, the treaty still places at risk some very sensitive, and militarily useful, technology which may readily be misused by the navies of ocean mining states. These include: underwater mapping and bathymetry systems, reflection and refraction seismology, magnetic detection technology, optical imaging, remotely operated vehicles, submersible vehicles, deep salvage technology, active and passive military acoustic systems, classified bathymetric and geophysical data, and undersea robots and manipulators.

The military application of these technologies would provide new anti-submarine warfare (ASW) capabilities, strategic deep-sea salvage abilities, and deep-water bastions for launching sub-surface ballistic missiles (SSBM's). With or without the mandatory technology transfer provisions contained in the UNCLOS, U.S. participation would provide a "legal" conduit and cover to justify the acquisition of state- of-the-art deep ocean devices and technology that have profound national security implications. Ocean mining activities by the Enterprise or third world nations, such as China or India, can provide plausible justification for successfully purchasing technologies that, in the absence of ocean mining, would likely be denied on national security grounds.

Leitner, Peter. "***A Bad Treaty Returns: The Case of the Law of the Sea Treaty*** ." **World Affairs**. Vol. 160, No. 3 (Winter 1998): 134-150. [**More** (6 quotes)]

Existing export control mechanisms are not sufficient to prevent tech transfer provisions in UNCLOS from being abused

“There is a common misperception that existing national security export control mechanisms will act as a safety net to ensure that the treaty will not serve as a conduit for militarily critical technology to be exported to potential adversaries. Unfortunately, the "stovepiped" nature of many government policy actions masks the fact that the Clinton administration has virtually eviscerated the export control process within the U.S. government and has dismantled the international regulatory mechanism as well (Leitner, 1995). There is no longer a reliable safety net to prevent foreign military or intelligence services from using the treaty as a cover to acquire highly strategic state-of-the-art technology that may be used to enhance power projection or regional destabilization activities.

Leitner, Peter. "***A Bad Treaty Returns: The Case of the Law of the Sea Treaty*** ." **World Affairs**. Vol. 160, No. 3 (Winter 1998): 134-150. [**More** (6 quotes)]

Amendments to UNCLOS in 1994 still left in technology transfer

obligations

“Finally, there is technology transfer, one of the most odious redistributionist clauses of the original convention. The mandatory requirement has been discarded, replaced by a duty of sponsoring states to facilitate the acquisition of mining technology "if the Enterprise or developing States are unable to obtain" equipment commercially.[29] Yet the Enterprise and developing states would find themselves unable to purchase machinery only if they were unwilling to pay the market price or were perceived as being unable to preserve trade secrets. The clause might be interpreted to mean that industrialized states, and private miners, whose "cooperation" is to be "ensured" by their respective govern- ments, are then responsible for subsidizing the Enterprise's acquisition of technology.[30] Presumably, the United States and its allies could block such a proposal in the Council, but again, it is hard to predict future legislative dynamics and potential logrolling in an obscure UN body.

[*Page 5-6*]

Bandow, Doug. **Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable** . **Cato Institute**: Washington, D.C., September 12, 1994. [**More** (5 quotes)]

Technology transfer provisions represent a substantial windfall for our adversaries and one they will surely exploit

“The United States is the nation with the most to lose – from an economic and national security point of view – from the sort of obligatory technology transfer provisions contained in the Law of the Sea Treaty, including those that would be binding even if the 1994 Agreement has effect.

America has long imposed unilateral export control restrictions precisely for the purpose of preventing transfers that will result in harm to this country. U.S. accession to LOST would require a substantial liberalization, if not wholesale scrapping, of such important self-defense measures.

Actual or potential competitors/adversaries like China, Russia, state-sponsors of terror and even European “allies” understand full well what a technology windfall U.S. adherence to LOST could represent. It would be irresponsible, not to say foolish in the extreme, to believe that none of these parties will take advantage of the opportunity to reap that windfall, to our very considerable detriment.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

UNCLOS requires transfer of valuable marine research and technology in a redistributionist scheme

"The Law of the Sea Treaty requires extensive transfers of data and technology – at least some of which could be highly detrimental to America's industrial competitiveness (including in fields far removed from maritime-related activities) and to the national security. For example:

• LOST's Article 266 mandates that states "cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions" and "endeavor to foster favorable economic and legal conditions for the transfer of marine technology."

• Article 268 requires states to "promote the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data."

• Article 269 calls for parties to "establish programs of technical cooperation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance." (Emphasis added.)

• Compulsory dispute settlement mechanisms afford further opportunities to obtain sensitive technology and information. Article 6 of Annex VII requires that parties to a dispute "facilitate the work of the arbitral tribunal and...provide it with all relevant documents, facilities and information." It can therefore be expected that countries may bring the United States or its businesses before arbitral tribunals – without expectation of a favorable result, solely for the purpose of obtaining sensitive technology information.

The object of these provisions is consistent with the socialist, redistributionist and one-world vision that animated many of LOST's negotiators: No matter what the costs may be to U.S. security and business interests, the fruits of marine research, exploration and exploitation of "the Area" – the waters covered by the Treaty – and the associated technology must be shared with developing nations, land-locked states and "geographically challenged" countries.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

Empirically, China has used the technology transfer provisions under UNCLOS to acquire military technology

In 1976 GAO was requested by several Committee Chairmen to independently report on the status of

negotiations as they were deeply distrustful of the official delegation reports authored by the State Department. As a result, I attended many of the negotiating sessions in New York and Geneva as an observer attached to the US delegation. I joined the U.S. delegation in 1977 and reported regularly to Congress on the state of negotiations through 1982. I was present in New York when the Reagan Administration's good faith attempt to make the Treaty acceptable was roundly rejected by a coalition of Developing and Communist nations.

Since that time I have closely tracked the accession process and the development of the International Seabed Authority. Having long since left the General Accounting Office and transferred to the Department of Defense I became deeply involved in the Export Licensing process. In this capacity I was assigned a case whereby the People's Republic of China was using their status as a so-called "pioneer investor" in ocean mining to justify the acquisition of strategic/export-controlled technology under the guise of prospecting for manganese nodules in the mid-Pacific. Unfortunately, the level of technology they were attempting to acquire greatly exceeded the level of capability that either the United States or our industrialized allied used in undertaking such work. The quality of the side-scanning sonar, deep-ocean bathymetric equipment, cameras, lights, remotely operated vehicles, and associated submersible technology provided them the capability to locate, reach, and destroy, or salvage early-warning and intelligence sensors vital to our national security. Additionally, such technology also imparted an offensive capability to our chief potential military adversary by enabling them to map any portion of the ocean or continental shelves to determine submarine routing schemes or underwater bastions where missile-launching or intelligence gathering submarines may operate undetected just off the U.S. coast.

Leitner, Peter. "***Testimony of Peter Leitner: Oversight hearing to examine the "United Nations Convention on the Law of the Sea". (March 24, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (4 quotes)]

UNCLOS will allow adversaries to challenge U.S. in court and acquire valuable military technology

Much more ambitious schemes of re-distribution and technology-transfer were originally intended, but the unfortunate fact that no companies actually did any mining reduced the ambitions of the treaty- writers. Even so, as Rabkin points out, the 1994 revision still has commitments to technology-transfer—and the power to make it a condition of granting mining licenses to signatory countries. The treaty also contains large and vague provisions for protecting the marine and littoral en- vironments. The structure of UNCLOS means that bodies it has created, such as the ISA and ITLOS, are now in effect independent international agencies accountable only to each other. They enjoy both the taxing power in light disguise and the ability to expand the reach of their regulatory activities. And they have a claque of exter- nal supporters in nation-states that are con- tent to have their own sovereignty limited provided that America's sovereignty is curbed too—even without Washington's consent.

Even though the U.S. has not ratified UNCLOS, the Chinese government exploited its technology-

transfer provisions to obtain advanced sonar technology from U.S. companies. Britain has joined UNCLOS since Thatcher, with the result that the Irish government sought to compel Britain to close down a nuclear reactor on British soil on the grounds that it was adversely impacting the maritime environment and so violating the environmental features of UNCLOS. And if the U.S. actually does sign on, that will add federal judges to the long list of people seeking to exploit the treaty to constrain and direct America's elected policymakers.

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John O'Sullivan. "*LOST is Right*." **National Review**. (September 10, 2007) [**More**]

Technology transfer provisions remain in UNCLOS and will act as a deterrent to further research and investment

"The problem of intellectual property protections was supposedly solved in the 1994 agreement, but it is vague, and the Authority's latent powers remain to make it a continuing issue. Sponsoring states are still required to facilitate technology transfer "if the Enterprise or developing states are unable to obtain" the advanced equipment commercially. Thus, if a contractor develops a breakthrough mining technology, it will be compelled to sell it commercially to rivals or face the prospect of giving it away to the Enterprise (a direct competitor) and developing states. Neither of these options will be attractive to an entrepreneurial company, thereby further deterring investment in deep sea mining Research and Development. (Defense technology transfers are also a concern, but beyond the scope of this study.

[*Page 9*]

Murray, Iain. **LOST at Sea: Why America Should Reject the Law of the Sea Treaty** . National Center for Policy Analysis: Washington, D.C., March 2013 (20p). [**More** (9 quotes)]

U.S. ratification of UNCLOS would further advance collectivist idea of "common heritage of mankind"

Principle of the common heritage of mankind enshrined in UNCLOS makes no moral or practical sense

"Even if no minerals are ever lifted commercially from the ocean floor, the Law of the Sea Treaty retains its coercive, collectivist philosophical underpinnings. It will have a negative impact on entrepreneurship even if no mining ever occurs. The worst principle is the declaration that all seabed resources are mankind's "common heritage" under the control of a majority of the world's nation states. American ratification would help validate some of these discredited collectivist notions.

Among the precedents enshrined by the LOST is that the nation states—not peoples—of the world, in the words of former Malaysian Prime Minister Mahathir Min Mohamad, collectively own "all the unclaimed wealth of this Earth."[14] Granting ownership and control to Third World autocracies with no relationship to the resource nor any ability to contribute anything to their development makes neither moral nor practical sense.

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Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

US ratification of UNCLOS would amount to endorsement of flawed common heritage of mankind principles

"Although American ratification of the LOST would not be enough to resurrect the NIEO, it would subject the United States to the treaty's restrictive regulatory regime and enshrine in international law some very ugly precedents. One is that the nation–states (not peoples) of the world collectively own all the unclaimed wealth of this earth. Granting ownership and control to petty autocracies that have no relationship to the resources and no ability to contribute anything to their development makes neither moral nor prac- tical sense. Much better on both counts is the simple Lockean notion that mixing one's labor with resources—by developing complex machinery capable of scouring the ocean floor, for instance—grants one a property interest in them.

The Lockean standard would better suit the interests of developing peoples. The LOST may purport to promote international justice, fairness, and cooperation, but, in fact, it advances none of those

things. Rather, it rais- es to the status of international law self-indul- gent claims of ownership to be secured through an oligarchy of international bureau- crats, diplomats, and lawyers. And the treaty's specific provisions still mandate global redistribution of resources, create a monopolistic public mining entity, restrict competition, and require the transfer of technology. Those principles, even in the attenuated form of the revised treaty, reflect the sort of statist panaceas that were discredited by the historical wave that swept away Soviet-style communism.

[*Page 10*]

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

UNCLOS treaty based on collectivist agenda to create global socialist entity

"The Treaty is a weird mixture of the codification of some long established and widely accepted navigational rules for the oceans with an outdated and counter-productive collectivist scheme to make the oceans the funding source for an UN-organized wealth redistribution plan. The Treaty would create a socialist entity to develop the oceans viewed as "the common heritage of mankind." The entity (the "Authority" and other bizarre language no longer heard even in North Korea) would gain its resources and knowledge by forcing private firms – likely US – to "share" with "all mankind." That "what's yours is mine" aspect of LOST will limit mankind's ability ever to benefit from the potential resources of this vast area.

[*Page 2*]

Smith, Fred. "***Statement of Fred Smith: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (5 quotes)]

Libertarians should be concerned by the collectivist and redistributionist origins of UNCLOS

"Libertarians—what are they concerned about? Libertarians are concerned about preserving the free market and free-market principles and opposing redistribution as economic policy. Clearly, this particular treaty, despite the 1994 revisions that were pointed to, still effectively establishes redistribution policies regarding the exploitation of sea-based assets—minerals, oil, whatever resources you would want to talk about." Doug Bandow of the Cato Institute has said that UNCLOS "embodies the most odious features of centralized planning."' And he reaffirmed that following the 1994 changes. He said, notwithstanding the 1994 revisions, UNCLOS "remains captive to its collectivist and redistributionist origins."10

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Spring, Baker. "*All Conservatives should Oppose UNCLOS*." **Texas Review of Law & Politics**. Vol. 4, No. 12 (April 2008): 453-457. [**More** (3 quotes)]

UNCLOS based on outdated and discredited redistributionist ideas from the 1970s

"This redistributionist, collectivist language, I've suggested, is archaic and this is not surprising. The treaty was drafted during the height of the G-77 – when many saw world poverty as the result of the west's wealth. People in Africa, Asia, and South America were poor because we were rich; make us poorer and they will become richer! In that era, only foreign aid and other wealth redistribution schemes were viewed as offering any hope of alleviating world poverty. LOST was typical of the flawed policy prescriptions of that era. But the world has learned much over the last decades. Most now recognize that Foreign Aid, while occasionally useful in emergency relief situations, can too often stifle the entrepreneurial forces and political reforms which offer the only hope for sustainable economic growth. The work of Lord Peter Bauer, recipient of the Cato Institute Friedman Prize, showed that too often foreign aid is simply the transfer of wealth from the poor in the rich world to the rich in the poor world, that such wealth transfer programs hurt, rather than helped the poor. LOST was crafted in this era and it shows. Even the World Bank and its other international institutions increasingly recognize that the key to addressing poverty is for the affected nation states to move toward economic freedom, private property, a predictable rule of law, a reduction in domestic violence. To enshrine collective political management of the oceans does nothing to advance this cause.

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Smith, Fred. "***Statement of Fred Smith: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (5 quotes)]

Original collectivist and redistributionist framework UNCLOS was built on remains in place

"Some advocates of the LOST have argued that a universal accord would promote seabed mining. A truly market-oriented accord might do so; not, however, a system that includes the ISA, the Enterprise, the Council, revenue sharing, international royalties, Western subsidies for the Enterprise, a Council veto for land-based minerals producers, and the like. Yet all of those anti-development provisions remain in the revised text.

That the treaty would favor political over productive activity should come as no surprise. The LOST was created in a different era. It was intended to inaugurate large and sustained wealth transfers from

the industrialized states. The structure was therefore crafted to advance ideological, not economic, goals. Since then, however, most developing states have moved away from collectivism, and the promise of undersea mining has largely evaporated. Yet the original collectivist framework remains. Even the State Department acknowledges that the new "agreement retains the institutional outlines of Part XI," which contains the seabed mining provisions.[10] The treaty has become a solution in search of a problem.

Bandow, Doug. **Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable** . **Cato Institute**: Washington, D.C., September 12, 1994. [**More** (5 quotes)]

UNCLOS would give far-reaching regulatory powers to international and national bureacracies

Regulatory reach of UNCLOS could be unconstrained given the interconnected nature of the ocean ecosystem

"LOST is a heavily regulatory bill, creating a body charged with protecting the seas. But, everything eventually flows into the seas. Thus, the UN gains the power to look upstream and into the skies to ensure that everything that has – or might have – impact on the seas be scrutinized and disciplined. The unintended consequences of this regulatory overreach cannot be under-estimated; its potential for damage is massive. This Committee has not done "due diligence" on this topic. And, for the complacent, note that the proponents of this bill – environmental alarmists and legal enthusiasts – are adept at converting hortatory language into legal prohibitions. Did anyone expect the Endangered Species Act to become a national land use planning act? Did anyone expect Superfund to become one of the most costly green pork barrel measures in history or that the Clean Water Act would compel the Corps of Engineers to ban development throughout any area that might have been or might become at some time a "wetland?"

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Smith, Fred. "***Statement of Fred Smith: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (5 quotes)]

ISA will promulgate regulations on nations outside of U.S. control

"Even where the United States retains a veto, it does so in common with all other parties to the treaty, not just with a few major powers, as in the U.N. Security Council. So even if the U.S. can force a stalemate, others can do the same and most of those others have no stake at all in seeing development go forward. The U.S. veto on rules about licensing of specific efforts does not, of course, ensure that favorable rules can be enacted. If mining does ever become financially attractive in the deep seabed, the Authority will remain an awkward regulatory structure. In effect, it subjects the handful of countries—or rather firms from such countries—to regulatory oversight from all the other countries in the world, on the grounds that all have a stake in what happens on the deep seabed. So far, the Authority has only issued one set of regulations (governing exploration for manganese or polymetallic nodules, which might be recovered from the surface of the ocean bottom). It has begun work on a new set of regulations on sulfide crusts, found around volcanic hot springs.

Regulations are not likely to be restricted to such mining operations, however. Already, the Authority has been urged to issue regulations to limit bioprospecting for commercial applications of new species—mostly microbial—discovered on vents at the depths of the seas. Here again,the handful of firms with the capacity to undertake such initiatives will be subject to control from bystanders. Yet scientists think that exotic bacteria found only at extreme depths of the sea may offer keys to the development of new antibiotics, antitumor agents for treatment of cancer, and other pharmaceutical applications. And the regulatory reach may extend even further. Given its authority to protect the "marine environment" in the deep seas, the Authority might claim some authority to regulate what is done in territorial waters or even on land, when such activities have some effect on the deep seas.

[*Page 8-9*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

Regulatory activism from ISA would stifle innovation and entrepreneurship

"As if this weren't a broad enough agenda for U.N. regulators, the ISA sees an opportunity to do more. In 2004 it proclaimed:

> The Authority represents a unique experiment in international relations. It is the only international body with the responsibility of administering a global commons for the benefit of mankind. As a global body with an institutional structure and finely balanced decision-making mechanism that safeguards the interests of all States, the Authority is well equipped to deal with new developments relating to the deep ocean and to play a more meaningful role in the international system of ocean governance.[23]

The U.N.'s Division for Ocean Affairs and the Law of the Sea boldly announced that the LOST "is not...a static instrument, but rather a dynamic and evolving body of law that must be vigorously safeguarded and its implementation aggressively advanced."[24]

Such regulatory activism would inhibit entrepreneurship. Investors seek legal stability and flee political uncertainty. A secure economic environment would be particularly important for entrepreneurs entering high-risk investment fields, notably underwater and in space, where the viability of the very process, let alone the security of the expected profit, would be in doubt. And with entrepreneurship in jeopardy, the future of the world's poor would also be at risk, as the economic development that could allow them to exit poverty is eroded.

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Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

Ratification of UNCLOS would allow regulators to run rampant, reaching far into all economic sectors

"The proponents of this bill know full well that it will empower their special interests to gain massive power over the economic hopes of peoples throughout the world. Development is unlikely under the clumsy management of the UN bureaucracy. Moreover, the treaty by empowering environmental elites to raise significant new legal objections against agriculture, manufacturing, transportation and even technology will gain new abilities to stop or slow economic development. Ratifying LOST would be to open not one but a myriad of Pandora's boxes – exacerbating the problems of an already overly litigious society, an America that already finds it difficult to site and build anything. We do not build a better future by empowering the forces of stasis. The NIMBY problems that America now faces may fade as LOST moves us toward NOPE policies.

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Smith, Fred. "***Statement of Fred Smith: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (5 quotes)]

US would be on hook for supporting an ISA bureaucracy so bloated and wasteful it even gave Russia pause

"Funding remains a problem as well. The United States, naturally, would be expected to provide the largest share of the ISA's budget: 25 percent to start. How much that would be is impossible to predict; the budget is to be developed through "consensus" by the Finance Committee, on which the United States is temporarily guaranteed a seat ("until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses").[32] After the Finance Committee vote, the budget must be approved by the Assembly and the council. Years ago the United Nations estimated that the ISA would cost between $41 million and $53 million annually, on top of initial office construction costs of between $104 million and $225 million.[33] The Clinton administration contended that the revised agreement provided for "reducing the size and costs of the regime's institutions."[34] How? By adopting a paragraph pledging that "all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective."[35] Similarly, states the amended accord, the royalty "system should not be complicated and should not impose major administrative costs on the Authority or on a contractor."[36]

These sentiments might be genuine. So far the ISA has been spending only about $5 million annually. But then, the world's wealthiest nation is not yet a member. Moreover, the revised agreement has changed none of the underlying institutional incentives that bias virtually every international organization, most obviously the UN itself, toward extravagance.

In fact, concern over bloated budgets was a major factor in Moscow's initial decision in 1994 not to

endorse the treaty. (Russia has since ratified the LOST.) Russian ambassador to the UN Yakov Ostrovsky explained to the General Assembly that though the revisions were “a step forward,” he doubted the new agreement would limit costs. Of particular concern was the fact that “general guidelines such as necessity to promote cost-effectiveness cannot be seriously regarded as a reliable dis-incentive [to spending].” Before the treaty had even gone into force Ambassador Ostrovsky pointed to “a trend to establish high-paying positions which are not yet required.”[37]

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Bandow, Doug. **Don’t Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

UNCLOS creates numerous super national bureaucracies all with the potential to threaten U.S. sovereignty

“LOST is a vast and complex undertaking, with obligations and implications that go far beyond the codification of common navigation rights and arrangements that were the initial impetus for the Treaty.

We cannot safely ignore the fact that, during its negotiation, LOST became a vehicle for advancing an agenda promoted by the Soviet Union and so-called “non- aligned movement” during the 1970s, known as the New International Economic Order (NIEO). The NIEO was a classic “united front” effort aimed at undermining the economic and military power of the industrialized West – particularly the United States – in the name of a centrally planned, global redistribution of wealth to the benefit of developing nations.

Toward this end, LOST creates various supranational bodies to develop and enforce its provisions, complete with an executive branch, legislature and judiciary. These agencies operate on the basis of one-nation/one-vote – an arrangement that has proven in the United Nations and elsewhere to be highly disadvantageous to the United States.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

UNCLOS is inextricably tied to the United Nations in several ways

“The Law of the Sea Treaty and its agencies are indisputably linked to the UN, both substantively and organizationally. What benefits one, benefits the other.

On the substantive plane, other UN agencies routinely promote treaties and regulations designed to build on and reinforce LOST's importance and the authority of its agencies. A recent example is instructive: A report of a UN review conference on progress between 2004 and 2006 in the implementation of the Convention on Biological Diversity "recognizes the United Nations General Assembly's central role in addressing issues relating to the conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction."

The report goes on to "recall that United Nations General Assembly Resolution 60/30 emphasized the universal and unified character of the United Nations Convention on the Law of the Sea, and reaffirmed that the United Nations Convention on the Law of the Sea sets out the legal framework within which all activities in the oceans and seas must be carried out, and that its integrity needs to be maintained, as recognized also by the United Nations Conference on the Environment and Development...." (Emphasis added throughout.)

At a practical level, the ties between the UN and LOST are no less palpable. For example: All staff associated with LOST bodies are paid by the UN system. Day-to- day monitoring of activities regulated by LOST is conducted by UN staff employees. Employees of LOST-related agencies participate in the UN pension plan. And, under the terms of the Treaty, the UN Secretary General plays a direct role in choosing the fifth arbiter for five-person special arbitral tribunals that will hear disputes between parties to LOST. He also is responsible for convening conferences to amend the Treaty.

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. non-party status to UNCLOS could be the last check against the United Nations assuming role of world government

"LOST's Transnationalist architects have long sought to build up supranational agencies. This treaty allows them to do so in unprecedented ways by: conferring on LOST "organs" responsibility for regulating seven-tenths of the planet (i.e., the world's oceans and the vast natural resources to be found in and below them); levying what are tantamount to international taxes; and imposing mandatory and un-appealable decisions in disputes that may arise involving parties to the Treaty.

To date, the full, malevolent potential of the Law of the Sea Treaty has been more in prospect than in evidence. Should the United States accede to LOST, however, it is predictable that the Treaty's agencies will: wield their powers in ways that will prove very harmful to American interests; intensify the web of sovereignty-sapping obligations and regulations being promulgated by this and other UN entities; and advance inexorably the emergence of supranational world government.

It may be that the only check on such undesirable outcomes is for the United States to remain a non-state party to LOST. The latitude such an arrangement affords America to observe Treaty provisions

that are unobjectionable – without being bound by those that are – may not only be preferable for this country and its vital interests. It could also help spare other nations the less free, less prosperous and more onerous international order that will emerge if the Transnationalists have their way on the Law of the Sea Treaty.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. ratification of UNCLOS would burden American industries with undue regulations and onerous information sharing requirements

“LOST will allow interference with and the penalization of American businesses, including those that conduct research for, equip and provide logistical support to the U.S. military. It will: impose the “Precautionary Principle” (according to which innovations cannot be introduced unless proven free of any adverse consequences); give standing to Alien Torts claims in U.S. courts; require sharing proprietary information and technology with international bureaucrats and competitors; compromise WTO rights; and give precedence to European- dominated international standards. The costs of such derogations of our sovereignty could be high, perhaps even crippling, for affected businesses – including those supporting our armed forces.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

If US accedes to UNCLOS, mining companies would have to abide by burdensome regulations

“Burdensome Environmental Regulations. If the United States joins UNCLOS, U.S. companies engaging in seabed exploration will be subject to a rigorous environmental regime administered by the Authority. The Authority has the power to adopt “rules, regulations and procedures” for the protection of the marine environment, with “particular attention being paid” to harm caused by drilling, dredging, and excavation.46 One regulation requires companies to apply a “precautionary approach” in regard to the marine environment “as reflected in principle 15 of the Rio Declaration.”[47] This is notable, given that neither UNCLOS nor the 1994 Agreement even mentions the controversial “precautionary approach”—a principle that requires absolute scientific certainty that an action will not cause environmental harm.

U.S. companies would be required to establish an environmental “baseline” at the outset of their contracts and continually monitor and report the impact of their activities on the marine environment.[48] To establish a baseline, U.S. companies would be required to collect data “on the sea- floor communities specifically relat- ing to megafauna, macrofauna, meiofauna, microfauna, nodule fauna and demersal scavengers” (bottom feed- ers) and “record sightings of marine mammals, identifying the relevant species and behavior.”[49] before engaging even in preliminary testing activities, companies would have to submit a site-specific environmental impact statement to the Authority, as well as a contingency plan to respond to environmental incidents.[50]

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Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on the Law of the Sea** . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

Should not trust UN won't try to extend the already extraordinary authority it is given by UNCLOS regime

“The charge has been made that this is a modest treaty, and we have not had any problem with people trying to use it to interfere with the use of our military and its mobility around the world, because it has not happened yet. This minor staff, this innocuous multilateral organization, is so inconsequential as to be of no concern in any of these respects. I must say again, that may be true today. In fact, it is not entirely surprising that it is true today since I believe that everyone who wishes to use this treaty against us has understood that they need to get us into the treaty before they start doing that, or else we will not get into the treaty.

Now, does that sound conspiratorial? Well, again, I think if you are a conservative, the old adage "just because you're paranoid doesn't mean they're not out to get you" applies. We need to be suspicious, especially when dealing with the U.N. or agencies like the U.N., to say nothing of an organization that was crafted by a majority that was determined to create supra- national organizations to run two-thirds of the world; that is to say, the two-thirds of the planet that is covered by international waters.

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Gaffney, Frank. "*U.N.'s s Larger Role in UNCLOS is Bad for American Interests*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 469-476. [**More** (2 quotes)]

US interests often thwarted in United Nations bureaucracies by regional voting blocs

Much to Lose, Little to Gain. As a multilateral treaty negotiated under the auspices of the U.N, UNCLOS poses the usual risks to U.S. interests of such multilateral treaties. In the international

organizations created by such treaties, the U.S. often faces regional, economic, or political blocs that coordinate their votes to support outcomes counter to U.S. interests. The bloc voting process is fre- quently driven by the same overtly anti-American agenda that is often apparent in the U.N. General Assembly. While the U.S. can achieve positive out- comes in these forums, its successes are usually lim- ited, having been watered down or coupled with demands from other participating states that it would otherwise not accept.

One example of U.S. interests being thwarted by bloc voting is the new U.N. Human Rights Council. The U.S. was a strong proponent of creating a new body to replace the discredited U.N. Commission on Human Rights, which had became a haven for human rights abusers to protect one another from scrutiny and censure. Once locked into negotiations over the specifics of the new council, however, the U.S. was repeatedly outnumbered and isolated. As a result, the council has minimal requirements for membership, and China, Cuba, Pakistan, Saudi Arabia, and other repressive states have won council seats. Unsurprisingly, the council has performed just as badly, if not worse, as its predecessor, and the U.S. has declined even to seek a seat on it.

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Edwin Meese, III, Baker Spring, and Brett D. Schaefer. "***The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits*** ." **Heritage Foundation WebMemo**. (May 16, 2007) [**More**]

UNCLOS would create even more unwieldy, unaccountable bureaucracies that take on a life of their own

Further, U.N.-related multilateral treaties often create unaccountable international bureaucracies. The UNCLOS bureaucracy is called the International Seabed Authority Secretariat, which is headed by a secretary-general. The Secretariat has a strong incentive to enhance its own authority at the expense of state sovereignty. Thus University of Virginia School of Law Professor John Norton Moore describes this sort of treaty as a “law-defining international convention.” The law that is being defined and applied by international bureaucrats is one designed to govern the actions of the participating states, not to serve their joint interests. For example, a provision of UNCLOS that would impose direct levies on the revenues of U.S. companies generated through the extraction of resources from the deep seabed reveals this bias against state sovereignty. When international bureaucracies are unac- countable they, like all unaccountable institutions, seek to insulate themselves from scrutiny and become prone to corruption. The International Seabed Authority Secretariat is vulnerable to the same corrupt practices that have been present at the U.N. for years. The most pertinent example of this potential for corruption is the United Nations Oil-for- Food scandal, in which the Iraqi government benefited from a system of bribes and kickbacks involving billions of dollars and 2,000 companies in nearly 70 countries. Despite ample evidence of the U.N.’s systemic weaknesses and vulnerability to corruption, the U.N. General Assembly has yet to adopt the reforms to increase transparency and accountability proposed by former Secretary-General Kofi Annan and others. This example is particularly pertinent considering that the Authority could oversee significant resources through fees and charges on commercial activities within its authority and potentially create a system of royalties

and profit sharing.

[*Page 2*]

Edwin Meese, III, Baker Spring, and Brett D. Schaefer. "***The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits*** ." **Heritage Foundation WebMemo**. (May 16, 2007) [**More**]

UNCLOS represents international government at its worst

"Neoconservatives have been concerned about rampant anti- Americanism in the United Nations system. And make no doubt about it: this particular treaty is part of the broader United Nations system. Are we creating yet another institution among many that are already there that will pursue essentially this kind of agenda? I think that we are. And I think that the international institutions this Convention establishes, such as the International Seabed Authority/ are going to be subject to the same procedural shenanigans that we see in the United Nations system regarding this anti-American agenda.

Thus, I think it was not coincidental that, prior to her passing, former U.N. Ambassador Jeane Kirkpatrick warned strongly against the United States rushing to join this particular Convention. I have no doubts that the U.N.'s systematic anti- Americanism will be pursued in the Law of the Sea institutions.

[*Page 454-455*]

Spring, Baker. "*All Conservatives should Oppose UNCLOS*." **Texas Review of Law & Politics**. Vol. 4, No. 12 (April 2008): 453-457. [**More** (3 quotes)]

Social conservatives should oppose UNCLOS because it supports corrupt United Nations

"Social conservatives—what are near and dear to their hearts? Preserving moral values and the moral standing of the United States. And once again, we come back to the question of the Law of the Sea Convention and the international institutions that it would create, as to whether they would behave consistendy with the highest aspirations humans are called to achieve. To put it mildly, the United Nations system is not a paragon of virtue. We have seen things like the "Oil for Food scandal;" we have seen things like U.N. peacekeepers exploiting women in African peacekeeping missions. We have seen the adoption of resolutions saying that Zionism is a form of racism. All of these are things that have been essential elements of the ongoing United Nations system of which this treaty is a part.

It should not surprise anybody that one of the most prominent social conservatives that ever served in the Senate, Senator Jesse Helms of North Carolina, took it as a personal responsibility to see that the United States did not join this Convention. He was successful during his tenure in doing that, and

I think he made very compelling arguments regarding not just this particular institution, but also about the broader problems with the United Nations system as a whole.'"

[*Page 455-456*]

Spring, Baker. "*All Conservatives should Oppose UNCLOS*." **Texas Review of Law & Politics**. Vol. 4, No. 12 (April 2008): 453-457. [**More** (3 quotes)]

U.S. ratification would validate movement towards a supranational world government

"Inevitably, American ratification will be a major step towards the one- worlders' agenda of global, supranational government. One prominent Transnationalist, Arvid Pardo, the former Maltan Ambassador to the UN who is credited with coining LOST's leitmotif phrase "the common heritage of mankind," has said that American acceptance of LOST "however qualified, reluctant, or defective, would validate the global democratic approach to decision-making." On that score, at least, Pardo is absolutely right.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

Ratification of UNCLOS unique in that it would set dangerous precedent for more control by international institutions

"By ratifying UNCLOS, the United States would be submitting itself to a much wider range of international controls than it has in the past. Allowing ITLOS to sit in judgment on U.S. naval tactics or allowing the Authority to press U.S. firms to share strategic technologies with countries like China can only prove damaging to U.S. national security. It may also be detrimental to U.S. economic interests to allow the Authority to place conditions on when and how U.S. firms can search for minerals or commercially valuable microbes in the deep seas.

In addition, in the long term, there are serious risks involved to American national sovereignty in accepting the underlying premise of UNCLOS III. The most valuable provisions, regarding transit rights and national regulatory rights in exclusive economic zones, are widely accepted. They have therefore a solid claim to be regarded as customary international law. By ratifying the treaty, the United States would be saying that it cannot retain its rights under customary international law unless it agrees to accept new international institutions that other countries happen to favor. Worse, ratification would seem to endorse the notion that American rights can only be secured by appealing to new international institutions. From there it is only a small step to the claim that further progress on

other international matters requires submission to new and more far-reaching international controls, developed and implemented by new supranational organs.

[*Page 8-9*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

The 1994 Agreement did not resolve serious problems with UNCLOS

Many of the most onerous provisions of UNCLOS were left in place even after the 1994 amendment, including provisions on technology transfer and wealth distribution.

1994 Agreement has not changed intent of International Seabed Authority

"It remains a fair question whether a complex U.N. regulatory bureaucracy—especially one that counts international wealth redistribution as one of its functions—is a reassuring presence for investors. The 1994 Agreement does not actually abolish the Planning Commission, but simply suspends its operations until the regulatory council of the Authority "decides otherwise."[15] The Seabed Authority still proclaims, on its official website, that it will oversee "action to protect land-based mineral producers in the third world from adverse economic effects of seabed production." The 1994 Agreement seems to give at least tacit support to this notion in empowering the Authority to provide "economic assistance" to "developing countries which suffer serious adverse effects on their export earnings" from deep seabed mining.[16] The Authority can still direct proceeds from mining or drilling approved for the continental shelf to compensate "affected developing land-based producer States." If the world wants to encourage mining in the deep seabed, this is no way to do it.

[*Page 7*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

Pernicious effect of technology transfer provision still in effect even after 1994 agreement

"Further, this approach carries an immediate risk to U.S. national security. Allegedly to ensure that the benefits of deep sea mining are properly shared, UNCLOS requires all states to "cooperate in promoting the transfer of technology and scientific knowledge" relevant to exploration and recovery activities in the deep seas.[17] The 1994 supplementary agreement endorses these provisions, qualifying them only with vague assurances that technology transfer should be conducted on "fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights."[18] It remains to be seen whether the Authority will assert claims to impose technology transfers in this field. It could do so by making such transfers a condition for approving

permits for exploration or recovery by Western firms, since all such activity requires approval of the Authority.[19] Yet even without direct demands from the Authority, the Chinese government, by invoking these provisions, managed to obtain microbathymetry equipment and advanced sonar technology from American companies in the late 1990s. China claimed to be interested in prospecting for minerals beneath the deep seas. Pentagon officials warned against sharing this technology with China, given its potential application to anti-submarine warfare. But other officials in the Clinton Administration insisted that the United States, having signed UNCLOS—even if not yet having ratified it—must honor UNCLOS obligations on technology sharing. Future administrations may be more vigilant, but the Authority may, in the future, be more insistent. That is the logic of a treaty that makes mining by firms in one country contingent on the approval of the governments in other countries.

[*Page 7-8*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

1994 Agreement does not give U.S. a true veto in the International Seabed Authority

"The 1994 Agreement specifies eligibility for the Council with formulas that would assure the United States a permanent seat—as "the state having the largest GNP"—if it were to ratify UNCLOS. It also assures permanent seats for Russia—as the largest state in "Eastern Europe"—and China and India—under a set-aside for "states with large populations." There will, in any case, always be a majority of developing countries on the Council, given various other eligibility formulas. For instance, only four of the 36 seats are reserved for "states which have made the largest investments in [deep sea mining] activities."22

Contrary to some advocates' claims, the 1994 supplementary agreement does not give the U.S. a veto over actions of the Authority. Under UNCLOS, the Council is only required to act by "consensus"—so that one negative vote would constitute a veto—when it endorses "rules, regulations and procedures [which] relate to prospecting, exploration and exploitation in the Area," that is, the deep seabed.23 However, the 1994 agreement specifies that the Council may make decisions by two-thirds vote on matters of "substance" and by mere majority on matters of "procedure"24 Thus, a mere majority may decide, as a matter of "procedure," when a seemingly "substantive" decision is really only procedural, empowering the deciding majority to decide on further questions by a simple majority vote.

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Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

US should unsign 1994 agreement to resolve legal ambiguity over its actions

"“Unsigning” the 1994 Agreement. When the Clinton Administration signed the 1994 Agreement in July 1994, it arguably obliged the United States to refrain from committing any act that would defeat the agreement’s “object and purpose,” even though the United States has ratified neither the agree- ment nor UNCLOS.94 The United States should therefore “unsign” the 1994 Agreement to resolve any legal ambiguity regarding U.S. intentions to explore and mine the deep seabed.

In May 2002, the Administration of President George W. bush delivered a letter to the U.N. Secretary-General regarding the rome Statute of the International Criminal Court (ICC), which the Clinton Administration had signed in December 2000. The letter stated that the United States “does not intend to become a party” to the rome Statute and accordingly “has no legal obligations arising from its signature on December 31, 2000.”95

This “unsigning” of the Rome Statute made clear to the international community that the United States has no intention of joining the ICC, and it enabled the bush Administration to secure pledges from other nations that they would not surrender U.S. military personnel to the ICC for prosecution.96 Since securing such pledges would arguably defeat the object and pur- pose of the rome Statute, the unsign- ing letter was necessary to clarify that the U.S. no longer had an obligation to adhere to the terms of the rome Statute.

The United States should unsign the 1994 Agreement to resolve any legal ambiguity regarding U.S. actions that may be seen as violating the agreement’s object and purpose. Since the United States never signed UNCLOS, it is unnecessary to unsign the convention.

[*Page 15-16*]

Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on the Law of the Sea** . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

Amendments to UNCLOS in 1994 still left in technology transfer obligations

"Finally, there is technology transfer, one of the most odious redistributionist clauses of the original convention. The mandatory requirement has been discarded, replaced by a duty of sponsoring states to facilitate the acquisition of mining technology "if the Enterprise or developing States are unable to obtain" equipment commercially.[29] Yet the Enterprise and developing states would find themselves unable to purchase machinery only if they were unwilling to pay the market price or were perceived as being unable to preserve trade secrets. The clause might be interpreted to mean that industrialized states, and private miners, whose "cooperation" is to be "ensured" by their respective govern- ments, are then responsible for subsidizing the Enterprise's acquisition of

technology.[30] Presumably, the United States and its allies could block such a proposal in the Council, but again, it is hard to predict future legislative dynamics and potential logrolling in an obscure UN body.

[*Page 5-6*]

Bandow, Doug. **Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable** . **Cato Institute**: Washington, D.C., September 12, 1994. [**More** (5 quotes)]

1994 agreement leaves anti competitive production control regulations in place in UNCLOS

"Indeed, production controls, one of the most perverse provisions of the original text, could recur under the revised agreement. The revision does excise most of article 151 and related provisions, which set a convoluted ceiling on seabed production to protect land-based miners. However, it leaves intact article 150, which, among other things, states that the ISA is to ensure "the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the area."[22] That wording would seem to authorize the ISA to impose production limits. The United States might have to rely on its ability to round up allied votes to block such a proposal in the Council in perpetuity.

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Bandow, Doug. **Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable** . **Cato Institute**: Washington, D.C., September 12, 1994. [**More** (5 quotes)]

1994 agreement still retains mandatory payments to the ISA that could then be redistributed to unfriendly nations

"ISA fees have been lowered, but companies will continue to owe a $250,000 application fee and some, as yet undetermined, level of royalties and profit sharing. (The "system of payments," intones the compromise text, shall be "fair both to the contractor and to the Authority," whatever that means. Fees "shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals," even though seabed production is more expensive, riskier, and occurs in territory beyond any nation's jurisdiction.[18] The revised LOST establishes a new "economic assistance fund" to aid land-based minerals producers.[19] Surplus funds will still be distributed "taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status"--such as the Palestine Liberation Organization.[20] Theoretically, America could block inappropriate payments--at least as long as it was a member of the Finance Committee--but over time the United States would come under enormous

pressure to be "flexible" and "reasonable."

[*Page 4*]

Bandow, Doug. **Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable** . **Cato Institute**: Washington, D.C., September 12, 1994. [**More** (5 quotes)]

1994 agreement did not amend UNCLOS and its terms are not binding on parties to UNCLOS

"Presumably, it is for these reasons that the 1994 Agreement does not explicitly amend LOST. Rather, the Agreement states that "The provisions of this Agreement and Part XI [of LOST] shall be interpreted and applied together as a single instrument."

At the time the Agreement was signed, a representative of the American ocean mining industry cited this shortcoming in testimony before Congress: "[The 1994 Agreement] does not even purport to amend the Convention. It establishes controlling 'interpretive provisions' that will control in the event of a dispute. This is not an approach that gives confidence to prospective investors in ocean mining." (Emphasis added.)

Neither does the 1994 Agreement require any of the LOST tribunals to abide by the Agreement. This increases the likelihood that such panels, when hearing disputes between parties, will view LOST itself as the basis for resolving the dispute, and not the 1994 Agreement.

That is especially so since roughly sixteen percent of the parties to LOST – fully 25 member countries – have yet to sign the 1994 Agreement. It is far from clear on what basis these countries could be expected to view the Agreement's purported revisions to the Treaty as legitimate. How, for instance, would resolutions be achieved in disputes between countries that are party to both LOST and the Agreement, on the one hand, and countries that are party only to LOST, on the other? At the very least, the latter could legitimately challenge claims by the United States (or others) to be bound by terms other than those contained in the Law of the Sea Treaty's agreed text.

[*Page 4-5*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

1994 amendment did not remove onerous information sharing requirements of UNCLOS

Mandatory Technology Transfers: Although the 1994 Agreement purports to modify some troubling

LOST provisions on the obligatory sharing of sensitive information and technologies, it fails to address, let alone alter, other coercive provisions. These include LOST's requirement that states parties "promote the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data."

Neither does the Agreement speak to LOST's requirement to transfer information and perhaps technology pursuant to the Treaty's mandatory dispute resolution mechanisms. Parties to a dispute are required to provide the tribunal with "all relevant documents, facilities and information." This amounts to an invitation for competitors to bring the United States and/or its companies or adversaries before a LOST tribunal to obtain sensitive data and know-how. These are hardly the sorts of safeguards upon which President Reagan had insisted.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. should reject UNCLOS because of its revenue sharing agreements

By ratifying UNCLOS, the U.S. would be subjecting its resource extraction industries to control by the United Nations. Furthermore, these industries would be assessed a royalty fee on these resources that the International Seabed Authority would redistribute to other states, possibly counter to U.S. national security interests.

Law of Sea structure still favors discredited and corrupt redistributionist model for foreign aid

"Were seabed mining ever to thrive, a transparent system for recognizing mine sites and resolving disputes would be helpful. But the Authority's purpose isn't to be helpful. It is to redistribute resources to irresponsible Third World governments with a sorry history of squandering abundant foreign aid.

This redistributionist bent is reflected in the treaty's call for financial transfers to developing states and even "peoples who have not attained full independence or other self-governing status"-code for groups such as the PLO. Whatever changes the treaty has undergone, a constant has been Third World pressure for financial transfers. Three voluntary trust funds were established to aid developing countries. Alas, few donors have come forward to subsidize the participation of, say, sub-Saharan African states in the development of ocean mining. Thus, the Authority has had to dip into its own budget to pay into the funds.

Bandow, Doug. "***Sink the Law of the Sea Treaty*** ." **Weekly Standard**. (March 15, 2004) [**More**]

Actual royalty rate has yet to be determined, leaving US companies vulnerable to exorbitant costs

"Royalty rate "To Be determined." Neither the convention nor the 1994 Agreement establishes the mining royalties that U.S. companies would be required to pay to the Authority. As originally drafted, the convention required mining companies to pay a "production charge" royalty ranging from 5 percent to 12 percent of the value of the processed metals. In the alternative, companies could pay a combi- nation of a production charge and a share of the net proceeds from the sale of the processed metals.70 In any event, each company must pay the Authority a minimum of $1 million per year once commercial produc- tion has commenced.71

The 1994 Agreement revised the convention's specific royalty range and minimum payment

scheme,72 but the 1994 revisions left more questions than answers. essentially, the 1994 Agreement left the seabed mining compensation scheme “to be determined” with the notion that the details would be negotiated within the Authority at some future date when commercial production is imminent. That date has not yet arrived, even though UNCLOS was adopted 30 years ago, and the Authority has yet to begin drafting regulations to establish the financial obligations of mining companies to the Authority.

Thus, if the U.S. accedes to the convention, it will be making an uninformed decision based on incomplete information. The 1994 Agreement refers only to a vague “system of payments” that U.S. mining companies would be required to pay to the Authority, stating that “Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit- sharing system.”73

[*Page 11*]

Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on the Law of the Sea** . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

Land-based mineral mining countries possess equivalent voting rights to the US in ISA

“Land-based mineral producers are generally opposed to the very idea of seabed mining. Yet they, as well as the “developing States Parties, representing special interests,” such as “geo- graphically disadvantaged” nations, each have their own chamber and, thus, a de facto veto over the ISA’s operations.30 Thus, the voting power of such groups essentially matches that of America. Moreover, the qualification stan- dards for miners are to be established by “con- sensus,” essentially unanimity, which could give land-based producers as much influence as the United States. The possession of a veto provides them with an opportunity to extract potentially expensive concessions —new limits on production, for instance, or increased redis- tributionist payments under the treaty— to let the ISA function. Unfortunately, once the Authority asserts jurisdiction over seabed mining, potential producers would be hurt by a deadlock.

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Bandow, Doug. **Don’t Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

Voting in ISA already beset by corruption and vote dilution

“Voting in the ISA so far gives no reason for optimism. Electing members to the dominant Council has proven to be no easy task, with substantial disagreement over membership criteria and political horse- trading.[9] For instance, in 1996 there were 22 candidates for 15 seats on the Legal and

Technical Commission. But the Council, rather than select from this pool, simply expanded the membership to 22. Five years later there were 24 candidates in the election, so the Council again increased the size of the panel. During the 2004 election for ISA Secretary-General, substantial pressure was applied to the three candidates who were apparently trailing to withdraw to avoid having a contested election.[10]

The revised treaty retains the ISA's ability to impose production controls. Negotiators excised provisions that set a convoluted ceiling on seabed production, but they preserved Article 150, which, among other things, states that the ISA is to ensure "the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral."

[*Page 9*]

Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

UNCLOS would create new international authority for a massive and unprecedented transfer of wealth

"The Treaty proposes to create a new global governance institution that would regulate American citizens and businesses, but which would not be accountable politically to the American people. Some of the Law of the Sea Treaty's proponents pay little attention to constitutional concerns about democratic legislative processes and principles of self-government, but I believe the American people take seriously threats to these foundations of our nation.

The Treaty creates a United Nations-style body called the "International Seabed Authority." "The Authority," as UN bureaucrats call it in Orwellian shorthand, would be involved in all commercial activity such as mining and oil and gas production in international waters. It is to this entity that the United States, pursuant to the Treaty's Article 82, would be required to transfer a significant share of all royalties generated by American companies royalties that would otherwise go to the U.S. Treasury for the benefit of the American people.

Over time, hundreds of billions of dollars could flow through the "Authority" with little oversight. The United States could not control how those revenues are spent. Under the Treaty, the Authority is empowered to redistribute these so-called "international royalties" to developing and landlocked nations with no role in exploring or extracting those resources. It would constitute a massive form of global welfare, courtesy of the American taxpayer. It would be as if fishermen who exerted themselves to catch fish on the high seas were required, on the principle that those fish belonged to all people everywhere, to give a share of their take to countries that had nothing to do with their costly, dangerous and arduous efforts.

Rumsfeld, Donald. "***Testimony of Former Secretary of Defense Donald Rumsfeld*** ." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (3 quotes)]

Under UNCLOS, U.S. revenues from offshore resource extraction would be redistributed to non-desirable state actors

UNCLOS is silent on how UNCLOS nations that receive Article 82 royalty revenue should spend it. Recipients are apparently free to spend the funds on military expenditures or simply deposit them into the personal bank accounts of national leaders.

UNCLOS bureaucracy would redistribute money to dictatorships and be managed by corrupt and unaccountable U.N.

"Worse still, these sizable "royalties" could go to corrupt dictatorships and state sponsors of terrorism. For example, as a Treaty signatory and a member of the "Authority's" executive council, the government of Sudan which has harbored terrorists and conducted a mass extermination campaign against its own people -- would have just as much say as the United States on issues to be decided by the "Authority." Disagreements among Treaty signatories are to be decided through mandatory dispute resolution processes of uncertain integrity. Americans should be uncomfortable with unelected and unaccountable tribunals appointed by the Secretary General of the United Nations serving as the final arbiter of such disagreements.

Even if one were to agree with the principle of global wealth redistribution from the United States to other nations, other UN bodies have proven notably unskilled at financial management. The UN Oil-for-Food program in Iraq, for instance, resulted in hundreds of millions of dollars in corruption and graft that directly benefited Saddam Hussein and those nations friendly to Iraq. The Law of the Sea treaty is another grand opportunity for scandal on an even larger scale.

Rumsfeld, Donald. "***Testimony of Former Secretary of Defense Donald Rumsfeld***." Testimony before the Senate Foreign Relations Committee, June 14, 2012. [**More** (3 quotes)]

U.S. seat on ISA board won't necessarily prevent article 82 revenue from going to our adversaries and dictatorships

"Some UNCLOS proponents maintain that the United States, if it joined the convention, would have a "veto" over such decisions because the U.S. would hold a permanent seat on the 36-member Council, which is the executive organ of the Authority.54 In fact, UNCLOS empowers the Council only to make recommendations to the Assembly on the disposition of Article 82 revenue, which the Assembly may approve or disapprove. Any Council recommendation that is disapproved by the Assembly is returned to the Council "for reconsideration in the light of the views expressed by the Assembly." Therefore, in function and form, the Assembly makes final determinations regarding the

disposition of Article 82 revenue.

Thus, it is unlikely that the United States would be able to prevent the Authority from distributing Article 82 revenue to Cuba and Sudan, UNCLOS members that the U.S. State Department has designated as state sponsors of terrorism. It would also be difficult for the United States to block the Authority from sending funds to the undemocratic, despotic, and/or brutal regimes in Belarus, Burma, China, Somalia, and Zimbabwe. Finally, the United States would have limited ability to stop the transfer of Article 82 revenue to corrupt regimes, especially given that 13 of the 20 most corrupt nations in the world are UNCLOS members.59

By virtue of its seat on the Council, the United States might be able to hinder decisions to distribute Article 82 revenue for purposes to which it objects. Whether the United States would be steadfast in its objections to such distributions and whether the Assembly would make any such distributions without the consent of the Council are open questions.

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Groves, Steven. **U.N. Convention on the Law of the Sea Erodes U.S. Sovereignty over U.S. Extended Continental Shelf** . **Heritage Foundation**: Washington, D.C., June 7, 2011 (1-13p). [**More** (5 quotes)]

UNCLOS has no restrictions on how recipient nations under article 82 have to spend the money

"UNCLOS is silent on how UNCLOS nations that receive Article 82 royalty revenue should spend it. UNCLOS does not require recipient nations to spend the revenue on anything related to the oceans or the maritime environment. Nor does it require them to spend the revenue on humanitarian or development projects, even though most, if not all, of the eligible recipients are supposed to be poor, developing countries. Recipients are apparently free to spend the funds on military expenditures or simply deposit them into the personal bank accounts of national leaders.

Finally, UNCLOS does not require that Article 82 revenue be spent in a transparent or accountable manner. Apparently, the Authority simply hands over substantial amounts of money to the recipient nation to be spent however that nation sees fit, no matter how corrupt or inept that nation's leadership is.

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Groves, Steven. **U.N. Convention on the Law of the Sea Erodes U.S. Sovereignty over U.S. Extended Continental Shelf** . **Heritage Foundation**: Washington, D.C., June 7, 2011 (1-13p). [**More** (5 quotes)]

U.S. ratification of UNCLOS would give United Nations ability to impose tax on U.S. citizens

UNCLOS would create taxing authority within UN for the first time, starting a dangerous precedent

"How about taxing authority? This will be the first time that an international organization has explicitly been given the ability to raise revenues." Now John Moore will quibble, I suspect based on past experience with him, that this is not really a tax. These are fees; these are tithings of some kind, permitting obligations.'" Whatever its name; we would begiving to a U.N. organization the ability to raise its own revenues.

And this is going to have precedential implications, especially at a moment when the U.N. is angling to try to find other ways to raise revenues, starting with airline taxes that are already being imposed by some in order to pay for unobjectionable things like AIDS and tuberculosis and other medical treatments through U.N. facilities." That is something conservatives should be concerned about, especially since it ensures that the U.N. will be even less accountable than it is today when it relies on us for a quarter of its funding.

[*Page 473*]

Gaffney, Frank. "*U.N.'s s Larger Role in UNCLOS is Bad for American Interests*." **Texas Review of Law & Politics**. Vol. 12, No. 2 (April 2008): 469-476. [**More** (2 quotes)]

UNCLOS would establish new precedent for allowing United Nations to levy taxes that would lead to further abuses

"As stated earlier, of the many precedents embodied in the existence of the ISA, the creation of an international bureaucracy with powers to tax, regulate, and enforce its will are perhaps the most dramatic and, in the long term, the most dangerous. The granting of what are essentially sovereign powers is unprecedented and unfortunately fits within a larger pattern of UN behavior-that being, to free itself from the political domination of the five permanent members of the Security Council as well as to insulate itself from the uncertainties and political limitations accompanying the traditional state-sponsored financing of UN operations.

Secretary General Boutros-Boutros Ghali recently proposed to establish a "world tax" on airline tickets and currency exchanges as an independent means of financing the UN. "Faced with $2.3 billion in arrears from member nations that failed to pay their assessments -- including $1.2 billion owed by the United States -- UN officials and others have long sought an independent means to

raise money for the organization's annual budget of roughly $3 billion" (Barber 1996). Disclosure of this plan provoked an immediate negative response in the U.S. Senate when majority leader Bob Dole stated that, "the United Nations continues its out-of-control pursuit of power" and along with colleagues called for an immediate investigation (Barber 1996).

Unfortunately, the Law of the Sea Treaty goes far beyond the Ghali plan and may indeed be viewed as a harbinger of future UN efforts to spin-off or reformulate its activities in such a way as to insulate itself from, and possibly become ascendant to, the sovereign character of nation-states. Unless the United States is willing to insist on further renegotiation of the treaty to protect these and other vital interests, the Senate will have little alternative other than rejection and refusal to ratify. Rejection by the Senate appears to be the only action capable of serving as the catalyst to bring all parties back to the table.

Leitner, Peter. "***A Bad Treaty Returns: The Case of the Law of the Sea Treaty*** ." **World Affairs**. Vol. 160, No. 3 (Winter 1998): 134-150. [**More** (6 quotes)]

UNCLOS uniquely sets up an international taxing authority that is a step in the wrong direction

"Problem #3: A step in the direction of international taxing authority. The Convention contains an ill-advised revenue-sharing provision that is applied to income derived from oil and gas production outside the EEZ. The general bias in the Convention, as I indicated earlier, is in favor of the redistribution of seabed resources. This bias is codified in the area of oil and gas revenues. The U.S. will be forced to pay a contribution to the International Sea-Bed Authority created by the treaty based on a percentage of its production in the applicable area beyond the 200-mile limit.

While he asserted the argument against this revenue-sharing provision was unconvincing, State Department Legal Advisor William H. Taft IV acknowledged it was an argument that could be made in the course of October 21, 2003 testimony before the Senate Foreign Relations Committee. Mr. Taft understates the problem. By any reasonable definition, this provision would for the first time allow a U.N.-affiliated international authority to impose a tax directly on the U.S. for economic activity. At least, I am unaware of any precedent for this kind of international taxing authority.

Shoring up the state system, as recommended by former Secretary of State Shultz, means that international institutions should be funded by the voluntary contributions of their member states. The extent to which these international institutions are allowed access to independent streams of revenue is the extent to which they will seek to obtain governing authority at the expense of the state system. While the revenue-sharing provision related to oil and gas production in the Convention is a relatively modest step in this direction, it is still a step in the wrong direction.

[*Page 7-8*]

Middendorf, William J. "***Statement of William J. Middendorf: On The United Nations Convention on the Law of the Sea (April 8, 2004)*** ." Testimony before the Senate Armed Service Committee,

April 8, 2004. [**More** (5 quotes)]

UNCLOS participation would require U.S. to transfer significant royalties to International Seabed Authority

If the U.S. accedes to UNCLOS, it will be required pursuant to Article 82 to transfer royalties generated on the U.S. continental shelf beyond 200 nautical miles (nm)—an area known as the "extended continental shelf" (ECS)—to the International Seabed Authority.

UNCLOS requires mineral extraction companies pay royalties to ISA to be redistributed

"However, the actual treaty insists that in return for the acknowledgement of such claims, coastal states must provide compensation to the rest of the world. The most blatant application of this concept concerns mineral extraction on the continental shelf beyond the 200-mile limit. UNCLOS allows claims to the limit of the continental shelf or up to 350 miles from the shoreline, whichever is less.8 However, to claim such additional drilling rights the state must first accept delineation of its continental shelf by a special Commission on the Limits of the Continental Shelf, established by UNCLOS with a requirement that the Commission's membership show for "equitable geographical representation" in its membership.9 If it chooses to exercise drilling or mining rights in this area beyond its EEZ, a state must provide a portion of revenue derived from such activity—increasing at 1 percent a year up to a rate of 7 percent per year—to the Deep Seabed Authority, an agency established by UNCLOS for general supervision of deep sea development.10

The United States government already provides sizable contributions—often over extended periods—to international aid organizations for programs—such as vaccination, schooling, and road building—which it considers likely to improve conditions in developing countries. UNCLOS does nothing to advance this. Instead, it requires states that are able to extract mineral wealth from the seas to compensate those that are not—while the non-extracting state contributes nothing to the equation.

[*Page 6*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

US accession to UNCLOS would obligate to transfer hundreds of billions of dollars of royalties to ISA

"One area where the U.S. can expect to experience significant costs—with no appreciable benefit—is in its compliance with Article 82 of the Convention: "Payments and contributions with respect to

the exploitation of the continental shelf beyond 200 nautical miles."

If the U.S. accedes to UNCLOS, it will be required pursuant to Article 82 to transfer royalties generated on the U.S. continental shelf beyond 200 nautical miles (nm)—an area known as the "extended continental shelf" (ECS)—to the International Seabed Authority. These royalties will likely total tens or even hundreds of billions of dollars over time. Instead of benefiting the American people, the royalties will be distributed by the Authority to developing and landlocked nations, including some that are corrupt, undemocratic, or even state sponsors of terrorism such as Cuba and Sudan.

[*Page 2*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS***." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

US offshore oil development could generate $92 billion in royalty payments for US treasury over next 50 year

"Both the Alaskan OCS and Gulf OCS will continue to generate revenue for the United States for many years to come. According to Interior Depart- ment estimates, the U.S. OCS contains 8.5 billion barrels of oil and 29.3 trillion cubic feet of natural gas in proved and unproved reserves and another 86 billion barrels of oil and 420 trillion cubic feet of natural gas in as yet undiscovered resources.

Such vast resources will continue to generate billions of dollars in royalty revenue for the United States. A recent report by the Institute for Social and Economic Research at the University of Alaska evaluated further development of the Alaskan OCS, focusing on the Beaufort Sea OCS and the Chukchi Sea OCS, the two OCS areas off the northern shore of Alaska. Assuming a minimum royalty rate of 12.5 percent, mineral exploitation in these two areas would generate almost $92 billion in royalty revenue over the next 50 years.

[*Page 9*]

Groves, Steven. **U.N. Convention on the Law of the Sea Erodes U.S. Sovereignty over U.S. Extended Continental Shelf**. **Heritage Foundation**: Washington, D.C., June 7, 2011 (1-13p). [**More** (5 quotes)]

UNCLOS obligates member nations to pay upwards of 7% in royalties for development of mineral and energy resources

"Member states begin to pay these "international royalties" during the sixth year of production at the drilling site. Starting with the sixth year of production, UNCLOS members must pay 1 percent of the value of the total production at that site to the Authority. Thereafter, the royalty rate increases in increments of 1 percentage point per year until the twelfth year of production, when it reaches 7 percent. The rate remains at 7 percent until production ceases at the site.

As such, if the United States accedes to UNCLOS it would be obligated to transfer to the Authority a considerable portion of the royalties generated on the U.S. ECS that would otherwise be deposited in the U.S. Treasury for the benefit of the American people. For example, the royalty rate of the majority of blocks currently under an active lease on the U.S. ECS is 12.5 percent. Beginning in the twelfth year of production on such an ECS block the U.S. would be required to transfer 7 percent—more than half—of its royalty revenue to the Authority and do so each year until production ends on that lease. The remaining 5.5 percent of the royalty would be retained by the Treasury.

[*Page 4*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS***." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

Under UNCLOS billions of dollars in royalties for offshore oil development would shift to ISA instead of to US revenue

"The United States will likely soon begin to exploit the oil and natural gas resources on its ECS. The BOEMRE has already issued exploration leases for areas located, at least in part, on the U.S. ECS. Indeed, during the bidding process, the BOEMRE has given notice to companies bidding on offshore leases about UNCLOS Article 82. Since at least 2001 and as recently as 2008, BOEMRE has advised companies that the Article 82 royalty payment provisions would apply if the United States joins the convention.

The BOEMRE is not alone in its opinion that activities on the ECS will commence sooner rather than later. The report commissioned by the Authority predicts that, while Article 82 "has been dormant since the adoption of the Convention," it "will soon awaken," and royalties from that provision may come due to the Authority as early as 2015.

In sum, under current U.S. law and policy, all royalties and other revenue generated from exploitation of the U.S. ECS and owed to the United States would be deposited in the U.S. Treasury to be dispensed in the best interest of the United States and the American people. However, if the United States accedes to UNCLOS, potentially billions of dollars in royalties would instead be transferred to the Authority pursuant to Article 82. How the Authority would dispense those "internationalized" royalties is less clear.

[*Page 11*]

Groves, Steven. **U.N. Convention on the Law of the Sea Erodes U.S. Sovereignty over U.S. Extended Continental Shelf**. **Heritage Foundation**: Washington, D.C., June 7, 2011 (1-13p). [**More** (5 quotes)]

U.S. currently collects billions of dollars in royalties on outer continental shelf resource development which would go ISA under

UNCLOS

“Exploitation of resources from the U.S. ECS is expected to generate royalties in the near future, and the United States will forgo some of those roy- alties if it joins UNCLOS. The potential financial impact of joining UNCLOS is evident from a brief review of how revenue is generated from activities currently taking place on the U.S. outer continental shelf within the 200 nm line.

A wealth of mineral resources (e.g., oil and natural gas) lies below the surface of the U.S. OCS. Alaska’s OCS alone may contain almost 10 billion barrels of oil and 15 trillion cubic feet of natural gas.[29] Massive known reserves of oil and natural gas also lie beneath the OCS in the Gulf of Mexico.

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) in the U.S. Department of the Interior manages the nation’s oil, natural gas, and other mineral resources on the OCS.[31] One of BOEMRE’s primary activities is managing sales of offshore oil and gas leases. Through BOEMRE, the United States leases OCS tracts to companies for exploration and exploitation. The companies bid competitively for leases, and the winning company is required to make certain pay- ments to the Secretary of the Interior for deposit into the U.S. Treasury.

[*Page 7-8*]

Groves, Steven. **U.N. Convention on the Law of the Sea Erodes U.S. Sovereignty over U.S. Extended Continental Shelf** . **Heritage Foundation**: Washington, D.C., June 7, 2011 (1-13p). [**More** (5 quotes)]

Mining companies have incentive to over develop resource in inefficient manner to avoid paying higher royalty share

“While Moore’s view is also that Article 82 is a “small quid pro quo”,[11] the Article may nonetheless have undesirable consequences. For example, Rainer Lagoni observed in New Delhi in 2002 that in providing for five years where the revenue share is nil per cent before slowly climbing by one per cent a year there is an incentive of the mining industry to extract resource at a far faster rate than they might otherwise do.[12] This may lead to an inefficient, even wasteful use of resource, particularly when taking into account the gearing of refinery resources to the raw resource available.

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Mingay, George. "*Article 82 of the LOS Convention—Revenue Sharing—The Mining Industry’s Perspective*." **The International Journal of Marine and Coastal Law**. Vol. 21, No. 3 (2006): 335-346. [**More** (2 quotes)]

UNCLOS would subject U.S. to anti-competitive regime

The UNCLOS treaty was originally concieved as a way to redistribute wealth on a global scale and the international regulatory structure that remains will likely inhibit development, depress productivity, increase costs, and discourage innovation.

Worst problem with the Law of the Sea treaty is its resource management regime which establishes a cartel, squashes innovation, and redistributes revenues to non-state actors

"The primary stumbling block to ratification is the bizarre regulatory regime governing seabed mining of deep ocean resources like the minerals cobalt and manganese. This system is unique in its byzantine complexity. The treaty effectively treats the ocean's unowned seabed resources as property of the United Nations. The LOST established an International Seabed Authority (ISA), ruled by an Assembly and a Council, to govern deep seabed mining and redistribute income from the industrialized West to developing countries. Perhaps inspired by "Star Trek," the LOST also created an entity called the Enterprise, which would mine the ocean floor—with the coerced assistance of Western mining companies—on behalf of the Authority.

The convention explicitly limited resource development and promised to protect developing countries from the lower prices that would result from minerals production. Essentially, it authorized an OPEC-style commodity cartel.

The details spelled out were as bad as the principles. Private companies had to survey two sites and turn one over gratis to the Enterprise; they also were required to transfer technology to the Enterprise and to developing states. American miners would be targeted by anti- density and antimonopoly provisions, while developing nations would dominate the Authority. Western governments would be required to enforce payment of fees and royalties, subsidize the U.N.'s mining operation, and provide resources for redistribution to Third World governments and pseudo-national entities like the Palestinian Liberation Organization (now the Palestinian Authority).

The problems with such a system are numerous. It would empower an inefficient international organization and incompetent—often kleptocratic—Third World governments, setting poor precedents for the development and operation of other multilateral institutions. Establishing a global oceans regulatory system that restricts entrepreneurship would do more than hinder resource development on the seabed; it would deter the production of software, technology, and processes designed for seabed mining or with dual-use capabilities. Finally, a LOST-like regime would discourage exploration of other currently unowned resources, most notably space. Although the treaty's economic impact might have seemed limited, its future adverse effects always would have been enormous. Today, they could be even worse.

[*Page 5*]

Bandow, Doug. **The Law of the Sea Treaty: Impeding American Entrepreneurship and Investment** . **Competitive Enterprise Institute**: Washington, D.C., September 2007 (21p). [**More** (8 quotes)]

Anti-production and anti-competitive bias of UNCLOS evident in its establishment of cartels and quotas

"As originally written, the treaty was explicit- ly intended to restrict mineral development. Among the treaty's objectives were "rational management," "just and stable prices," "orderly and safe development," and "the protection of developing countries from the adverse effects" of mineral production. The LOST explicitly limited mineral production and authorized commodity cartels (rather like OPEC). Further, the treaty placed a moratorium on the mining of some resources, such as sulfides, until the Authority adopted rules and regulations— which might never have happened.

The procedures governing mining reflect- ed that anti-production bias. A firm would have been required to survey two sites and turn one of them over gratis to the Enterprise before even applying for a permit. The Authority had the power to deny an applica- tion if the operation would violate the treaty's anti-density and anti-monopoly provisions, aimed at U.S. operators. And the ISA's deci- sions in this area were to be set by a subsidiary body, the Legal and Technical Commission. Developing countries would dominate the 36- member council, as they did the Assembly, leaving access of American firms to the deep seabed (that beyond national jurisdiction) dependent on the whims of countries that might oppose seabed mining for economic or political reasons.

[*Page 3*]

Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

Regime setup by UNCLOS to govern deep seabed mining would stifle innovation with regulations

"The LOST's fundamental premise is that all unowned resources on the ocean's floor belong to the "people of the world"—effec- tively the UN. But an international regulato- ry system would likely inhibit development, depress productivity, increase costs, and discourage innovation, thereby wasting much of the benefit to be gained from mining the oceans. The Byzantine regime created by the LOST was, and remains, almost unique in its perversity. In the original agreement, the UN would have asserted its control through the International Seabed Authority, ruled by an Assembly dominated by poorer nations and a council that would regulate deep seabed mining and redistribute income from the indus- trialized West to developing countries. The ISA would employ as its chief subsidiary to mine the seabed a body called the Enterprise, which would enjoy the coerced

assistance of Western mining companies.

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Bandow, Doug. **Don't Resurrect the Law of the Sea Treaty** . **Cato Institute**: Washington, D.C., October 13, 2005 (1-20p). [**More** (16 quotes)]

US accession to UNCLOS would place mining interests directly under regulatory regime of the Authority

"If the United States accedes to UNCLOS, American companies will be required to adhere to all the Authority's rules, regulations, and dictates. In matters concerning deep seabed mining, UNCLOS leaves no doubt where the power lies. The convention states that all activities in the seabed "shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole" and that the Authority "shall have the right to take at any time any measures...to ensure compliance with its provisions and the exercise of the functions of control and regu- lation assigned to it thereunder or under any contract."35

The Authority has exercised these general grants of power in a number of specific ways, notably by creating the "mining Code," a "comprehensive set of rules, regulations and pro- cedures issued by the International Seabed Authority to regulate prospecting, exploration and exploitation of marine minerals in the international seabed Area."36

Among the regulations thus far enacted by the Authority are the procedures regarding exploration for polymetallic nodules.37 These regulations, when read in conjunction with the Authority's standard clauses for exploration contracts38 and the Legal and Technical Commission's environmental regulations,39 create a regulatory regime without precedent in international law. If the United States accedes to UNCLOS, U.S. seabed mining companies will be subject to that regime.

[*Page 9*]

Groves, Steven. **The U.S. Can Mine the Deep Seabed Without Joining the U.N. Convention on the Law of the Sea** . **Heritage Foundation**: Washington, D.C., December 04, 2012 (18p). [**More** (8 quotes)]

UNCLOS based on outdated and discredited redistributionist ideas from the 1970s

"This redistributionist, collectivist language, I've suggested, is archaic and this is not surprising. The treaty was drafted during the height of the G-77 – when many saw world poverty as the result of the west's wealth. People in Africa, Asia, and South America were poor because we were rich; make us poorer and they will become richer! In that era, only foreign aid and other wealth redistribution schemes were viewed as offering any hope of alleviating world poverty. LOST was typical of the

flawed policy prescriptions of that era. But the world has learned much over the last decades. Most now recognize that Foreign Aid, while occasionally useful in emergency relief situations, can too often stifle the entrepreneurial forces and political reforms which offer the only hope for sustainable economic growth. The work of Lord Peter Bauer, recipient of the Cato Institute Friedman Prize, showed that too often foreign aid is simply the transfer of wealth from the poor in the rich world to the rich in the poor world, that such wealth transfer programs hurt, rather than helped the poor. LOST was crafted in this era and it shows. Even the World Bank and its other international institutions increasingly recognize that the key to addressing poverty is for the affected nation states to move toward economic freedom, private property, a predictable rule of law, a reduction in domestic violence. To enshrine collective political management of the oceans does nothing to advance this cause.

Smith, Fred. "***Statement of Fred Smith: On Accession to the United Nations Convention on the Law of the Sea and Ratification of the 1994 Agreement regarding Part XI of the Convention*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (5 quotes)]

U.S. ratification of UNCLOS would damage national security

Dispute resolution mechanisms in UNCLOS threaten U.S. national security

Mandatory dispute resolution mechanism could be used by states unsympathetic to the U.S. to curtail its military operations even though such operations are supposed to be exempt from the mechanism. This is because it is unclear by the terms of the treaty what activities will be defined as military.

Risks of national security damage due to a adverse dispute settlement ruling are under appreciated

"Problem #4: Unnecessary Risks to National Security. Proponents of the Convention argue that it promotes U.S. security by codifying a variety of rights to navigate the world's oceans that are valued by the Navy. While the Navy, quite appropriately, seeks the codification of these rights, it should be pointed out that a significant portion of these rights are already established by a series of four 1958 "Geneva Conventions on the Law of the Sea" and customary international practice.

On the other hand, the risks to national security posed by the Convention are often understated. For example, Deputy Assistant Secretary of Defense for Negotiations Policy Mark T. Esper, who testified in favor of the Convention, told the Senate Foreign Relations Committee in an October 21, 2003, hearing that the mandatory dispute resolution mechanism could be used by states unsympathetic to the U.S. to curtail its military operations even though such operations are supposed to be exempt from the mechanism. This is because it is unclear by the terms of the treaty what activities will be defined as military. While the Bush Administration believes that it will be up to each State Party to determine for itself what activities are military, it is uncertain enough about the issue that it is recommending the U.S. submit a declaration reserving its right to determine which activities are military. Unfortunately, it is not at all certain that a declaration will suffice to protect vital U.S. national security interests. Other states may choose to accept or ignore the declaration, or a future administration may accept the jurisdiction of a tribunal and be surprised if precedent-setting decisions go against U.S. interests. While in the future the Navy may recommend that the U.S. reject a claim of jurisdiction for a tribunal, civilian authorities both inside and outside the Department of Defense may overrule the Navy. Amending the text of the treaty may be the only certain way to protect U.S. interests against overreaching by other states regarding the mandatory dispute resolution mechanism. This is my view, in part, because I am not aware of a precedent for such a mandatory dispute settlement mechanism that could extend to such sensitive areas.

[*Page 8-9*]

Middendorf, William J. "***Statement of William J. Middendorf: On The United Nations Convention on the Law of the Sea (April 8, 2004)***." Testimony before the Senate Armed Service Committee, April 8, 2004. [**More** (5 quotes)]

Interpretation of "military activities" clause left up to external courts and possibly unfriendly panel

"UNCLOS seems to provide protection against these concerns by stipulating that states may opt out of its compulsory arbitration requirements when disputes concern "military activities...by government vessels and aircraft engaged in non-commercial service."[6] At its narrowest reading, this provision might mean only that ITLOS will avoid intervening in full-scale confrontations between opposing battle fleets—a situation that would create problems far beyond those of dispute resolution. At its broadest, this exemption might mean that any seizure could be excluded from ITLOS review, since seizures are never effectuated by unarmed commercial vessels, which would entirely negate the provision bestowing mandatory jurisdiction on ITLOS for seizures at sea. So which is it?

The only thing certain is that it will be up to ITLOS to decide how far it wants to intrude into U.S. naval strategy. The State Department has proposed ratification with an "understanding" that the military exemption will be read broadly. (Sec. 2, Par. 2 of 'Text of Resolution of Advice and Consent to Ratification," printed with Treaty Doc. 103-39 in Hearings on the UN Convention on the Law of the Sea, Ot. 21, 2003, along with "Statement of William H.Taft, Legal Adviser to the Department of State) But UNCLOS itself stipulates that states may not attach "reservations" to their ratification.[7] Again, it will be up to ITLOS to decide what significance, if any, should be accorded such unilateral U.S. "understandings." And the court's composition is not encouraging. As of September 2005, a clear majority of the court's 21 judges were from states that cannot be supposed to be friendly to American naval action—including Russia, China, Brazil, Cameroon, Ghana, Senegal, Cape Verde, Tunisia, Lebanon, Grenada, and Trinidad.

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Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

US has always resolved maritime disputes with voluntary, bilateral diplomacy -- accession to UNCLOS would compel legally binding dispute resolution

"The United States and other nations are free to resolve their maritime disputes in a number of ways outside of UNCLOS, including bilateral negotiations, fact-finding and conciliation commissions, and proceedings at the Permanent Court of Arbitration, to name a few.[8] The United States may also submit a dispute by special agreement to the International Court of Justice, as it did in 1981 to resolve a dispute with Canada over maritime boundaries in the Gulf of Maine.

Bilateral negotiations, special agreements, arbitration, and conciliation commissions have in com-

mon the fact that they are voluntary means of resolving maritime disputes. The United States may choose to engage in such voluntary pro- ceedings depending on whether the predicted outcome would advance its national interests. However, if the U.S. accedes to UNCLOS, it will be compelled to submit itself to legally binding dispute resolution whenever another member state brings a lawsuit against it.

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Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Should recognize that U.S. will be bigger target for ITLOS because of its status as the sole global naval superpower

"Finally, opponents of the Law of the Sea Treaty contend that Article 88 of the treaty, which stipulates that "the high seas shall be reserved for peaceful purposes" together with Article 301's requirement to refrain from "any threat or use of force against the territorial integrity or political independence of any state" have the potential of unduly constraining U.S. defense operations on the high seas.22

Proponents counter that warships of all major powers freely travel through the high seas even though the treaty is already in force for nations that have ratified it,23 which, as of this writing, stood at 149 nations.24 But the U.S.'s circumstances are very different than those of the 149 parties to the treaty. As the world's only remaining superpower, the U.S. is the only nation capable of extended, extensive long-range maritime operations.25 What's more, the U.S. has military obligations that other nations simply do not. Many of the parties to the treaty26 don't have organized navies. Others don't have significant ones.27 Consequently, most parties to the treaty have less interest in the military implications of Article 88 than does the United States. The ratification of the treaty by these nations therefore should not be the yardstick by which the risks to U.S. military interests are measured.

David Ridenour. "***Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage*** ." **National Policy Analysis**. (August 1, 2006) [**More**]

U.S. ratification of UNCLOS would bind our freedoms to the interpretations of international tribunals

"Advocates think it is worthwhile to hope for such results, because, they say, the treaty offers such important protections of naval transit rights. But the United States has, for over a quarter century, embraced the standards in the treaty as a guide to accepted international practice. By ratifying the treaty and committing ourselves to participate in dispute-settling mechanisms, we adopt not our own understandings but those which international authorities may choose to put on them.

And it's not as if the standards set out in the treaty are so clear that they couldn't be twisted in dangerous ways by unsympathetic interpretations.

So the treaty can be acceptable if interpreted as we want it to be interpreted. But if we commit to the treaty, we are, by its terms, leaving ultimate interpretations to be determined by international tribunals, which may not agree with our interpretations. The treaty stipulates that decisions of international arbitration must be treated as "final" and "binding."

Putting aside lawyerly questions about the meaning of "finality," if we ratify the treaty, we will, as a practical matter, find it very awkward (to say the least) to reject the interpretations that emerge from international arbitration of its disputed points. In 1985, the United States disputed the jurisdiction of the International Court of Justice to hear Nicaragua's complaint against U.S. support for the "contra" insurgency there. When the ICJ rejected U.S. objections to its jurisdiction, the Reagan administration withdrew from the proceedings and insisted the United States would not be bound by the subsequent judgments against it (when, as expected, the Court did rule against the U.S. intervention).

Rabkin, Jeremy. "***How Many Lawyers Does It Take to Sink the U.S. Navy?*** ." **Weekly Standard**. (September 10, 2007) [**More**]

An adverse judgement against the US in UNCLOS tribunal could damage US economy

"In the past, international courts have not hesitated to pronounce adverse judgments against the United States that have negatively affected its national interests, including judgments on critical matters such as the use of military force, as in the Paramilitary Activities case, and on controversial legal and social issues such as the death penalty, as in the Avena case. UNCLOS tribunals have already indicated that they will engage in hotly contested interna- tional environmental disputes, as demonstrated by the MOX Plant case.

An adverse judgment against the United States in a climate change lawsuit would be domestically enforceable and would undoubtedly harm the U.S. economy. The regime formulated by the arbitral tribunal in the Trail Smelter case, if extrapolated to its logical extent and applied to U.S. industries that produce green- house gases, would impose massive regulatory burdens on U.S. compa- nies, and the costs would be passed on to American consumers. Such a judgment would accomplish through international litigation what climate change alarmists could not achieve through treaty negotiations or in the U.S. Congress.

[*Page 26*]

Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

Decisions made by ITLOS would be legally binding and enforceable within United States

"Acceding to UNCLOS would expose the U.S. to lawsuits on virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or even through the atmosphere. Regardless of the case's merits, the U.S. would be forced to defend itself against every such lawsuit at great expense to U.S. taxpayers. Any judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.

Unlike a resolution passed by the U.N. General Assembly or a recommendation made by a human rights treaty committee, judgments issued by UNCLOS dispute resolution tribunals are legally enforceable upon members of the convention. Article 296 of the convention, titled "Finality and binding force of decisions," states, "Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute."25

Judgments made by UNCLOS tribunals are enforceable in the same manner that a judgment from a U.S. domestic court would be. For example, Article 39 of Annex VI states that "The decisions of the [Seabed Disputes] Chamber shall be enforce- able in the territories of the States Parties in the same manner as judg- ments or orders of the highest court of the State Party in whose territory the enforcement is sought."26 In other words, if the United States accedes to the convention, the U.S. government will be required to enforce and comply with SDC judgments in the same manner as it would enforce and comply with a judgment of the U.S. Supreme Court. The U.S. court sys- tem will serve not as an avenue for appeal from UNCLOS tribunals, but rather as an enforcement mechanism for their judgments.

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Groves, Steven. **Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits** . **Heritage Foundation**: Washington, D.C., March 12, 2012 (26p). [**More** (9 quotes)]

UNCLOS contains numerous provisions that would restrain U.S. military action

"The Law of the Sea Treaty's compulsory dispute resolution requirements and procedures are particularly problematic when taken together with a number of obligations the accord entails that are at odds with our military practices and national interests. These include commitments that:

- Reserve the oceans exclusively for "peaceful purposes" (Article 88): The United States routinely uses the world's oceans for military purposes, including waging war against our enemies.

- Require states to refrain from "the threat or use of force against the territorial integrity or

political independence of any state" (Article 301): As the world's preeminent maritime nation, America must project power from the sea and does so with some regularity. Some would describe such power projection as contrary to "the territorial integrity or political independence" of states (most recently, for example, attacks from naval forces against the Taliban's Afghanistan and Saddam Hussein's Iraq).

- Proscribe the use of territorial waters to collect intelligence and conduct other operations (Article 19): For many decades, intelligence vital for American security has been collected on, below and above the oceans – including, in some cases, those considered to be "territorial waters."

- Oblige submarines to travel on the surface and show their flags in territorial waters (Article 20). The effectiveness and perhaps the very survival of our submarines would be compromised were they to have to operate on the surface in close-in waters where they can only go with the greatest of stealth.

- Bar any maritime research except that conducted for peaceful purposes and require the coastal state's permission for that performed in territorial waters (Article 240). Classified oceans research, including some conducted covertly, is indispensable to the U.S. Navy's mission.

In statements in support of LOST, the United States military makes clear that it has no intention of ending such activities, and insists that it will not have to do so since "military activities" are exempted from the Treaty's dispute resolution mechanisms. Unfortunately, this position both defies common sense and hard experience with international accords: These articles are wholly without effect if they do not apply to the military and it is predictable that America's foes will use every opportunity afforded by LOST to ensure they do.

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

U.S. ratification of UNCLOS would subject U.S. military to rulings by third-party tribunals

Acceding to UNCLOS would expose the U.S. to lawsuits on virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or through the atmosphere. Regardless of the merits, the U.S. would be forced to defend itself against every such lawsuit at great expense to U.S. taxpayers. Any judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.

Navy would be the target of a deluge of lawsuits under UNCLOS

"Of all institutions, the Navy should be alive to the dangers that such a treaty entails. After all, the service's civilian leader, Secretary Donald Winter, for one has expressed grave concerns about the impact domestic environmentalists and their litigiousness currently have on Navy and Marine Corps' operations.

Such challenges are likely to pale by comparison with the edicts handed down by multilateral tribunals whose deciding votes are, in every instance, selected by international bureaucrats (in the case of one arbitral panel, by the U.N. secretary-general himself). A recent paper written by Dr. Jeremy Rabkin for the American Enterprise Institute under the provocative title, "Do We Really Want to Place the U.S. Navy Under International Judicial Supervision?" makes clear that, by so doing, we would open ourselves to expanded attacks via "Lawfare" — the technique of using treaties, courts and international law as an asymmetric weapon against us:

"It is estimated that the United States has more practicing lawyers than all other countries put together. Separation of powers and an active, independent judiciary invite challenges to decisions of officials in the executive branch, just as we scrutinize and challenge so many other institutions in our society. What that means is that it is much harder for the United States to shrug off international legal claims than it may be for more centralized or repressive countries such as China."

Gaffney, Frank. "***A Navy LOST?*** ." **Washington Times**. (October 10, 2007) [**More**]

Under UNCLOS, US could be subject to arbitrary lawsuits with binding authority for international tribunals

"Acceding to UNCLOS would expose the U.S. to lawsuits on virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or through the atmosphere. Regardless of the merits, the U.S. would be forced to defend itself against every such lawsuit at great

expense to U.S. taxpayers. Any judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.

Unlike a resolution passed by the U.N. General Assembly or a recommendation made by a human rights treaty committee, judgments issued by UNCLOS tribunals are legally enforceable upon members of the convention. Article 296 of the convention, titled “Finality and binding force of decisions,” states, “Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.”

[*Page 10*]

Groves, Steven. "***The Law of the Sea: Costs of U.S. Accession to UNCLOS***." Testimony before the United States Senate Committee on Foreign Relations, June 14, 2012. [**More** (11 quotes)]

U.S. ability to exclude its military from arbitration is not absolute and our adversaries will use that to their advantage

“Even though LOST permits a state party to declare “disputes concerning military activities” to be exempt from dispute settlement, such a declaration would very likely be the beginning of the process, not its end.

As I have noted earlier, the Treaty does not define “military activities.” At the very least, therefore, were the United States freely to assume the foregoing obligations, it would set the stage for injunctions, or other adverse rulings, against the U.S. military to be sought from one LOST dispute resolution agency or another. Given the stacked-deck nature of these mechanisms, it is far from certain that our opponents will fail.

This applies in spades to things we consider to be “military activities” but that may well be depicted by our opponents in ITLOS or arbitration proceedings as environmentally harmful activities (e.g., charges that Navy sonars are responsible for killing whales and dolphins). Importantly, in the event of any disagreement over whether an activity is military in nature, the Treaty grants to its dispute resolution mechanisms the right to make that determination themselves.

[*Page 11-12*]

Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)***." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

Even proponents of Law of Sea acknowledge ambiguity of 'military activities' clause could lead tribunal to rule against U.S. military

"Most influential, though, may be support from the U.S. Navy, which is enamored of the treaty's guarantee of navigational freedom. Not that such freedom is threatened now: The Russian navy is rusting in port, China has yet to develop a blue water capability, and no country is impeding U.S. transit, commercial or military.

At the same time, some ambiguous provisions may impinge on freedoms U.S. shipping now enjoys. In Senate testimony last fall, State Department legal adviser William H. Taft IV noted the importance of conditioning acceptance "upon the understanding that each Party has the exclusive right to determine which of its activities are 'military activities' and that such determination is not subject to review." Whether other members will respect that claim is not at all certain. Admiral Michael G. Mullen, the vice chief of naval operations, acknowledges the possibility that a Law of the Sea tribunal could rule adversely and harm U.S. "operational planning and activities, and our security."

Bandow, Doug. "***Sink the Law of the Sea Treaty*** ." **Weekly Standard**. (March 15, 2004) [**More**]

As sole global naval power, U.S. shouldn't constrain itself by making its actions subject to international tribunals

"In the past, writers on international law acknowledged that states could not be expected to submit the most sensitive political questions--those most vital to national security--to international arbitration. Most of the world seems to have abandoned this view, but most nations no longer make great efforts to provide for their own defense. So, even as the United States has substantially reduced the scale of its naval forces, since the peak years of the Reagan build-up we have acquired a larger and larger share of the world's naval capacity. Others have shrunk their forces further and faster.

In past centuries, rules about the conduct of ships at sea emerged from agreements among major naval powers, and there were always a number of naval powers engaged in challenging, enforcing, and accommodating agreed-upon standards. Now, when the United States (by some estimates) actually deploys a majority of the world's naval capacity, we are told that our security requires us to participate with 150 other states in electing international judges to determine, in the last analysis, what rules our Navy must accept.

To find this convincing, one must be awed by the moral authority of the U.N. majority. To think that way means that we seek consensus at almost any price. Why do we claim to be independent, why do we invest so many billions in defense capacities, if we are prepared to go along with an international consensus, articulated (and -readjusted) by international jurists? The Senate should think long and hard before making the U.S. Navy answer to the U.N version of the Law of the Sea.

Rabkin, Jeremy. "***How Many Lawyers Does It Take to Sink the U.S. Navy?*** ." **Weekly Standard**. (September 10, 2007) [**More**]

Tribunals setup by UNCLOS would have excessive power over U.S. Navy

"There are even more complex problems. UNCLOS sets up a special law of the sea tribunal with jurisdiction to interpret provisions of the Convention that apply equally to military and non-military uses of the sea. Although military uses can be excluded from the purview of the tribunal by particular states on ratifying the UNCLOS (article 298.1.b), a decision interpreting the UNCLOS's language relating to "innocent passage" or "transit passage" through straits, even if rendered in a case involving only non-military activities, would necessarily apply also to military uses. The distinction between military and non-military application of the tribunal provisions is thus untenable. Moreover, even if the United States and other naval powers take advantage of this available exclusion, nothing they do can stop other states from having their own military activity adjudicated by the tribunal. Despite the fact that the tribunal's decision binds only the parties before it, the tribunal's interpretation of a provision of the UNCLOS that applies equally to all parties affects international correspondence in ways potentially disastrous to American naval power.

Alfred P. Rubin. "***Monster from the Deep: Return of UNCLOS*** ." **The National Interest**. (September 1, 1994) [**More**]

U.S. ability to conduct maritime interdiction operations would be curtailed by UNCLOS

If the United States ratifies the Convention on the Law of the Sea, the legality of maritime interdiction operations whether to stop terrorist attacks or prevent nuclear proliferation will, depending on the circumstances, be left to the decision of one of two international tribunals.

Under UNCLOS, U.S. maritime interdiction operations would be subject to jurisdiction of ITLOS

"UNCLOS III provides that, if a ship or its crew are seized on the high seas, the flag state can appeal to the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, Germany, for a prompt decision on the legality of the seizure.[3] The treaty allows states to opt for other forms of arbitration on other disputes, but other forms of arbitration require all nations involved to agree on a specific panel of arbitrators. The only important category of dispute where one party can force another to answer before ITLOS is when a ship has been detained on the high seas and the complaining party seeks its immediate release.

Seizing a ship on the high seas without the consent of its home government would inevitably trigger a diplomatic confrontation. But in the right circumstances, the United States or its allies might feel obliged to act first and try to handle the diplomatic protests later. If intelligence gives reasonably firm indications of an imminent terror attack to be launched from a particular ship, the U.S. could insist on intervening, claiming a right of self-defense that supersedes the general "rules of the road" at sea. Alternatively, the United States might claim that a ship operated by terrorists was so closely analogous to a pirate ship that intervention could be justified under the UNCLOS exemption for piracy. In still another variant, the United States might interpret a bilateral agreement with the flag state as covering a particular intervention, while the flag state insisted on a different interpretation. In any of these cases, the flag state would likely sit on the sidelines while the ship's operators pursued a claim on their own initiative, "on behalf of the flag State," as UNCLOS allows.[4] It is easy to imagine situations in which U.S. intervention might trigger a complaint to ITLOS. It is hard to imagine situations in which ITLOS would be other than a complicating factor in ensuing U.S. diplomacy toward the flag state.

[*Page 4-5*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

U.S. relies on maritime interdiction operations to counter threat of

terrorism

“Terrorists have obvious reasons to take their operations out to sea. An attack on an oil tanker, for example, could do vast environmental damage and have a sizable impact on international oil markets. Seaborne shipping may be used to transport missiles and other weapons components not easily sneaked through airports. Currently, the United States does not claim the right to stop any and all ships on the high seas, merely on general suspicion. Since 2004, the United States has encouraged other nations, under the American-led Security Proliferation Initiative (SPI), to sign agreements authorizing American naval patrols to inspect merchant ships flying their flags when there is reason to fear the ships are engaged in illicit activities. While more than half the ships engaged in international commerce are covered by these agreements, many are not. American policy implicitly acknowledges that stopping other ships on the high seas would usually be improper. But special circumstances might justify exceptional measures.

[*Page 4*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

U.S. would lose capability to interdict and hold terrorists under UNCLOS and ITLOS

“Far from treating such seizures as remote hypotheticals, the Bush administration has invested considerable effort in a "Proliferation Security Initiative" (PSI) under which the United States has signed agreements with states that provide flags for most of the world's commercial shipping. These agreements may strengthen U.S. claims to intercept suspicious ships on the high seas, when flying with markings from the most common flagging states (such as Belize, Panama, and Libya, which have all signed such agreements). But the PSI agreements do not make clear when or whether ships or crews may be subject to long-term detention, and all the agreements stipulate that they do not supersede accepted standards of international law.

If we ratify the Law of the Sea treaty, even a PSI agreement with the flag state won't necessarily keep a dispute about the seizure from winding up before the Law of the Sea tribunal in Hamburg. That tribunal has asserted its right to hear claims for "prompt release" when filed by owners or operators of a ship, even when the nominal flag state takes no role in the proceedings. In past cases, ITLOS has ruled that ships cannot be detained, even when claimants refuse to supply full information about how the ship was acquired and on whose behalf. So while we have jealously reserved the right to detain terror suspects captured on land, we will, if we ratify this treaty, give up our right to decide when we can hold terror suspects seized at sea.

Rabkin, Jeremy. "***How Many Lawyers Does It Take to Sink the U.S. Navy?*** ." **Weekly Standard**. (September 10, 2007) [**More**]

Convention would subject U.S. counterterrorism efforts to review by international tribunals

"Deputy Secretary of State John D. Negroponte and Deputy Defense Secretary Gordon England maintain that the convention will enhance U.S. security. They argued in the **Washington Times last month** that to meet the "complex array of global and transnational security challenges," the United States must have "unimpeded maritime mobility -- the ability of our forces to respond any time, anywhere, if so required."

This is true, but ratifying the convention won't bring this benefit. Instead it would put America's naval counterterrorism efforts under the control of foreign judges. Suppose the United States seizes a vessel it suspects of shipping dual-use items that might be utilized to build weapons of mass destruction or other tools of terrorism. It's not a wild supposition. Under the Proliferation Security Initiative, the United States has since 2003 secured proliferation-related high-seas interdiction agreements with countries such as Belize and Panama, which provide registration for much international shipping. If the United States ratifies the Convention on the Law of the Sea, the legality of such seizures will, depending on the circumstances, be left to the decision of one of two international tribunals.

The first is the International Tribunal for the Law of the Sea, based in Hamburg. Some members of the Hamburg tribunal come from countries naturally suspicious of American power, such as China and Russia. Others are not allied with the United States. Even judges from Europe and South America do not always see things the way U.S. military authorities do.

The second institution is a five-person international arbitration panel. The United States and the flag state of the seized ship would have input into the selection of some of these arbitrators. But the U.N. secretary general or the president of the Hamburg tribunal would select the crucial fifth arbitrator when, as would typically be the case, the state parties cannot agree. They must choose from a list of "experts" to which every state party to the convention -- not just China and Russia but other unfriendly nations such as Cuba and Burma -- can contribute.

Jack Goldsmith and Jeremy Rabkin. "***A Treaty the Senate Should Sink*** ." **Washington Post**. (July 7, 2007) [**More**]

UNCLOS prevents U.S. from boarding ships without flag state approval, giving pass to rogue states

"Similarly, counter-proliferation efforts at sea are hindered by UNCLOS Article 92, which provides that “ships sail under the flag of one state only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.” That means that a warship must have the consent of the flag state or the master to board and search a foreign flag vessel encountered seaward of the territorial sea of another nation. The

enforcement regime established in both UNSCRs 1718 (2006) and 1874 (2009), which ban most arms transfers to and from North Korea, is based on exclusive flag state jurisdiction. Although UNSCR 1874 contains an enhanced maritime cargo inspection regime, it is still dependent on flag state consent (Operative Paragraph 12). UNSCRs 1696 (2006), 1737 (2006), 1747 (2006) and 1803 (2008), which impose a similar ban on material related to Iran's nuclear weapons program, are likewise based on flag state jurisdiction. Interdiction efforts on the high seas under other non-proliferation initiatives, like the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)[19] adopted by the International Maritime Organization (IMO) and the Proliferation Security Initiative (PSI)[20] announced by President Bush in March 2003 to combat the growing threat of WMD proliferation, also suffer from the same weakness – they are based on flag state consent. It is highly unlikely that Iran or North Korea will give consent to a foreign warship to board one of its vessels at sea. In short, in could be argued that UNCLOS allows North Korea and Iran to transport WMD-related materials with impunity, hiding behind the concept of exclu- sive flag state jurisdiction on the high seas.

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Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

Law of the Sea would subject U.S. navy seizures of foreign ships suspected of terrorism to an international tribunal

"Take the question of suspects captured in Afghanistan--and the few captured elsewhere who have been brought to Guantánamo. Are they prisoners of war, covered by the 1949 Geneva Convention on this subject? The U.S. position is that such unlawful combatants--those who do not fall within the categories set out in the convention--are neither legitimate prisoners of war nor need they be treated as criminal suspects, who (according to international human rights conventions) must be either prosecuted or released.

The Bush administration has sought, in various ways, to mollify critics of its detention policy. Congress and the Supreme Court have insisted on certain legal safeguards and may ultimately demand more. But would we like the matter to be settled for us, all at once, by an international tribunal?

That is exactly what the Law of the Sea treaty would do: If we seize and detain a foreign ship and/or its crew, we must arrange some form of international arbitration within 10 days or the Law of the Sea tribunal will have jurisdiction to hear appeals for "prompt release." It has heard about one case a year in this category, since it got organized in the late 1990s and has never encountered a case in which it regarded further detention as justified. So, if we commit to this treaty, we will commit to having ITLOS review any seizures made at sea.

Rabkin, Jeremy. "***How Many Lawyers Does It Take to Sink the U.S. Navy?*** ." **Weekly Standard**. (September 10, 2007) [**More**]

UNCLOS prohibits valuable maritime interdiction efforts of Proliferation Security Initiative

“PSI is not compatible with LOST, despite proponents’ claims to the contrary. As a treaty, LOST is binding international law on the parties, whereas PSI is only an informal arrangement between certain nations, and carries no force as international law. The argument that PSI can be executed within the rules of LOST, even though LOST clearly prohibits boarding actions critical to PSI, ignores the fact that LOST outranks PSI in the hierarchy of international law.

As a result, unless one or more of the Treaty-approved circumstances for an at-sea intercept applies, LOST member states could be precluded from participating in such an action – even when there might be compelling evidence that nuclear or other WMD or their delivery systems were on board. As long as the United States continues not to be a LOST state party, it can always act unilaterally. That option, however, will be foreclosed, and our security possibly endangered as a result, if the Senate consents to the Treaty’s ratification.

In this connection, it must be noted that the Chinese and Russians have strenuously objected to the Proliferation Security Initiative, claiming that it violates LOST. They can be expected to seek mandatory dispute resolution of the matter should the United States become a state party. Should the ruling go against us, a critical tool in the nation’s effort to prevent the spread of nuclear, chemical and biological weapons and their delivery systems could be lost for good.

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Gaffney, Frank. "***Statement of Frank Gaffney: Hearing on the Law of the Sea Convention (October 4, 2007)*** ." Testimony before the Senate Foreign Relations Committee, October 4, 2007. [**More** (20 quotes)]

Many countries use UNCLOS to attack proliferation security initiative

“Regarding the PSI in particular, despite wide international support for the initiative – 95 participating states as of May 2009 – opponents to PSI have relied on UNCLOS to attack the legitimacy of the initiative. Clearly, coun- tries of proliferation concern like Iran and North Korea are going to oppose PSI. However, there are other important countries that object to the initia- tive, in part because of UNCLOS. For example, an article by Rick Rozoff discussing the PSI reports that Indian officials have described PSI as a “con- troversial U.S.-led multilateral initiative . . .” with “dubious legality . . .” that “undercuts a . . . multilateral and balanced approach to the problem of proliferation.”21 Rozoff further states that Malaysia’s Deputy Prime Minister has stated the PSI violates Malaysia’s national sovereignty and that Indonesia is also opposed PSI, indicating that the initiative violates UNCLOS. Similarly, Mark Valencia stated in an essay posted on the Nautilus

Institute Policy Forum Online (08-043A: May 29, 2008)22 that China and Pakistan are also opposed to the initiative. Specific articles of UNCLOS cited by the opponents to PSI include Articles 17 and 19 (right of innocent passage), Article 33 (contiguous zone), Articles 38 and 39 (right of transit passage), Part V (EEZ), and Article 88 (high seas reserved for peaceful pur- poses).23

[*Page 158-159*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

UNCLOS would gut ability of U.S. to conduct maritime interdiction operations like the Proliferation Security Initiative

"The United States should take the lead in developing new practices on the oceans that will at once facilitate commerce and peacetime deployment of warships but also protect our shores from the terrorist scourge. The President's Proliferation Security Initiative is an example of such modern and creative thinking. This US-led multinational program of high seas interdiction and vessel boarding is barred by the Law of the Sea Treaty yet it is our overriding national security interest to execute. Ratification of the Treaty would effectively gut our ability to intercept the vessels of terrorists or hostile foreign governments even if they were transporting nuclear weapons. We must ensure that we not binding the government of the United States to a legal regime that makes us more vulnerable and trades the lives of our innocent citizens for the sake of participating in yet another unnecessary Treaty.

Leitner, Peter. "***Testimony of Peter Leitner: Oversight hearing to examine the "United Nations Convention on the Law of the Sea". (March 24, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (4 quotes)]

UNCLOS would prevent U.S. from responding to threats of environmental terrorism by restricting maritime interdiction operations

"Yet another "environmental impact" could arise from limitations the treaty imposes on measures we might take to assure our national security and homeland defense. If, for instance, foreign vessels operating on the high seas do not fit into one of three categories (i.e., they are engaged in piracy, flying no flag or transmitting radio broadcasts), LOST would prohibit U.S. Navy or Coast Guard vessels from intercepting, searching or seizing them.

As you know Mr. Chairman, such constraints would preclude President Bush's most important recent counterproliferation measure – the Proliferation Security Initiative (PSI). The same would be true, however, if the crew of the foreign ship was engaged not in the sort of activity the PSI is meant to

interrupt (namely, the covert transfer of weapons of mass destruction and/or related equipment), but in the shipment of heavy crude oil or other toxic materials that could cause an environmental disaster were the vessel to be blown up or scuttled in or near our waters.

Gaffney, Frank. "***Statement of Frank Gaffney, Jr.: Oversight Hearing to examine the "United Nations Convention on the Law of the Sea". (March 24, 2004)*** ." Testimony before the U.S. Senate Committee on Environment & Public Works, March 24, 2004. [**More** (3 quotes)]

UNCLOS impedes interdiction efforts in the EEZ of coastal states

“While UNCLOS does contain provisions that encourage cooperation to combat illicit activities at sea, it could also be argued that some of the Convention’s provisions actually hinder such efforts. For instance, UNCLOS impedes maritime interception operations (MIO) in the territorial sea, where the coastal state enjoys “sovereignty” (Article 2). This raises a practical, not a hypothetical, problem for maritime security. Tens of thousands of tons of diesel fuel were smuggled out of Iraq in violation of UN Security Council Resolutions (UNSCR) 661 (1990) and 665 (1990) through the Iranian territorial sea. Coalition forces were aware that the smuggling activities were ongoing, but were unable to intervene because the UNSCRs did not authorize entry into Iran’s territorial sea to enforce the sanctions.18 In the case of counter-piracy operations off the Horn of Africa, UNSCR 1816 (2008) authorizes coalition forces to “enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea . . . and use, within the territorial waters of Somalia . . . all necessary means to repress acts of piracy and armed robbery,” but it falls short of authorizing entry into any other nation’s territorial sea to repress piracy and armed rob- bery at sea. In fact, during negotiations for UNSCR 1816, Indonesia, China and other states made clear that the Resolution did not set a precedent for future counter-piracy operations in any other nation’s territorial seas. Moreover, UNCLOS Article 111 requires coalition forces to break off hot pursuit of a vessel engaged in piracy on the high seas when that vessel enters the territorial sea of its own state or of a third state.

[*Page 156-157*]

Pedrozo, Raul. "*Is it Time for the United States to Join the Law of the Sea Convention*." **Journal of Maritime Law and Commerce**. Vol. 41, No. 2 (April 2010): 151-166. [**More** (10 quotes)]

U.S. ratification of UNCLOS would complicate counter-piracy efforts

UNCLOS complicates anti-piracy efforts by allowing pirates to act within the EEZ of weak states

"Several factors make naval patrols the only true legal and practical option.[117] Only warships can seize pirates under UNCLOS,[118] and the IMO strongly cautions against arming merchant ship crews or carrying private security forces on-board because of the possibility for escalation of violence during pirate attacks.[119] Moreover, Somalia lacks the power to control its own maritime territory, and so international antipiracy efforts necessarily do the job for it. The UNCLOS provisions that protect coastal states' sovereignty would hamper antipiracy efforts. Since UNCLOS permits the establishment of a state's territorial sea at the waters within twelve nautical miles from the coastal low-water line,[120] and Somalia is a signatory of the treaty,[121] pirates operating in a vast area around Somalia's long coastline could theoretically harass and hijack ships with a manner of double impunity. States have thus gone to great lengths to address that obstacle. Yet safeguarding their ability to exercise jurisdiction in foreign territorial waters for enforcement purposes did not provide the broad and flexible adjudica- tive jurisdiction states today require.

[*Page 2301-2302*]

Kelley, Ryan P. "***UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime Piracy*** ." **Minnesota Law Review**. Vol. 95, No. 6 (June 1, 2011): 2285-2317. [**More** (4 quotes)]

Somalia had to waive UNCLOS sovereignty to allow international assistance against pirates

"The Somali Transitional Federal Government (TFG) and other semi-autonomous regions within Somalia are actively en- gaging with antipiracy efforts.122 Somalia went further than waiving its expulsion right under UNCLOS.123 It actively requested international assistance to combat unlawful acts in its waters and piracy,124 perhaps because it could not do so itself, but also because neither UNCLOS nor SUA would otherwise permit foreign navies to intervene in its waters.125 The Security Council subsequently passed a number of resolutions on the matter, which have authorized a robust use of military force.126 Notably, Resolution 1816 provides authorization for foreign states cooperating with the TFG to enter its territorial waters for the purpose of repressing piracy, provided the TFG notifies the Secretary General in advance of the agreement.127 Resolu- tion 1950 provides the most recent extension of that permission from the date of its adoption.128 Further, Resolution

1851 argu- ably extends that permission to land-based operations as well, which the French military has undertaken.129

[*Page 2302-2303*]

Kelley, Ryan P. "***UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime Piracy*** ." **Minnesota Law Review**. Vol. 95, No. 6 (June 1, 2011): 2285-2317. [**More** (4 quotes)]

U.S. adherence to UNCLOS would jeopardize maritime intelligence gathering operations

Under the convention, the United States assumes a number of obligations at odds with its military practices and national security interests, including a commitment not to collect intelligence. The U.S. would sign away its ability to collect intelligence vital for American security within the "territorial waters" of any other country (Article 19). Further- more, U.S. submarines would be required to travel on the surface and show their flags while sailing within territorial waters (Article 20).

UNCLOS would complicate intelligence operations by facilitating seizure of U.S. assets

"Nor is there much consolation in the prospect of appealing to ITLOS against the seizure of an American ship, since the most vulnerable American ships would be small craft, gathering intelligence near the coasts of unfriendly states. UNCLOS couples transit rights with provisions for national regulatory measures in coastal waters, including the right of the coastal state to prohibit intelligence gathering in these waters. Suppose an American ship were seized outside the territorial waters of a hostile state, on the claim that it had earlier traversed these waters for illicit purposes and then been pursued into "contiguous" waters—as UNCLOS allows, for a belt of water extending twelve nautical miles beyond the twelve mile reach of "territorial waters."[5] The United States being required to document for ITLOS exactly what its ship was doing in exactly which waters could very well compromise sensitive U.S. intelligence gathering operations.

[*Page 5*]

Rabkin, Jeremy. **The Law of the Sea Treaty: A Bad Deal for America** . Competitive Enterprise Institute: Washington, D.C., June 1, 2006 [**More** (12 quotes)]

Impossible for proponents of UNCLOS to have high confidence that UNCLOS won't restrict US intelligence operations

"*Assertion #3: U.S. participation in UNCLOS will not undermine intelligence operations.* Fact: It is impossible to confirm this assertion because the relevant intelligence activities are classified. It is clear, however, that U.S. participation in UNCLOS is unlikely to facilitate U.S. intelligence activities. For example, a coastal state may demand that all submarines entering its exclusive economic zone surface and identify themselves. Even if the U.S. were a party to the treaty, the Navy would not invoke UNCLOS to justify its presence in these waters when it engages in intelligence operations.

Instead, it would simply ignore the demand and avoid being caught. On this basis, it is unclear how the U.S. intelligence community would suffer by not joining the treaty.

[*Page 3*]

Edwin Meese, III, Baker Spring, and Brett D. Schaefer. "***The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits*** ." **Heritage Foundation WebMemo**. (May 16, 2007) [**More**]

U.S. participation in UNCLOS would undermine military and intelligence operations

"Under the convention, the United States assumes a number of obligations at odds with its military practices and national security interests, including a commitment not to collect intelligence. The U.S. would sign away its ability to collect intelligence vital for American security within the "territorial waters" of any other country (Article 19). Further- more, U.S. submarines would be required to travel on the surface and show their flags while sailing within territorial waters (Article 20). This would apply, for example, to U.S. submarines maneuvering in Iranian or North Korean territorial waters; they would be required to sail on the surface with their flags waving.

[*Page 2*]

Baker Spring, Steven Groves and Brett D. Schaefer. "***The Top Five Reasons Why Conservatives Should Oppose the U.N. Convention on the Law of the Sea*** ." **Heritage Foundation WebMemo**. (September 25, 2007) [**More**]

Article 19 or the "Pueblo clause" would devastate U.S. intelligence operations

"Most obviously, and possibly what President Reagan's advisors had in mind, coastal states' rights under UNCLOS include the so-called "Pueblo clause." It says that it is not "innocent passage" for any foreign ship in the twelve-mile territorial sea to perform "any act aimed at collecting information to the prejudice of the defense or security of the coastal state" (article 19.c). But American naval vessels underway routinely take soundings and keep their radio receivers turned on, and any coastal state can claim that receiving information about the approaches to a harbor or the configuration of a coast is prejudicial to its security. Although it is possible with some ingenuity to argue that the provision does not mean what it says, foreign states are not bound by the ingenuity of American lawyers. And other provisions of the same article, like the clause forbidding "research or survey activities" (article 19.j) also contain undefined terms that can be interpreted to end American naval rights of passage. Indeed, it is also forbidden to undertake "any other activity not having a direct bearing on passage" (article 19.1). I have never understood how the United States negotiators could accept this language.

Alfred P. Rubin. "***Monster from the Deep: Return of UNCLOS*** ." **The National Interest**. (September 1, 1994) [**More**]

Article 20 provisions will negative impact ability of military to use underwater drones

"Advocates of the treaty also argue that Law of the Sea Treaty merely maintains the status quo for submarines passing through territorial waters because the United States is already a party to the 1958 Convention on the Territorial Sea and the Contiguous Zone which, they contend, contains similar language.[11] U.S. submarines have traversed territorial waters while submerged over the past 48 years, they say, largely unaffected by the Territorial Sea Convention's surfacing requirement.

Where submarines are concerned, they appear to be correct.

But Article 20 also adds something completely new: The requirement that "other underwater vehicles" navigate on the surface.[12] The surfacing requirement would thus presumably apply to Autonomous Underwater Vehicles (AUVs) and Remotely Operated Underwater Vehicles (ROVs), among others (including, presumably, the next generation of such vessels) for the first time.

AUVs, unmanned underwater drones, and ROVs, underwater vehicles controlled by operators at the surface, have numerous military applications, including mine detection and neutralization, surveillance and inspection of underwater installations and topography, among others.[13]

Some of these activities are otherwise consistent with the Law of the Sea Treaty's definition of "innocent passage." An AUV or ROV used to detect mines to protect a ship exercising its right of innocent passage, for example, appears to meet the requirement that it engage only in activities with "direct bearing on passage." But because these vehicles must be submerged to be used effectively they would be considered "prejudicial to the peace, good order and security of the state" by doing so, even though advancing the peace, good order and security is precisely the purpose for which they would be used.

If the U.S. ratifies the Law of the Sea Treaty, the use of AUVs and ROVs for these and other purposes could be reduced.

David Ridenour. "***Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage*** ." **National Policy Analysis**. (August 1, 2006) [**More**]