



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@legis.state.ak.us

Memorandum

TO: Representative Bob Herron
FROM: Chuck Burnham, Susan Haymes, Susan Warner, Tim Spengler, and Roger Withington, Legislative Analysts
DATE: March 11, 2011
RE: United Nations Convention on the Laws of the Sea
LRS Report 11.220

You asked for information regarding the United Nations Convention on the Law of the Sea. Specifically, you asked us to confirm and provide supporting documentation to statements put forth in an updated draft Legislative Resolve concerning the Convention dated March 9, 2011.

We present each of the “Whereas” statements in the draft resolution you provide below. Our findings for each statement immediately follow.

1 WHEREAS the United Nations Convention on the Law of the Sea (UNCLOS) preserves freedom of navigation as a basic right of all countries;

Part VII, Article 87, of UNCLOS guarantees freedom of the high seas as follows:

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.¹

Free Navigation of the “territorial sea”—the sea area immediately adjacent to a state and extending up to 12 nautical miles seaward—is provided by Part II, Section III, Articles 17-18, under the concept of “innocent passage.” That concept means navigation for the purpose of traversing the sea without entering internal waters or calling at port; or proceeding to or from internal waters or a port facility. Such passage must be peaceful as defined in Article 19. Similarly, Part III, Section 3, Article 45, provides the right to innocent passage in straits used for international navigation, while Article 52 provides the same right for passage through archipelagic waters, and Article 58 does so for “exclusive economic zones,” which extend 200 nautical miles seaward.

¹ Full text of the Convention is available online at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

2 WHEREAS the United Nations Convention on the Law of the Sea permits member nations to claim an exclusive economic zone out to 200 nautical miles from shore, with an exclusive sovereign right to explore, manage, and develop all living and nonliving resources, including deep sea mining, within that exclusive economic zone;

Part V, Articles 56-57, delineate exclusive economic zones as follows:

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

Article 57

Breadth of the exclusive economic zone: The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

3 WHEREAS the United States Arctic Research Commission estimates that the United Nations Convention on the Law of the Sea would permit the United States to lay claim beyond the present 200-mile exclusive economic zone to an area of the Arctic Ocean seabed north of Alaska that is about the size of California;

In his May 6, 2010, testimony before the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Insular Affairs, Oceans, and Wildlife, John Farrell, Executive Director of the U.S. Arctic Research Commission (USARC), advocated for greater mapping of the Arctic Ocean. Describing the bases for his advocacy, Dr. Farrell made the following statement:

Should the U.S. accede to the United Nations Convention on the Law of the Sea, as recommended by the Commission and many others, estimates . . . suggest that the U.S. stands to gain sovereign rights over seafloor resources in the Arctic Ocean in an area at least the size of California.²

The basis for this claim appear to relate to the Convention's provisions related to the extension of a state's control over the continental shelf adjacent to and beyond its 200 nautical mile exclusive economic zone. Those provisions are in Part VI, Article 76, et seq., which read, in part, as follows:

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

² Dr. Farrell's full testimony can be accessed online at <http://www.arctic.gov/testimony/farrell-05-06-2010.pdf>.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
- (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.³

Where a state makes legitimate claim to its continental shelf extending beyond the 200 mile exclusive economic zone, Article 77 provides that “the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.” Further, Article 81 states that “[t]he coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.”

4 WHEREAS, by not joining the Convention, the United States is forfeiting sovereign rights to and international recognition of an expansion of United States resource jurisdiction by as much as 1,000,000 square kilometers of ocean, an area half the size of the Louisiana Purchase;

The U.S. Extended Continental Shelf Task Force—a multi-agency effort chaired by the U.S. Department of State—is currently working to identify the extended continental shelf (ECS) lying more than 200 nautical miles off the shores of the U.S. The Task Force’s preliminary estimate puts the entire U.S. ECS at over one-million square kilometers. In order to claim sovereignty over its ECS under Article 76 of the UNCLOS, the U.S. must collect and analyze data sufficient to prove its claims.

It is clear that should the U.S. not become a signatory to the Convention, a number of the rights, responsibilities, privileges, and protections therein will not be available. However, we found nothing in the document that delineates what the specific impact of not becoming a signatory would have on sovereignty rights on the ECS. In the UNCLOS preamble, the signatories affirm that “matters not regulated by this Convention continue to be governed by the rules and principles of general international law.” Indeed, among opponents to the U.S. becoming a signatory to the Convention, the impact of current international law is among the primary bases for their resistance. That is, opponents believe that international law already provides the U.S. with desirable sovereignty protections without subjecting the country to the extra-national judicial oversight and other controlling mechanisms in the Convention. A study of the matter prepared for the Council on Foreign Relations strongly disagrees with such claims by Convention opponents as follows:

³ To see a graphic illustration of the application of the measurement formulae discussed in this section, please see <http://www.state.gov/g/oes/continentalshelf/>.

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.⁴

The impact on U.S. national sovereignty of remaining outside the Convention does not appear to be a settled legal matter. On this point, you may wish to seek an opinion from Legal Services explaining the relationship between the Convention and international maritime law as relates to ECS issues.

5 *WHEREAS, with nearly one-third of all the world's hydrocarbons being produced off-shore, the United States would be unwise to ignore the need for access to extended oil and gas resources on the outer continental shelf;*

According to the experts with whom we communicated, it appears that the statement that “nearly one-third of all the world’s hydrocarbons [are] being produced off-shore,” is accurate. G. Allan Petzet, chief editor (explorations) at the Oil and Gas Journal, relates that, while he is not aware if precise published up-to-date figures exist, it is his understanding that around one-third of the world’s hydrocarbons are produced off-shore.⁵ Additionally, Alex Chakhmakhchev, senior manager, Global Support, IHS Inc., informs us that in 2009, 30 percent of the world’s hydrocarbons were produced off-shore.⁶ He believes the percentage is roughly the same in today’s market.

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)—an agency of the U.S. Department of the Interior—released a comprehensive inventory of outer continental shelf (OCS) resources in 2006 that indicated that significant oil and gas resources exist in the U.S. OCS.⁷ The study estimated that the quantity of undiscovered, technically recoverable, resources ranges from 66.6 to 115.3 billion barrels of oil and 326.4 to 565.9 trillion cubic feet of natural gas. The mean or average estimate is 85.9 billion barrels of oil and 419.9 trillion cubic feet of natural gas. Therefore, it may be argued that it could be “unwise” for the U.S. to ignore potential oil and gas resources in the OCS.⁸

6 *WHEREAS the United States Geological Survey estimates that the Arctic contains conventional oil and gas resources totaling approximately 90,000,000,000 barrels of oil, 1,669 trillion cubic feet of natural gas, and 44,000,000,000 barrels of natural gas liquids, amounting to more than one-fifth of the world's undiscovered, recoverable oil and natural gas resources;*

We found the information in the above “whereas” to be accurate. A 2008 United States Geological Survey (USGS) assessment found that 90 billion barrels of oil, 1,669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids may remain to be found in the Arctic. The USGS estimates that these resources account for about 22 percent (or slightly more than one-fifth) of the undiscovered, technically recoverable resources in the world.⁹

⁴ Scott G. Borgerson, Ph.D., “The National Interest and the Law of the Sea,” for the Council on Foreign Relations, Council Special Report No. 46, May 2009, p. 19. This publication is available online at <http://www.cfr.org/global-governance/national-interest-law-sea/p19156>. The Council on Foreign Relations describes itself as an independent, nonpartisan membership organization, think tank, and publisher. More information on the Council is available at <http://www.cfr.org/about/>.

⁵ G. Allan Petzet can be reached at (713) 963-6292. The Oil and Gas Journal provides international oil and gas news, analysis of issues and events, practical technology for design, operation and maintenance, and statistics on international markets and activity (<http://www.ogj.com/>).

⁶ Alex Chakhmakhchev can be reached at (303) 790-0600. The IHS is a leading source of information in the following areas: energy, economics, geopolitical risk, sustainability and supply chain management (<http://www.ihs.com/>).

⁷ The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), is the federal entity responsible for overseeing the safe and environmentally responsible development of energy and mineral resources on the outer continental shelf (<http://www.boemre.gov/>).

⁸ More information on the BOEMRE assessment is available at <http://www.boemre.gov/revaldiv/RedNatAssessment.htm>.

⁹ A USGS document on these finding can be accessed at <http://pubs.usgs.gov/fs/2008/3049/>.

7 WHEREAS American energy and deep-seabed companies are at a disadvantage in making investments in the outer continental shelf because of the legal uncertainty over the outer limit of the federal continental shelf; and

A wide majority of the opinions that we found in our review generally support the above “whereas.” For example, Gerald Leape, senior officer (international policy) with the Pew Charitable Trusts, related to us that the ratification of the Convention would benefit U.S. energy and deep-seabed companies.¹⁰ As an example, Mr. Leape, who specializes in international marine issues, relates that when disputes regarding OCS claims arise, countries that have ratified UNCLOS have a place “at the table” to work through the issues. Countries that have not ratified the treaty would not have an official voice in such a forum.

Additionally, Coast Guard Rear Admiral Christopher Colvin, commander of Coast Guard operations in Alaska, said recently in an interview that ratifying UNCLOS was imperative for the country.¹¹ He relates that there are valuable oil, gas, and mineral resources that the U.S. would have a legitimate claim to if the country signs on to the treaty. Admiral Colvin asserts that China is currently exploring areas north of the United States’ exclusive economic zone off Alaska that would otherwise be under sovereign control of the U.S. under terms of the Convention.

Further, according to Citizens for Global Solutions (CGS), joining UNCLOS will benefit American businesses.¹² The CGS affirms that UNCLOS would protect the claims of U.S. firms to resources and give us an opportunity to provide better management of the sensitive Arctic environment adjacent to U.S. boundaries. Under UNCLOS, Arctic states stand to gain tremendously by claiming mineral and oil extraction rights in the Arctic seabed in areas that extend beyond their respective exclusive economic zones. Additionally, joining the Convention, would give U.S. companies an opportunity to apply for licenses with the International Seabed Authority, which manages claims to resources in the deep seabed, an area over which no country has sovereign rights.

8 WHEREAS the United States, as a major maritime power and as the country with the largest exclusive economic zone and one of the largest continental shelves, stands to gain more from the Convention in terms of economic and resource rights than any other country;

Our review found the above “whereas” to be accurate. According to our review, the United States’ exclusive economic zone (EEZ) is the largest in the world, spanning over 13,000 miles of coastline and containing 3.4 million square nautical miles of ocean (a square nautical mile is equal to 1.3 square miles). According to preliminary studies, the extended continental shelf—again, that portion of the continental shelf beyond 200 nautical miles off shore—likely totals roughly one million square kilometers, or an area about twice the size of California, according to the U.S. Department of State.

Given the size of the U.S. continental shelf, the potential resources may be worth billions if not trillions of dollars, according to a U.S. Department of State article “Defining the Limits of the U.S. Continental Shelf.”¹³ Mr. Leape of the Pew Charitable Trusts affirms that it is quite likely that the U.S. has more to gain than any other country from the treaty. He cautions, however, that what resources actually exist in the unexplored depths is uncertain.

9 WHEREAS other Arctic nations have been asserting their sovereignty in the Arctic and making extended continental shelf claims under the United Nations Convention on the Law of the Sea;

Receding sea ice in the Arctic has heightened territorial claims in the area. In 2007, Russian divers planted their nation’s flag on the seabed below the North Pole. The Russian Federation claims that the underwater Lomonosov Ridge is a natural

¹⁰ Gerald Leape can be reached at (202) 552-2000. The Pew Charitable Trusts strives to improve public policy, inform the public, and stimulate civic life (<http://www.pewtrusts.org/>).

¹¹ Rear Admiral Colvin can be reached at (907) 463-2065.

¹² Citizens for Global Solutions is a non-partisan membership organization that envisions a “future in which nations work together to abolish war, protect our rights and freedoms and solve the problems facing humanity that no nation can solve alone.” More information on Citizens for Global Solutions’ stance on UNCLOS can be accessed at <http://globalsolutions.org/law-justice/law-sea-treaty>.

¹³ “Defining the Limits of the U.S. Continental Shelf,” can be accessed at <http://www.state.gov/g/oes/continentalshelf/index.htm>.

extension of Siberia's continental shelf and, therefore, the nation owns the rights to that vast tract of Arctic seafloor.¹⁴ Denmark responded to Russia's pronouncement with a claim that the 1,200-mile ridge is an extension of Greenland, a Danish possession.¹⁵ Canada's prime minister has vowed to defend "Canada's sovereignty" in the Arctic. While the U.S. considers the Northwest Passage an international strait, Canada asserts that it has sole jurisdiction over the increasingly ice-free waterway.¹⁶

10 WHEREAS the United States, with 1,000 miles of Arctic coast off of the State of Alaska, remains the only Arctic nation that has not ratified the United Nations Convention on the Law of the Sea;

According to the United Nations, 161 nation-states have ratified the United Nations Convention on the Law of the Sea.¹⁷ Except for the United States, every Arctic nation—Canada, Denmark (Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, and Sweden—are parties to the treaty.¹⁸

11 WHEREAS, until the United States ratifies the United Nations Convention on the Law of the Sea, the United States will not become a full partner in cooperative efforts of Arctic nations to address the manifold problems of the region;

If the United States does not ratify the UNCLOS, it is still highly likely that the United States will continue to partner in various ways with other nations in addressing issues surrounding the Arctic region. According to U.S. Senator Richard Lugar, however, many critical Arctic policy decisions will be made without the input of the U.S. if we do not accede to UNCLOS. Unlike some treaties, such as the Kyoto Agreement, which is inoperable in a practical sense without ratification by the United States, UNCLOS participants will make decisions regardless of whether the U.S. is a party. Senator Lugar maintains that nonparticipation will put the U.S. in a position of "self-imposed weakness," forcing our nation to rely on others to advocate for our interests.¹⁹

Additionally, the Council on Foreign Relations reports that without accession, the U.S. will give up "a seat at the table" in the important decision-making bodies established by the convention, including the economically critical Commission on the Limits of the Continental Shelf and the International Seabed Authority. The Council also warns that the U.S. could damage efforts to develop cooperative maritime partnerships, such as the Proliferation Security Initiative (PSI), a U.S.-led multilateral effort to interdict shipments of weapons of mass destruction.²⁰

12 WHEREAS, until the United States ratifies the United Nations Convention on the Law of the Sea, the United States cannot participate in deliberations to amend provisions of the Convention that relate to the

- (1) oil, gas, and mineral resources in the Arctic Ocean and other northern waters;**
- (2) conduct of essential scientific research in the world's oceans;**
- (3) right of the United States to the use of the seas;**
- (4) rules of navigation;**

¹⁴ Fred Weir, "Russian's Putin Says he Wants Peaceful Division of Arctic," *Christian Science Monitor*, September 23, 2010. This article can be viewed at <http://www.csmonitor.com/World/Europe/2010/0923/Russia-s-Putin-says-he-wants-peaceful-division-of-Arctic>.

¹⁵ Adrian Blomfield, "Canada and Denmark Join Rush to Claim Arctic," *The Telegraph*, August 11, 2007. This article can be read at <http://www.telegraph.co.uk/news/worldnews/1560028/Canada-and-Denmark-join-rush-to-claim-Arctic.html>.

¹⁶ John Ibbitson, "Who Owns the Arctic?" *The Globe and Mail*, January 27, 2011. This article can be viewed at <http://byers.typepad.com/arctic/2011/01/dispute-over-hans-island-nears-resolution-now-for-the-beaufort-sea.html>.

¹⁷ The United Nations prepared a table that shows the status of each nation with regard to Law of the Sea participation, http://www.un.org/Depts/los/reference_files/status2010.pdf.

¹⁸ The Arctic Council, an intergovernmental forum that provides a means for promoting cooperation, coordination and interaction among the Arctic States, defines the Arctic nations as Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden, and the United States of America. (<http://arctic-council.org>)

¹⁹ Senator Richard Lugar, Opening Statement for the Hearing on the UN Convention on the Law of the Sea, U.S. Senate Committee on Foreign Relations, October 4, 2007, <http://lugar.senate.gov/news/record.cfm?id=284885&&>.

²⁰ Borgerson, "The National Interest and the Law of the Sea," pp. 19 and 26.

(5) effect of the use of the seas on world economic development; and
(6) environmental concerns related to the use of the seas;

In 1973, the United States participated in the Third United Nations Conference on the Law of the Sea with the objective of dealing with the issues listed above. The U.S. wanted to preserve its freedoms of navigation, diminish threats to fisheries and marine mammals, protect the marine environment, preserve the freedom of scientific research, ensure access to the mineral resources of the deep seabed to U.S. companies, and create a strong, viable organization to arrest the growing claims by northern nations to the Arctic seafloor.²¹

The 1973 UNCLOS agreement addressed these U.S. objectives, and additional U.S. concerns were attended to in a subsequent agreement in 1994; however, according to Scott Borgerson of the Council on Foreign Relations, failure to take the next step through accession will severely weaken the U.S. role in advocating its position on these issues and will undercut its ability to respond to emerging challenges. Mr. Borgerson continues:

Immediate U.S. accession to the treaty is imperative to advance critical U.S. national interests. These stakes can be grouped into three general “baskets”: national security, economic, and environmental. Each day the convention is in force—and each day its various organs make ocean policy and set legal precedent—the United States is in effect marginalizing itself. It is also placing itself at a disadvantage by being unable to mobilize the convention to advance its interests through new initiatives or by means of the credibility that accompanies being a state party.²²

13 WHEREAS the United States continues to reject a carefully negotiated accord that enjoys overwhelming international consensus, one that has been adjusted specifically to meet the demands set out by President Ronald Reagan two decades ago;

The assertion that the UNCLOS is a “carefully negotiated accord” appears to be accurate. According to a Congressional Research Service Issue Brief entitled, *The Law of the Sea Convention and U.S. Policy*, the treaty “resulted from the third U.N. Conference on the Law of the Sea, which met for a total of 93 weeks between December 1973 and December 1982.”²³

The claim that the UNCLOS “enjoys overwhelming international consensus” appears to be accurate. Currently, 161 nations have ratified the treaty while 32 have not.²⁴

The assertion that the UNCLOS was “adjusted specifically to meet the demands put forth by President Reagan” appears to be accurate. On March 10 1983, after months of consideration of the implications of the adoption of the Law of the Sea Conference, and after 119 other nations adopted the Convention on the Law of the Sea, President Ronald Reagan issued his statement on U.S. Oceans policy. In this statement he noted that the U.S. would not join the Convention because of unacceptable provisions related to deep seabed resources beyond national jurisdictions. He also noted, however, that the balance of the Convention was in the interest of, and be observed by, the United States.²⁵

Scott G. Borgerson, in “The National Interest and the Law of the Sea,” notes that:

In the end, the Reagan administration declared it could accept Part XI of the Convention only if certain changes were made in six areas relating to matters like technology transfer, and if the United States “preserved a de facto veto power in the governing organs of the new authority so that no financial obligations could be imposed on the United States without its consent.” When these changes were not made by 1982, the Reagan administration refused to sign the convention.

²¹ Borgerson, “The National Interest and the Law of the Sea,” p. 9.

²² Borgerson, “The National Interest and the Law of the Sea,” p. 22.

²³ Marjorie Ann Browne, *The Law of the Sea Convention and U.S. Policy*, Congressional Research Issue Brief, February 10, 2005, <http://www.fas.org/sfp/crs/row/IB95010.pdf>.

²⁴ The status of nations with respect to the Convention can be reviewed at http://www.un.org/Depts/los/reference_files/status2010.pdf.

²⁵ One source for President Reagan’s statement is OceanLaw.org, <http://www.oceanlaw.org/index.php>.

Eventually, all six of the Reagan administration's objections were amended to the satisfaction of the United States in a subsequent supplemental agreement that was negotiated and signed by most countries, including the United States, in 1994.²⁶

We note that the text for this "whereas" statement appears to have been extracted from page 38 of Mr. Borgerson's report.

14 WHEREAS the United Nations Convention on the Law of the Sea will have sizable beneficial effects on virtually all states, both coastal and noncoastal, because the United States is heavily dependent on the use, development, and conservation of the world's oceans and their resources;

The statement appears to be accurate. In "The National Interest and the Law of the Sea," Mr. Borgerson spends a great deal of time discussing national interest in the UNCLOS.²⁷ He notes that:

The oceans are marine highways, carrying 90 percent of U.S. imports and exports, and most of the world's oil passes through shipping choke points such as the Suez Canal and the Straits of Malacca.

He further notes that:

...acceding to the convention would advance a long list of national security, economic, and environmental issues of strategic importance to the United States. Beyond establishing the rules for territorial seas and exclusive economic zones, the convention establishes regimes for managing shipping fleets, fish, and pollutants that do not abide by national boundaries. The Law of the Sea Convention includes specific provisions guaranteeing freedom of navigation for merchant fleets and navies, and sets firm limits on jurisdiction to prevent "creeping sovereignty" by a few aggressive coastal states [nations] eager to unilaterally extend their authority seaward.

15 WHEREAS 161 nations have ratified the United Nations Convention on the Law of the Sea, including almost all of the world's maritime powers; and

According to the United Nations, 161 countries have ratified the United Nations Convention on the Law of the Sea.²⁸ It is difficult to unequivocally confirm the second portion of the statement as we are unsure of precise definitions of a "maritime power". However, based on our review of the list of the 32 nations that have not ratified the Convention, many of which are landlocked, we consider this statement to be accurate.

16 WHEREAS ratification of the United Nations Convention on the Law of the Sea has been pending before the United States Senate since 1994, and seven hearings on the treaty were held by the United States Senate Committee on Foreign Relations in 2003, 2004, and 2007;

Mr. Borgerson, in his report for the Council on Foreign Relations, notes that:

On July 29, 1994, President Bill Clinton signed the Agreement on the Implementation of Part XI of the Convention on the Law of the Sea. He sent the agreement, along with the 1982 convention, to the Senate on October 7, 1994. The following month, Republicans won control of the Senate, and in January 1995, Senator Jesse Helms (R-NC) became chairman of the Senate Foreign Relations Committee. Worried that the convention had not been fixed and that it sacrificed U.S. sovereignty, Senator Helms refused to hold committee hearings.²⁹

²⁶ Borgerson, "The National Interest and the Law of the Sea," p. 11.

²⁷ Borgerson, "The National Interest and the Law of the Sea," pp. 14 and 20.

²⁸ http://www.un.org/Depts/los/reference_files/status2010.pdf. We note that Israel, long considered to be an ally of the United States, also has not ratified the UNCLOS.

²⁹ Borgerson, "The National Interest and the Law of the Sea," p. 12.

Based on this summary it appears that the Convention on the Law of the Sea has been placed before the U.S. Senate Committee on Foreign Relations since 1994 although no hearings on the issue appear to have occurred until 2003.

We identified seven meetings of the U.S. Senate Committee on Foreign Relations that had the U.N. Convention on the Law of the Sea on the agenda. The dates are: October 14 and 21, 2003; February 24-25, 2004; September 27, 2007; and October 4 and 31, 2007.³⁰

17 WHEREAS, despite favorable reports by the United States Senate Committee on Foreign Relations regarding the United Nations Convention on the Law of the Sea in 2004 and 2007, the United States Senate has yet to vote on the ratification of the Convention;

On February 25, 2004, the Senate Foreign Relations Committee voted 19-0 to approve the UNCLOS, sending it to the full Senate for ratification. Subsequently, on October 31, 2007, the Senate Foreign Relations Committee voted 17-4 to approve the treaty. However, the treaty was not brought to the Senate floor for a vote on either occasion, thus the full Senate has never voted on UNCLOS.³¹

18 WHEREAS all six of the United States military leaders making up the Joint Chiefs of Staff support Senate ratification of the United Nations Convention on the Law of the Sea;

A June 26, 2007, letter to Senator Joseph Biden, Chairman of the Senate Foreign Relations Committee, signed by all six members of the Joint Chiefs of Staff supported ratification of the treaty as follows.³²

As the world's preeminent maritime power, leader in the War on Terrorism, and Nation with the largest exclusive economic zone, the United States should accede to the Law of the Sea Convention during this session of Congress. No country has a greater interest in public order for the world's oceans. Becoming a party to the Convention will ensure our leadership role in the continuing development of oceans laws and policies.

On September 27, 2007, testifying before the Senate Foreign Relations Committee, Deputy Secretary of Defense Gordon England reiterated the Joint Chiefs of Staff support as follows:³³

As Deputy Secretary of Defense, and a prior Deputy Secretary of Homeland Security and prior Secretary of the Navy, I am well acquainted with the Law of the Sea Convention. The legal framework that the Convention establishes is essential to the mission of the Department of Defense, and the Department of Homeland Security concurs that it is also essential for their mission. For that reason, Secretary Gates, the Joint Chiefs of Staff, the Military Department Secretaries, all of the Combatant Commanders, and the Commandant of the Coast Guard join me in asking the Senate to give its swift approval for U.S. Accession to the Law of the Sea Convention and ratification of the 1994 Agreement.

19 WHEREAS ratification of the United Nations Convention on the Law of the Sea has wide bipartisan support;

The Clinton, Bush, and Obama administrations have all asked for ratification of the Convention. In 2007, it was one of only five international agreements that the Bush Administration placed in its "urgent" category of treaty priorities submitted to the Foreign Relations Committee. Current and former representatives from the Department of State, the Office of the Secretary

³⁰ http://foreign.senate.gov/search/?q=law+of+the+sea+as_sitesearch=http%3A%2F%2Fforeign.senate.gov%2Fhearings&x=22&y=17.

³¹ Senate Executive Report 108-10, March 11, 2004, 108th Congress and Senate Executive Report 110-9, December 19, 2007, 110th Congress can be accessed at <http://www.virginia.edu/colp/los.html>. Scott Borgerson, Council on Foreign Relations, pp. 12-13, further discusses Senate action on the treaty. We note that under Senate rules, treaties must be reconsidered by the Senate Foreign Relations Committee in each new Congress. Because the full Senate did not take action on UNCLOS before the end of the Congressional term in 2008, the treaty is still before the Senate Foreign Relations Committee.

³² The entire letter can be accessed at <http://www.virginia.edu/colp/pdf/Biden-Letter-JointChiefs.pdf>.

³³ Deputy Secretary England's full testimony can be accessed at <http://foreign.senate.gov/imo/media/doc/EnglandTestimony070927.pdf>.

of Defense, the U.S. Navy, the U.S. Coast Guard, and the Commerce Department have testified in support of the Convention at various Congressional hearings. Representatives from six Bush Administration Cabinet departments participated in the interagency group that helped write the resolution of advice and consent accompanying the treaty and the U.S. Commission on Ocean Policy, appointed by President Bush, strongly endorsed U.S. accession to the Law of the Sea.

On May 19, 2007, President George W. Bush urged the Senate to approve the Convention during the then-current session of Congress, stating as follows:³⁴

Joining [the Convention] will serve the national security interests of the United States, including the maritime mobility of our armed forces worldwide. It will secure U.S. sovereign rights over extensive marine areas, including the valuable natural resources they contain. Accession [to the Convention] will promote U.S. interests in the environmental health of the oceans. And it will give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted.

In an October 16, 2009 letter to the U.S. Senate Foreign Relations Committee, Secretary of State Hillary Clinton offered strong support for U.S. accession to the Convention, noting that as the country with the largest Exclusive Economic Zone, and one of the largest continental shelves, the United States stands more to gain from the treaty in terms of economic and resource rights than any other country. Likewise, the Department of Defense 2010 Quadrennial Defense Review “strongly supports accession” to the UNCLOS for national security reasons, as well as economic and environmental benefits.³⁵

A September 24, 2007, letter to Senators Harry Reid and Mitch McConnell requesting the Senate approve U.S. accession to the treaty was signed by 101 individuals representing former and current government and military officials, environmental and conservation groups, and major industry groups. The signers included such persons as retired Admiral James D. Watkins, former Secretary of State Madeline Albright, co-founder of the Natural Resources Defense Council, John Adams, president and CEO of the American Petroleum Institute, Red Cavaney, Walter Cronkite, former Secretary of the Interior Bruce Babbitt, former Secretary of State, Alexander Haig, Jr., and former Alaska Governor Tony Knowles. In addition, former Alaska Governor Sarah Palin also supported ratification of the treaty.³⁶

20 WHEREAS, in 2009, the Twenty-Sixth Alaska State Legislature passed a similar resolution to this one;

In 2009, the Alaska Legislature approved HJR 22 (Legislative Resolve 14), which urged the United States Senate to ratify the Law of the Sea Treaty. The House voted 34 to 4 and the Senate 15 to 2 to issue the resolution.³⁷ An identical measure was considered in 2008 (HJR 39), but died in the House Rules Committee.

We hope this is helpful. If you have questions or need additional information, please let us know.

³⁴ Senate Executive Report, 110-9, December 19, 2007, 110th Congress.

³⁵ “Quadrennial Defense Review Report,” Department of Defense, February 2010, p. 26. The report can be accessed at http://www.defense.gov/qdr/images/QDR_as_of_12Feb10_1000.pdf.

³⁶ Numerous letters and testimony from individuals supporting the treaty can be accessed at the Center for Oceans Law and Policy at <http://www.virginia.edu/colp/los.html>. Scott Borgerson, Council on Foreign Relations, notes that the Law of the Sea might be the only issue on which all of these individuals and constituencies agree.

³⁷ Legislative Resolve 14 (2009) can be accessed at <http://www.legis.state.ak.us/PDF/26/Bills/HJR022Z.PDF>. The text and legislative history for HJR 39 (2008) is available at http://www.legis.state.ak.us/basis/get_bill.asp?bill=HJR%2039&session=25.