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ALASKA STATE LEGISLATURE
House District 35

Sponsor Statement
HJR 22

HJR 22 urges the U.S. Senate to ratify the United Nations Convention on the Law of the Sea ("Law of the Sea treaty"). This resolution will help Alaska's Senate delegation bring the Law of the Sea treaty to the Senate floor for a vote on ratification. Ratification of this treaty is important to protect U.S. interests concerning the use and development of the high seas off Alaska.

The Law of the Sea treaty governs many aspects of oceans, such as mapping, state area control, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters.

150 countries are signatories to the treaty, including all of the arctic nations with the exception of the United States.

According to the office of U.S. Senator Lisa Murkowski, a resolution from the Alaska State Legislature would be helpful as she works this late spring or early summer to get a ratification vote to the Senate Floor. U.S. participation in the Law of the Sea Treaty was approved in 1994 by President Clinton after work was done on portions of the treaty to address concerns raised by President Reagan. The Bush Administration actively supported Senate ratification of the treaty. Among other entities on the record supporting ratification are the United States Coast Guard, the Department of the Navy, Governor Sarah Palin, The State Department, the Joint Chiefs of Staff, AT&T, The American Petroleum Institute, The International Association of Drilling Contractors, and the National Oceans Industries Association.

The U.S. is now the only arctic nation that is not a signatory to the treaty. Under the treaty, member nations can claim an exclusive economic zone (EEZ) to 200 miles, with sovereign rights to explore, develop, and manage the resources within that zone. A claim can extend beyond the 200 mile limit if a connection can be proven that the nation's continental shelf extends beyond 200 miles. It is estimated that the northern seabed off Alaska and beyond the 200 mile limit could be as large as the state of California.

Key features of the Law of the Sea treaty include the following:

- Coastal States exercise sovereignty over their territorial sea which may not exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
- Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;
- Coastal States have sovereign rights in the 200-nautical mile EEZ with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
- All other States have freedom of navigation and over flight in the EEZ, as well as freedom to lay submarine cables and pipelines;
- All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas; they are obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources;
- States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution;
- All marine scientific research in the EEZ and on the continental shelf is subject to the consent of the coastal State, but in most cases they are obliged to grant consent to other States when the research is to be conducted for peaceful purposes and fulfils specified criteria;
- States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention;
- Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Arbitration is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

The State of Alaska has much to gain from controlling development in the waters adjacent to our 200 mile EEZ and much to lose if we are the only arctic nation not to extend our ocean boundaries.

HOUSE JOINT RESOLUTION NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SEATON, Gruenberg, Lynn, Dahlstrom, Wilson

Introduced: 3/2/09
Referred: State Affairs

A RESOLUTION

Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea (the Law of the Sea Treaty).

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS, in August 2007, Russia sent two small submarines into the Arctic Ocean to plant that nation's flag under the North Pole to support its territorial claim that its continental shelf extends to the North Pole; and

WHEREAS Denmark is exploring whether a mountain range under the Arctic Ocean is connected to Greenland, a territory of Denmark; and

WHEREAS Canada is considering the establishment of military bases to protect its claim to the Northwest Passage; and

WHEREAS the actions taken by Russia, Denmark, and Canada have been exercised under the United Nations Convention on the Law of the Sea; and

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; and

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 northern seabed off Alaska that is equal in size to California; and

WHEREAS 155 nations have ratified the United Nations Convention on the Law of the Sea, including all allies of the United States and the world's maritime powers; and

WHEREAS ratification of the current form of the United Nations Convention on the Law of the Sea has been pending before the United States Senate since 1994, and hearings on the treaty were held by the United States Senate Committee on Foreign Relations in 1994, 2003, and 2004, and on September 27, 2007, and October 4, 2007; and

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; and

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; and

WHEREAS, until the United States Senate votes to ratify the United Nations Convention on the Law of the Sea, the United States may not have the authority to promote its claims to an extended area of the continental shelf, refute the claim of authority by other nations to exercise greater control over the Arctic, or take a permanent seat on the International Seabed Authority Council; and

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;

(5) effect of the use of the seas on world economic development; and

(6) environmental concerns related to the use of the seas; and

WHEREAS the United Nations Convention on the Law of the Sea will have an important and beneficial effect 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; and

WHEREAS the United Nations Convention on the Law of the Sea will not interfere with the intelligence-gathering efforts of the United States or the navigational freedom of the United States Navy; and

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

BE IT RESOLVED that the Alaska State Legislature urges the United States Senate to ratify the United Nations Convention on the Law of the Sea.

COPIES of this resolution shall be sent to the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable John F. Kerry, Chair of the U.S. Senate Committee on Foreign Relations; the Honorable Richard G. Lugar, ranking Republican on the U.S. Senate Committee on Foreign Relations; the Honorable Lisa Murkowski, and the Honorable Mark Begich, U.S. Senators, members of the Alaska delegation in Congress; and all other members of the United States Senate.

Subject: FW: Law of the Sea

From: Fuglvog, Arne (Murkowski) [mailto:Arne_Fuglvog@murkowski.senate.gov]
Sent: Thursday, March 19, 2009 7:33 AM
To: Louie Flora
Subject: RE: Law of the Sea

Members of the House State Affairs Committee,

I am writing in support of HJR 22, A resolution urging the United States Senate to ratify the United Nations Convention on the Law of the Sea. This resolution will be helpful to Senator Lisa Murkowski and Senator Mark Begich as they work to bring the Treaty to the floor for Senate consideration.

I recognize there are still some concerns that remain, in regards to the Treaty and I ask that the committee members thoroughly research the facts. I believe you will find that the concerns about detrimental affects to the United States are unfounded.

I believe that the strong support from members of all branches of the United States military, including national intelligence; former Secretaries of State; former Joint Chiefs of Staff; the oil and gas industry, shipping companies, telecommunication, offshore mining interests, commercial and recreational fishing groups, and environmental organizations is a testament to the benefits that ratifying the Convention offers the United States, including enhancing our nation's economic security. Otherwise, you simply would not have support from such a diverse and broad group of interests.

I encourage you to support HJR 22 in your committee and by the Legislature of the State of Alaska.

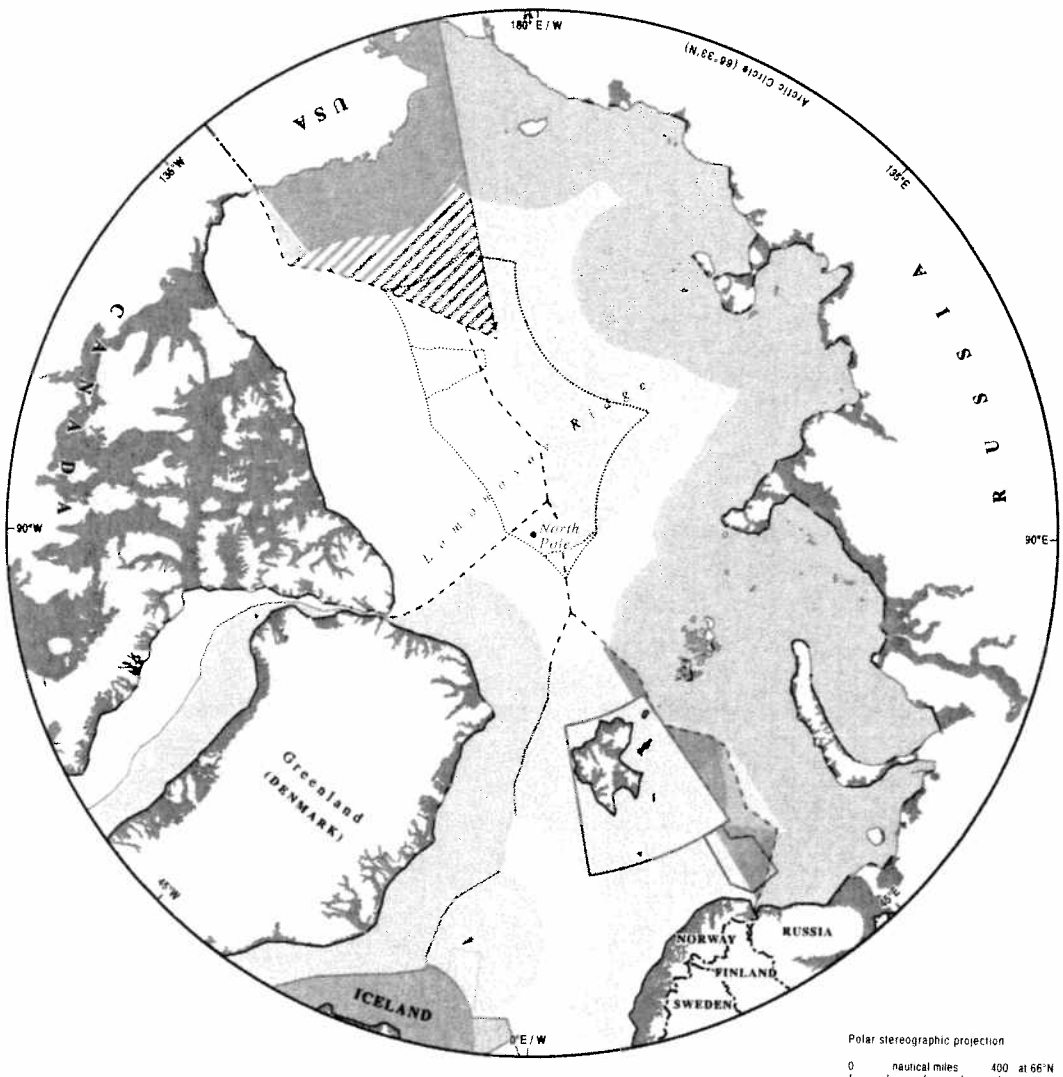
Sincerely,

Arne Fuglvog
Legislative Assistant for Natural Resources
Senator Lisa Murkowski

IBRU
International Boundaries

Durham University

Maritime jurisdiction and boundaries in the Arctic region



- Internal waters
- Canada territorial sea and EEZ
- Potential Canada continental shelf beyond 200 nm
- Denmark territorial sea and EEZ
- Denmark claimed continental shelf beyond 200 nm
- Potential Denmark continental shelf beyond 200 nm)
- Iceland EEZ
- Iceland claimed continental shelf beyond 200 nm
- Norway territorial sea and EEZ / Fishery zone Jan Mayen) / Fishery protection zone (Svalbard)
- Norway claimed continental shelf beyond 200 nm
- Russia territorial sea and EEZ
- Russia claimed continental shelf beyond 200 nm
- Overlapping Norway / Russia EEZ
- Overlapping Norway EEZ / Russia claimed continental shelf beyond 200 nm
- Overlapping Norway / Russia claimed continental shelf beyond 200 nm
- USA territorial sea and EEZ
- Potential USA continental shelf beyond 200 nm
- Overlapping Canada / USA EEZ
- Straight baselines
- Agreed boundary
- Median line
- 350 nm from baselines
- 100 nm from 2500 m isobath (beyond 350 nm from baselines)
- Svalbard treaty area
- Iceland - Norway joint zone
- Norway - Russia 'Grey Area' (agreed fishing regime)
- Canada EEZ boundary claim
- Eastern Special Area

Notes

1. The depicted potential areas of continental shelf beyond 200 nautical miles (nm) for Canada, Denmark and the USA are theoretical maximum claims assuming that none of the states claims continental shelf beyond median lines with neighbouring states where maritime boundaries have not been agreed. **In reality, the claimable areas may fall well short of the theoretical maximums** (see the summary of the definition of the outer limit of the continental shelf below). It is also possible that one or more states will claim areas beyond the median lines.

   Where the continental margin of a coastal state extends beyond 200 nm from the state's territorial sea baseline, the outer limit of the continental shelf is defined with reference to two sets of points: (i) points 60 nm from the foot of the continental slope; (ii) points at which the thickness of sedimentary rocks is at least 1% of the shortest distance from the points in question to the foot of the continental slope. The outer limit of the continental shelf is defined by a series of straight lines (not exceeding 60 nm in length) connecting the seawardmost of the points in the two sets described above. This map does not attempt to depict such lines, which can only be identified with precision through bathymetric and seismic surveys. However, it is possible to depict the 'cut-off' limit beyond which states may not exercise continental shelf jurisdiction regardless of the location of the foot of the continental slope and the thickness of sediment seaward of that point. The cut-off limit is the seawardmost combination of two lines: (i) a line 350 nm from the state's territorial sea baseline; (ii) a line 100 nm seaward of the 2,500 metre isobath. Both the 350 nm line and (where it runs seaward of the 350 nm line) the 2,500 m + 100 nm lines are depicted on the map. The 2,500 m + 100 nm line is derived from the US National Geophysical Data Center's etopo2 bathymetry dataset.

2. The depicted claims of Denmark and Iceland to continental shelf beyond 200 nm in the northeast Atlantic Ocean are defined in the "Agreed Minutes on the Delimitation of the Continental Shelf beyond 200 Nautical Miles between the Faroe Islands, Iceland and Norway in the Southern Part of the Banana Hole of the Northeast Atlantic" of 20 September 2006. The agreed division of the continental shelf in this area is subject to confirmation by the Commission on the Limits of the Continental Shelf (CLCS) that there is a continuous continental shelf in the area covered by the agreement. Neither Denmark nor Iceland has yet made a submission to the CLCS.

3. An executive summary of Norway's submission to the CLCS of 27 November 2006 is available at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_exec_sum.pdf. The Commission has yet to respond to Norway's submission.

4. Maps and coordinates defining the area covered by Russia's submission to the CLCS of 20 December 2001 are available at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm. The Commission asked Russia to revise its submission relating to its continental shelf in the Arctic Ocean.

5. Norway and the Soviet Union agreed a partial maritime boundary in Varangerfjord in 1957 but disagree on the alignment of their maritime boundary in the Barents Sea: Norway claims the boundary should follow the median line, while Russia seeks a 'sector' boundary extending due north (but deviating around the 1920 Svalbard Treaty area). As the Barents Sea is an important fishery for both states, in January 1978 the two governments agreed on a fishing regime in the so-called "Grey Zone", a 19,475 nm² area covering 12,070 nm² of overlapping EEZ claims, 6,588 nm² of undisputed Norwegian EEZ and 817 nm² of undisputed Russian EEZ. Within the Grey Zone Norway and Russia have jurisdiction over their own fishing vessels.

6. Canada argues that the maritime boundary in the Beaufort Sea was delimited in the 1825 treaty between Great Britain and Russia defining the boundary between Alaska and the Yukon as following the 141° W meridian "as far as the frozen ocean". The USA argues that no maritime boundary has yet been defined and that the boundary should follow the median line between the two coastlines. The area of overlap between the two claims is more than 7,000 nm².

7. Under a treaty signed in February 1920, Norway has sovereignty over the Svalbard archipelago and all islands between latitudes 74° and 81° north and longitudes 10° and 35° east. However, citizens and companies from all treaty nations enjoy the same right of access to and residence in Svalbard. Right to fish, hunt or undertake any kind of maritime, industrial, mining or trade activity are granted to them all on equal terms. All activity is subject to the legislation adopted by Norwegian authorities, but there may be no preferential treatment on the basis of nationality. Norway is required to protect Svalbard's natural environment and to ensure that no fortresses or naval bases are established. 39 countries are currently registered as parties to the Svalbard treaty.

8. The Eastern Special Area lies more than 200 nm from the baseline of the USA but less than 200 nm from the baseline of Russia. Under the June 1990 boundary agreement between the two states, the Soviet Union agreed that the USA should exercise EEZ jurisdiction within this area. A second Eastern Special Area and a Western Special Area (in which the opposite arrangement applies) were established adjacent to the boundary south of 60° north. The agreement has yet to be ratified by the Russian parliament but its provisions have been applied since 1990 through an exchange of diplomatic notes.

Agreed maritime boundaries

Canada-Denmark (Greenland): continental shelf boundary agreed 17 December 1973.

Denmark (Greenland)-Iceland: continental shelf and fisheries boundary agreed 11 November 1997.

Denmark (Greenland)-Norway (Jan Mayen): continental shelf and fisheries boundary agreed 18 December 1995 following adjudication by the International Court of Justice.

Denmark (Greenland)-Iceland-Norway (Jan Mayen) tripoint agreed 11 November 1997.

Denmark (Greenland)-Norway (Svalbard): continental shelf and fisheries boundary agreed 20 February 2006.

Iceland-Norway (Jan Mayen): fisheries boundary following the 200 nm limit of Iceland's EEZ agreed 28 May 1980; continental shelf joint zone agreed 22 October 1981 following the report of the Conciliation Commission.

Russia-USA: single maritime boundary agreed 1 June 1990 (see also note 8).

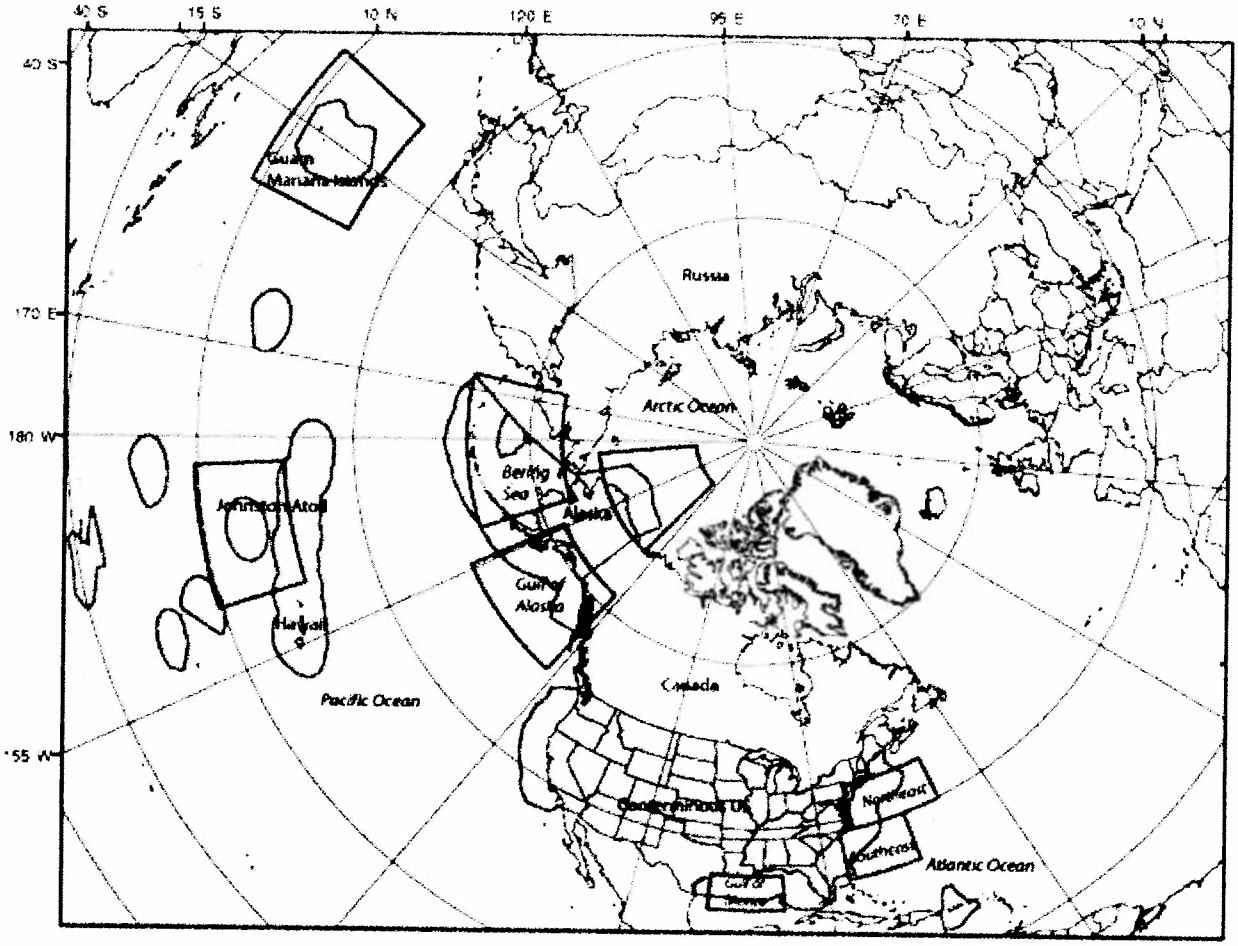


Figure 2: Eight regions (in red) adjacent to the United States and its dependences, where there likely exists extended continental shelf (ECS) beyond 200 nautical miles (in blue) identified by Mayer et al.(2002), The compilation and analysis of data relevant to a U.S. Claim under the United Nations Law of the Sea Article 76: A Preliminary Report. The regions presented in this figure are the result of an academic study, do not represent a formal position of the United States, and are without prejudice to any rights that the United States has with respect to its continental shelf.

US Department of State
Extended Continental Shelf Project

Arctic Meltdown

The Economic and Security Implications of Global Warming

Scott G. Borgerson

THE ARCTIC OCEAN is melting, and it is melting fast. This past summer, the area covered by sea ice shrank by more than one million square miles, reducing the Arctic icecap to only half the size it was 50 years ago. For the first time, the Northwest Passage—a fabled sea route to Asia that European explorers sought in vain for centuries—opened for shipping. Even if the international community manages to slow the pace of climate change immediately and dramatically, a certain amount of warming is irreversible. It is no longer a matter of if, but when, the Arctic Ocean will open to regular marine transportation and exploration of its lucrative natural-resource deposits.

Global warming has given birth to a new scramble for territory and resources among the five Arctic powers. Russia was the first to stake its claim in this great Arctic gold rush, in 2001. Moscow submitted a claim to the United Nations for 460,000 square miles of resource-rich Arctic waters, an area roughly the size of the states of California, Indiana, and Texas combined. The UN rejected this ambitious annexation, but last August the Kremlin nevertheless dispatched a nuclear-powered icebreaker and two submarines to plant its flag on the North Pole's sea floor. Days later, the Russians provocatively ordered strategic bomber flights over the Arctic Ocean for the first time since the Cold War. Not to be outdone, Canadian Prime Minister Stephen Harper announced

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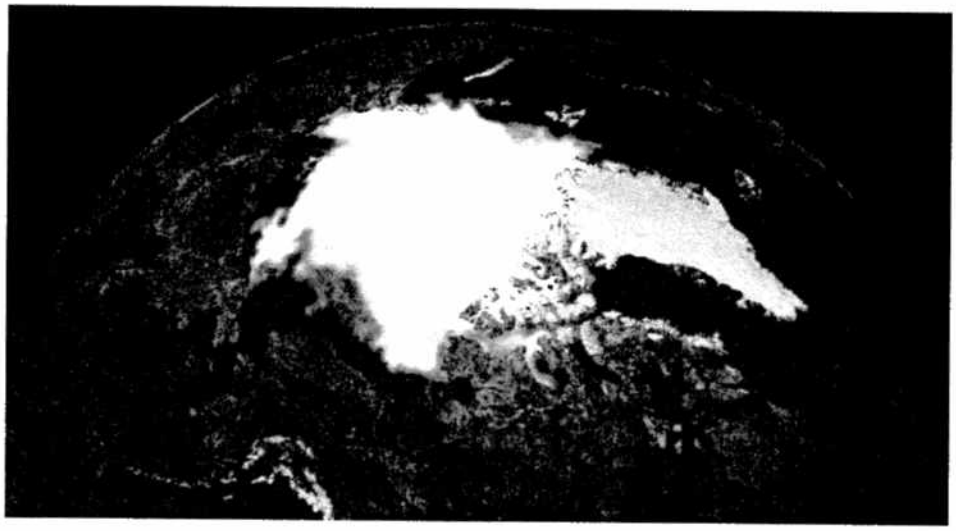
SCOTT G. BORGERSON is International Affairs Fellow at the Council on Foreign Relations and a former Lieutenant Commander in the U.S. Coast Guard.

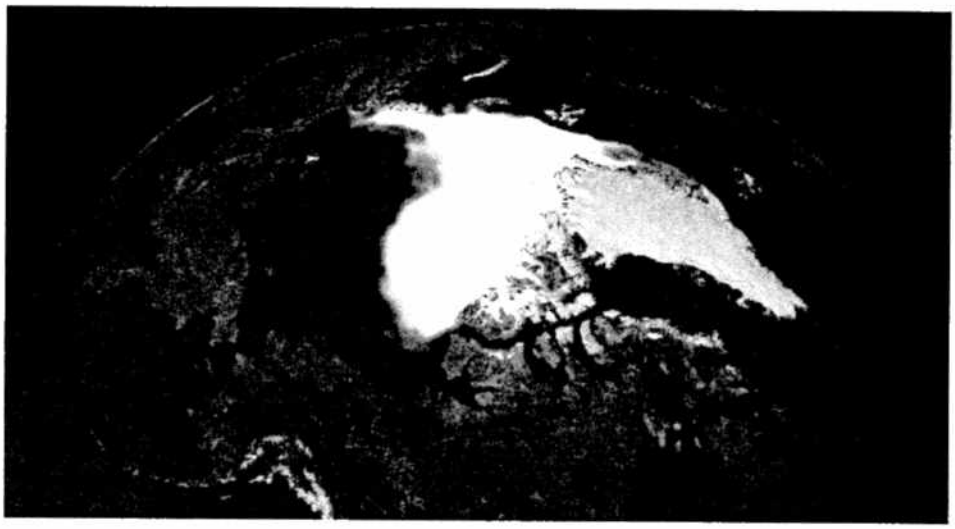


NASA

The Arctic icecap, September 2001

funding for new Arctic naval patrol vessels, a new deep-water port, and a cold-weather training center along the Northwest Passage. Denmark and Norway, which control Greenland and the Svalbard Islands, respectively, are also anxious to establish their claims.

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



NASA

The Arctic icecap, September 2007

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.

Washington cannot afford to stand idly by. The Arctic region is not currently governed by any comprehensive multilateral norms and regulations because it was never expected to become a navigable waterway or a site for large-scale commercial development. Decisions made by Arctic powers in the coming years will therefore profoundly shape the future of the region for decades. Without U.S. leadership to help develop diplomatic solutions to competing claims and potential conflicts, the region could erupt in an armed mad dash for its resources.

GO NORTH, YOUNG MAN

THE ARCTIC has always experienced cooling and warming, but the current melt defies any historical comparison. It is dramatic, abrupt, and directly correlated with industrial emissions of greenhouse gases. In Alaska and western Canada, average winter temperatures have increased by as much as seven degrees Fahrenheit in the past 60 years. The results of global warming in the Arctic are far more dramatic than elsewhere due to the sharper angle at which the sun's rays strike the polar region during summer and because the retreating sea ice is turning into open water, which absorbs far more solar radiation. This dynamic is creating a vicious melting cycle known as the ice-albedo feedback loop.

Arctic Energy Resources

SOURCE: UN Environment Program/GRID-Arendal.

Each new summer breaks the previous year's record. Between 2004 and 2005, the Arctic lost 14 percent of its perennial ice—the dense, thick ice that is the main obstacle to shipping. In the last 23 years, 41 percent of this hard, multiyear ice has vanished. The decomposition of this ice means that the Arctic will become like the Baltic Sea, covered by only a thin layer of seasonal ice in the winter and therefore fully navigable year-round. A few years ago, leading supercomputer climate models predicted that there would be an ice-free Arctic during the summer by the end of the century. But given the current pace of retreat, trans-Arctic voyages could conceivably be possible within the next five to ten years. The most advanced models presented at the

2007 meeting of the American Geophysical Union anticipated an ice-free Arctic in the summer as early as 2013.

The environmental impact of the melting Arctic has been dramatic. Polar bears are becoming an endangered species, fish never before found in the Arctic are migrating to its warming waters, and thawing tundra is being replaced with temperate forests. Greenland is experiencing a farming boom, as once-barren soil now yields broccoli, hay, and potatoes. Less ice also means increased access to Arctic fish, timber, and minerals, such as lead, magnesium, nickel, and zinc—not to mention immense freshwater reserves, which could become increasingly valuable in a warming world. If the Arctic is the barometer by which to measure the earth's health, these symptoms point to a very sick planet indeed.

Ironically, the great melt is likely to yield more of the very commodities that precipitated it: fossil fuels. As oil prices exceed $100 a barrel, geologists are scrambling to determine exactly how much oil and gas lies beneath the melting icecap. More is known about the surface of Mars than about the Arctic Ocean's deep, but early returns indicate that the Arctic could hold the last remaining undiscovered hydrocarbon resources on earth. The U.S. Geological Survey and the Norwegian company StatoilHydro estimate that the Arctic holds as much as one-quarter of the world's remaining undiscovered oil and gas deposits. Some Arctic wildcatters believe this estimate could increase substantially as more is learned about the region's geology. The Arctic Ocean's long, outstretched continental shelf is another indication of the potential for commercially accessible offshore oil and gas resources. And, much to their chagrin, climate-change scientists have recently found material in ice-core samples suggesting that the Arctic once hosted all kinds of organic material that, after cooking under intense seabed pressure for millennia, would likely produce vast storehouses of fossil fuels.

The Arctic could hold the last great undiscovered hydrocarbon resources on earth.

The largest deposits are found in the Arctic off the coast of Russia. The Russian state-controlled oil company Gazprom has approximately 113 trillion cubic feet of gas already under development in the fields it owns in the Barents Sea. The Russian Ministry of Natural

Resources calculates that the territory claimed by Moscow could contain as much as 586 billion barrels of oil—although these deposits are unproven. By comparison, all of Saudi Arabia's current proven oil reserves—which admittedly exclude unexplored and speculative resources—amount to only 260 billion barrels. The U.S. Geological Survey is just now launching the first comprehensive study of the Arctic's resources. The first areas to be studied are the 193,000-square-mile East Greenland Rift Basins. According to initial seismic readings, they could contain 9 billion barrels of oil and 86 trillion cubic feet of gas. Altogether, the Alaskan Arctic coast appears to hold at least 27 billion barrels of oil.

Although onshore resources, such as the oil in Alaska's Arctic National Wildlife Refuge, have dominated debates about Arctic development in Washington, the real action will take place offshore, as the polar ice continues to retreat. An early indication of the financial stakes and political controversies involved is a lawsuit that was filed against Royal Dutch/Shell in the U.S. Ninth Circuit Court. Filed jointly by an unusual alliance of environmental groups and indigenous whalers, the case has held up the development of Shell's $80 million leases in the newly accessible Beaufort Sea, off Alaska's northern coast. By 2015, such offshore oil production will account for roughly 40 percent of the world's total. The Alaskan coast might one day look like the shores of Louisiana, in the Gulf of Mexico, lit up at night by the millions of sparkling lights from offshore oil platforms.

POLAR EXPRESS

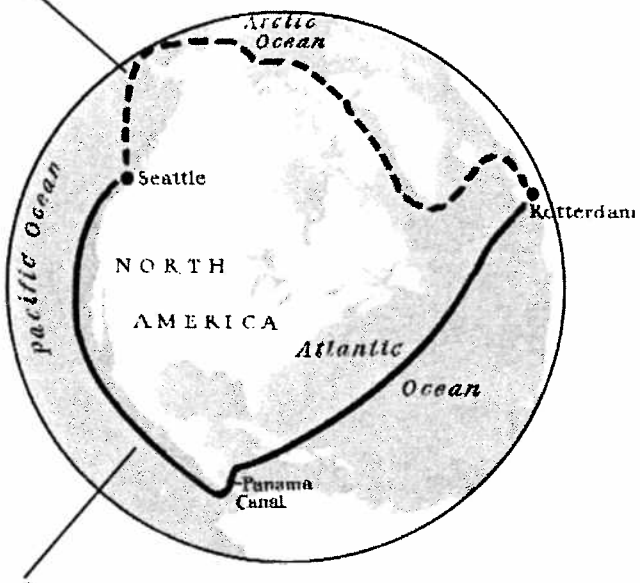
AN EVEN GREATER prize will be the new sea-lanes created by the great melt. In the nineteenth century, an Arctic seaway represented the Holy Grail of Victorian exploration, and the seafaring British Empire spared no expense in pursuing a shortcut to rich Asian markets. Once it became clear that the Northwest Passage was ice clogged and impassable, the Arctic faded from power brokers' consciousness. Strategic interest in the Arctic was revived during World War II and the Cold War, when nuclear submarines and intercontinental missiles turned the Arctic into the world's most militarized maritime space, but it is only now that the Arctic sea routes so coveted by nineteenth-

century explorers are becoming a reality.

The shipping shortcuts of the Northern Sea Route (over Eurasia) and the Northwest Passage (over North America) would cut existing oceanic transit times by days, saving shipping companies—not to mention navies and smugglers—thousands of miles in travel. The Northern Sea Route would reduce the sailing distance between Rotterdam and Yokohama from 11,200 nautical miles—via the current route, through the Suez Canal—to only 6,500 nautical miles, a savings of more than 40 percent. Likewise, the Northwest Passage would trim a voyage from Seattle to Rotterdam by 2,000 nautical miles, making it nearly 25 percent shorter than the current route, via the Panama Canal. Taking into account canal fees, fuel costs, and other variables that determine freight rates, these shortcuts could cut the cost of a single voyage by a large container ship by as much as

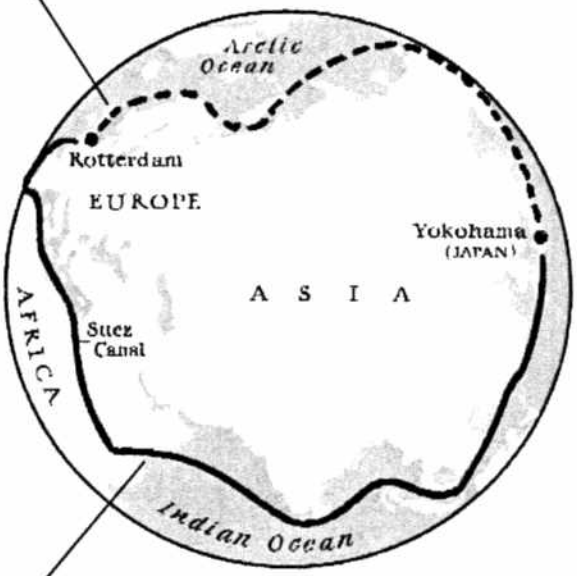
Arctic Shipping Shortcuts

Northwest Passage: 7,000 nautical miles



Current route: 9,000 nautical miles

Northern Sea Route: 6,500 nautical miles



Current route: 11,200 nautical miles

20 percent—from approximately $17.5 million to $14 million—saving the shipping industry billions of dollars a year. The savings would be even greater for the megaships that are unable to fit through the Panama and Suez Canals and so currently sail around the Cape of Good Hope and Cape Horn. Moreover, these Arctic routes would also allow commercial and military vessels to avoid sailing through politically unstable Middle Eastern waters and the pirate-infested South China Sea. An Iranian provocation in the Strait of Hormuz, such as the one that occurred in January, would be considered far less of a threat in an age of trans-Arctic shipping.

Arctic shipping could also dramatically affect global trade patterns. In 1969, oil companies sent the *S.S. Manhattan* through the Northwest Passage to test whether it was a viable route for moving Arctic oil to the Eastern Seaboard. The *Manhattan* completed the voyage with the help of accompanying icebreakers, but oil companies soon deemed the route impractical and prohibitively expensive and opted instead for an Alaskan pipeline. But today such voyages are fast becoming economically feasible. As soon as marine insurers recalculate the risks involved in these voyages, trans-Arctic shipping will become commercially viable and begin on a large scale. In an age of just-in-time delivery, and with increasing fuel costs eating into the profits of shipping companies, reducing long-haul sailing distances by as much as 40 percent could usher in a new phase of globalization. Arctic routes would force further competition between the Panama and Suez Canals, thereby reducing current canal tolls; shipping chokepoints such as the Strait of Malacca would no longer dictate global shipping patterns; and Arctic seaways would allow for greater international economic integration. When the ice recedes enough, likely within this decade, a marine highway directly over the North Pole will materialize. Such a route, which would most likely run between Iceland and Alaska's Dutch Harbor, would connect shipping megaports in the North Atlantic with those in the North Pacific and radiate outward to other ports in a hub-and-spoke system. A fast lane is now under development between the Arctic port of Murmansk, in Russia, and the Hudson Bay port of Churchill, in Canada, which is connected to the North American rail network.

In order to navigate these opening sea-lanes and transport the Arctic's oil and natural gas, the world's shipyards are already building ice-capable ships. The private sector is investing billions of dollars in a fleet of Arctic tankers. In 2005, there were 262 ice-class ships in service worldwide and 234 more on order. The oil and gas markets are driving the development of cutting-edge technology and the construction of new types of ships, such as double-acting tankers, which can steam bow first through open water and then turn around and proceed stern first to smash through ice. These new ships can sail unhindered to the Arctic's burgeoning oil and gas fields without the aid of icebreakers. Such breakthroughs are revolutionizing Arctic shipping and turning what were once commercially unviable projects into booming businesses.

THE COMING ANARCHY

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.

There are few legal frameworks that offer guidance. The Arctic Council does exist to address environmental issues, but it has remained silent on the most pressing challenges facing the region because the United States purposefully emasculated it at birth, in 1996, by prohibiting it from addressing security concerns. Many observers argue that UNCLOS is the correct tool to manage the thawing Arctic. The convention provides mechanisms for states to settle boundary disputes and submit claims for additional resources beyond their exclusive economic zones. Furthermore, UNCLOS sets aside the resources in the high seas as the common heritage of humankind, it allows states bordering ice-covered waters to enforce more stringent environmental regulations, and it defines which seaways are the sovereign possessions of states and which international passages are open to unfettered navigation.

Diplomatic gridlock could lead the Arctic to erupt in an armed mad dash for its resources.

However, UNCLOS cannot be seamlessly applied to the Arctic. The region's unique geographic circumstances do not allow for a neat application of this legal framework. The Arctic is home to a number of vexing problems that, taken in their entirety, make it a special case. These unresolved challenges include carving up the world's longest uncharted and most geologically complex continental shelf among five states with competing claims, resolving differences between Canada and the rest of the world over how to legally define the Northwest Passage, demarcating maritime borders between the United States and Canada in the Beaufort Sea and between Norway and Russia in the Barents Sea, and regulating vessels shielded behind flags of convenience (which obscure the true origin and ownership of the vessels) as they travel across numerous national jurisdictions. Finally, increased oil and gas exploration and the trans-Arctic shipping that comes with it will pose serious environmental risks. Oil tankers present a particularly grave environmental threat, as illustrated by three recent oil spills in the much safer waters of the San Francisco Bay, the Black Sea, and the Yellow Sea.

There are also a handful of unresolved issues at play in the Arctic that are not covered under UNCLOS. Between 1958 and 1992, Russia dumped 18 nuclear reactors into the Arctic Ocean, several of them still

fully loaded with nuclear fuel. This hazard still needs to be cleaned up. Furthermore, the Arctic region is home to one million indigenous people, who deserve to have a say in the region's future, especially as regards their professed right to continue hunting bowhead whales, their safety alongside what will become bustling shipping lanes, and their rightful share of the economic benefits that Arctic development will bring. With the prospect of newfound energy wealth, there is also growing talk of Greenland petitioning Denmark for political independence. Finally, there has been an explosion in polar tourism, often involving ships unsuited for navigation in the region. Last year, 140 cruise ships carried 4,000 intrepid travelers for holidays off Greenland's icy coast, a dangerous journey in largely uncharted waters.

Although it is tempting to look to the past for solutions to the Arctic conundrum, no perfect analogy exists. The 1959 Antarctic Treaty, which froze all territorial claims and set aside the continent for scientific research, provides some lessons, but it concerns a continent rather than an ocean. Moreover, Antarctica is far removed from major trade routes, and negotiations unfolded in the entirely different context of the Cold War. As a body of water that links several large economies, the Mediterranean Sea is somewhat similar to the Arctic Ocean, but its littoral states have always had clearer historical claims, and it has never been covered with ice, at least not in human history. There is simply no comparable historical example of a saltwater space with such ambiguous ownership, such a dramatically mutating seascape, and such extraordinary economic promise.

The region's remarkable untapped resource wealth and unrealized potential to become a fast lane between the Atlantic and Pacific Oceans makes it a key emerging pressure point in international affairs. At this critical juncture, decisions about how to manage this rapidly changing region will likely be made within a diplomatic and legal vacuum unless the United States steps forward to lead the international community toward a multilateral solution.

NORTHERN EXPOSURE

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.

Washington must get over its isolationist instincts and lead the way toward a multilateral Arctic treaty.

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.

Naturally, other Arctic states are responding. Norway submitted its claim for additional Arctic resources to the commission in 2006; Canada and Denmark are now doing their homework in order to present their own claims. Ottawa and Copenhagen are currently at odds over the possession of Hans Island, an outcropping of desolate rocks surrounded by resource-rich waters in the Nares Strait, between Canada's Ellesmere Island and Greenland. Even the United States, despite its refusal to ratify UNCLOS, has for the past few summers dispatched its sole icebreaker to the Arctic to collect evidence for a possible territorial claim in the event the Senate eventually ratifies the treaty.

There are also battles over sea-lanes. Canada has just launched a satellite surveillance system designed to search for ships trespassing in its waters. Even though the Northern Sea Route will likely open before the Northwest Passage, the desire to stop ships from passing through the Canadian archipelago—especially those from the U.S. Coast Guard and the U.S. Navy—is the cause of much saber rattling north of the border. "Use it or lose it," Canadian Prime Minister Harper frequently declares in reference to Canada's Arctic sovereignty—an argument that plays well with Canadians, who are increasingly critical of their southern neighbor. So far, the delicate 1988 "agreement to disagree" between the United States and Canada over the final disposition

of these waters has remained intact, but the United States should not underestimate Canadian passions on this issue.

The ideal way to manage the Arctic would be to develop an overarching treaty that guarantees an orderly and collective approach to extracting the region's wealth. As part of the ongoing International Polar Year (a large scientific program focused on the Arctic and the Antarctic that is set to run until March 2009), the United States should convene a conference to draft a new accord based on the framework of the Arctic Council. The agreement should incorporate relevant provisions of UNCLOS and take into account all of the key emerging Arctic issues. With a strong push from Washington, the Arctic states could settle their differences around a negotiating table, agree on how to carve up the region's vast resource pie, and possibly even submit a joint proposal to the UN for its blessing.

But even as it pushes for a multilateral diplomatic solution, the United States should undertake a unilateral effort to shore up U.S. interests in the Arctic. The few in the United States who still stubbornly oppose U.S. accession to UNCLOS claim that by ratifying the treaty Washington would cede too much U.S. sovereignty and that customary international law and a powerful navy already allow the United States to protect its Arctic interests. But these are not enough. The United States is the only major country that has failed to ratify UNCLOS, and Washington is therefore left on the outside looking in as a nonmember to various legal and technical bodies. In addition to becoming a party to the convention, the United States must publish an updated Arctic policy, invest in ice-mapping programs, and breathe new life into its inefficient, uncompetitive shipyards, thus enabling it to update the country's geriatric icebreaker fleet, as soon as possible.

The United States should also strike a deal with Canada, leading to a joint management effort along the same lines as the 1817 Rush-Bagot Agreement, which demilitarized the Great Lakes and led to the creation (albeit more than a century later) of the nonprofit St. Lawrence Seaway Development Corporation to manage this critical, and sometimes ice-covered, binational waterway. In the same spirit, the United States and Canada could combine their resources to help police thousands of miles of Arctic coastline. Washington and

Ottawa now work collaboratively on other sea and land borders and together built the impressive North American Aerospace Defense Command, or NORAD, system. They are perfectly capable of doing the same on the Arctic frontier, and it is in both countries' national interests to do so.

There is no reason that economic development and environmental stewardship cannot go hand in hand. To this end, Canada could take the lead in establishing an analogous public-private Arctic seaway management corporation with a mandate to provide for the safe and secure transit of vessels in North American Arctic waters while protecting the area's sensitive environment. Shipping tolls levied by this bilateral management regime could pay for desperately needed charts (much of the existing survey information about the Northwest Passage dates to nineteenth-century British exploration), as well as for search-and-rescue capabilities, traffic-management operations, vessel tracking, and similar services that would guard life and property. Such a jointly managed Arctic seaway system could establish facilities for the disposal of solid and liquid waste, identify harbors of refuge for ships in danger, and enforce a more rigorous code for ship design in order to ensure that vessels traveling through the Northwest Passage have thicker hulls, more powerful engines, and special navigation equipment. The captains and crews of these vessels could also be required to have additional training and, if the conditions warrant, to take aboard an agency-approved "ice pilot" to help them navigate safely.

This bilateral arrangement could eventually be expanded to include other Arctic countries, especially Russia. The United States and Russia, as an extension of the proposed Arctic seaway management corporation, could develop traffic-separation schemes through the Bering Strait and further invest in the responsible development of safe shipping along the Northern Sea Route. Eventually, a pan-Arctic corporation could coordinate the safe, secure, and efficient movement of vessels across the Arctic. Japan, which is vitally dependent on the Strait of Malacca for the overwhelming majority of its energy supplies, would be a natural investor in such a project since it has an interest in limiting the risk of a disruption in its oil supply.

IT'S EASY BEING GREEN

In 1847, a British expedition seeking the fabled Northwest Passage ended in death and ignominy because Sir John Franklin and his crew, seeing themselves as products of the pinnacle of Victorian civilization, were too proud to ask the Inuit for help. At the height of its empire, the United States sometimes sees itself as invincible, too. But the time has come for Washington to get over its isolationist instincts and ratify UNCLOS, cooperate with Canada on managing the Northwest Passage, and propose an imaginative new multilateral Arctic treaty.

Washington must awaken to the broader economic and security implications of climate change. The melting Arctic is the proverbial canary in the coal mine of planetary health and a harbinger of how the warming planet will profoundly affect U.S. national security. Being green is no longer a slogan just for Greenpeace supporters and campus activists; foreign policy hawks must also view the environment as part of the national security calculus. Self-preservation in the face of massive climatic change requires an enlightened, humble, and strategic response. Both liberals and conservatives in the United States must move beyond the tired debate over causation and get on with the important work of mitigation and adaptation by managing the consequences of the great melt.

Letters and Backup Info

March 19, 2004

Senators James M. Inhofe
U.S. Senate
Washington, D.C.

Senator James M. Jeffords
U.S. Senate
Washington, D.C.

Dear Senators Inhofe and Jeffords:

The American Petroleum Institute (API), the International Association of Drilling Contractors (IADC) and the National Ocean Industries Association (NOIA), are pleased to provide for the Senate Environmental and Public Works Committee a copy of our statement in support of U.S. ratification of the United Nations Law of the Sea (LOS) Convention. The statement was delivered during an October 2003 hearing before the Senate Foreign Relations Committee. We would ask that our statement be made part of your committee's record for the March 23, 2004 hearing on the LOS.

Thank you for considering the views expressed in this statement.

American Petroleum Institute

International Association of Drilling Contractors

National Ocean Industries Association

CHAMBER OF SHIPPING
OF AMERICA

19 March 2004

The Honorable James M. Inhofe
Chairman, Senate Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable James M. Jeffords
Ranking Member, Senate Environment and Public Works Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member:

Thank you for holding a hearing on the UN Law of the Sea Treaty. The purpose of this letter is to advise that the Chamber of Shipping of America very strongly supports ratification of the United Nations Law of the Sea Convention (UNCLOS) as it is in the best interests of the United States to do so.

The Chamber of Shipping of America represents 22 American companies that own, operate or charter ships used in the domestic and international trades of the United States. We represent all types of ships including container ships, tankers, ocean-going tug/barges vessels, roll-on roll-off ships and bulk ships. We were founded in 1917 to coordinate U.S. shipowner positions at the initial deliberations leading to the Safety of Life at Sea Convention. Today, we represent our members on safety, environmental and security issues addressed domestically and at the international fora including the International Maritime Organization and the International Labor Organization.

UNCLOS is the codification of the traditional law of the sea and protects, inter alia, our rights of innocent passage and freedom of navigation. We are concerned that our status as a non-ratifying party places us in a dangerous position when the treaty comes open for amendment in October of this year. It is simply in our sovereign interest to ensure that we are at the international negotiating table in the strongest possible position. The U.S. should not ignore the potential for treaty amendments that could have large negative impacts on our interests and we have no vote.

I enclose here a copy of testimony I gave before the Senate Foreign Relations Committee on October 21, 2003 wherein I explain some of the potential problem areas where amendments may limit our navigation freedoms. I request that my letter and enclosure be made part of this hearing record. If you or your staff has any questions, please feel free to contact me.

Sincerely,

Joseph J. Cox
President

1730 M Street, NW ▪ Suite 407 ▪ Washington, DC 20036-4517
Voice: 202.775.4399 ▪ Fax: 202.659.3795

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

18 Mar 04

Dear Senator Jeffords,

I write to express my strong support for United States accession to the Law of the Sea Convention. It has been the consistent, longstanding position of the Navy that accession to the Convention will benefit the United States by advancing our national security interests and ensuring continued U.S. leadership in the development and interpretation of the law of the sea.

The Law of the Sea Convention helps 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. The Convention protects military mobility by codifying favorable transit rights that support our ability to operate around the globe, anytime, anywhere, allowing the Navy to project power where and when needed. The Convention also provides important safeguards for protecting the marine environment while preserving operational freedoms.

Although the Convention was drafted over 20 years ago, the Convention supports U.S. efforts in the war on terrorism by providing important stability and codifying navigational and overflight freedoms, while leaving unaffected intelligence collection activities. Future threats will likely emerge in places and in ways that are not yet known. For these and other as yet unknown operational challenges, we must be able to take maximum advantage of the established navigational rights codified in the Law of the Sea Convention to get us to the fight rapidly. The diversity of challenges to our national security combined with a more dynamic force structure makes strategic mobility more important than ever. The oceans are fundamental to that maneuverability and, by joining the Convention, we further ensure the freedom to get to the fight, twenty-four hours a day and seven days a week, without a permission slip.

I appreciate your continued strong support of the Law of the Sea Convention and the Navy.

Sincerely,

VERN CLARK
Admiral, U.S. Navy

The Honorable James M. Jeffords
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

DATE: May 17, 2007 16:54:26 EST
Document Number: 234

FOR IMMEDIATE RELEASE

Office of Public Affairs
U.S. Coast Guard

U.S. Department of Homeland Security
United States Coast Guard

Press Release

Date: May 17, 2007

Contact: Cmdr. Jeff Carter
(202) 372-4635

STATEMENT BY ADM. THAD ALLEN, COMMANDANT OF THE COAST GUARD, ON THE CONVENTION ON THE LAW OF THE SEA

WASHINGTON – Adm. Thad Allen, commandant of the U.S. Coast Guard, issued the following statement today reiterating long-standing Coast Guard support for joining the Convention on the Law of the Sea.

"Becoming a party to the 1982 United Nations Convention on the Law of the Sea would greatly enhance our global position in maritime affairs. Because of our maritime security and law enforcement missions, the Coast Guard has long been a proponent of achieving a comprehensive and stable regime with respect to traditional uses of the oceans. The convention greatly enhances our ability to protect the American public as well as our efforts to protect and manage fishery resources and to protect the marine environment. From the Coast Guard's perspective, we can best maintain a public order of the oceans through a universally accepted law of the sea treaty that preserves and promotes critical U.S. national interests.

"The convention strikes the appropriate balance between the interests of countries in controlling activities off their coasts with the interests of all countries in protecting freedom of navigation. The convention provides the framework under which the Coast Guard is able to interdict illicit drug traffickers and illegal immigrants far beyond our own waters. The convention also gives the coastal state the right to protect its marine environment, manage its fisheries and off-shore oil and gas resources within the 200-nautical mile exclusive economic zone, and secure sovereign rights over resources of the continental shelf beyond 200 nautical miles.

"U.S. military forces, including Coast Guard units, already rely heavily on the freedom of navigation principles codified in the convention. These principles allow the use of the world's oceans to meet changing national security requirements, including those necessary to fight the global war on terrorism. Becoming a party to the convention will enhance our ability to carry out the many maritime missions of the Coast Guard, refute excessive maritime claims, and participate in interpreting and applying the convention to day-to-day realities."

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The U.S. Coast Guard is a military, maritime, multi-mission service within the Department of Homeland Security dedicated to protecting the safety and security of America.

printer friendly

SARAH PALIN
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 13, 2007

The Honorable Ted Stevens
United States Senate
522 Hart Senate Building
Washington, DC 20510

The Honorable Lisa Murkowski
United States Senate
709 Hart Senate Building
Washington, DC 20510

Dear Senator Stevens and Senator Murkowski:

It is my understanding that the U.S. Senate may consider the United Nations Convention on the Law of the Sea in the fall. With this in mind, I am writing to express my strong support for Senate ratification of the convention. In my opinion, the convention would be beneficial to the U.S. and Alaska in various ways, but I want to focus on one aspect in this correspondence.

As you know, several Arctic nations have recently asserted claims to submerged lands off their coasts. The Convention on the Law of the Sea establishes the framework for these assertions. To date, 155 nations, including Canada and Russia, have approved the convention. If the U.S. does not ratify the convention, the opportunity to pursue our own claims to offshore areas in the Arctic Ocean might well be lost.

As a consequence, our rightful claims to hydrocarbons, minerals, and other natural resources could be ignored. In this regard, geologists have prognosticated that billions of barrels of crude oil and vast quantities of natural gas, not to mention various hard rock minerals, might be present in the Arctic. In the absence of affirmative action by the Senate, these resources could become the property of nations with less valid claims.

It is my understanding that the Bush administration and many senators, both republicans and democrats, have expressed support for Senate ratification of the

convention. However, as you know, ratification has been thwarted by a small group of senators who are concerned about the perceived loss of U.S. sovereignty. I believe that quite the contrary is the case. If the U.S. does not ratify the convention, we will be denied access to the forum established by the international community to adjudicate claims to submerged lands in the Arctic.

I also urge Congress to authorize the programs and funds necessary for the U.S. to assert its sovereign rights. The assertion of such rights requires significant research and information gathering. Other Arctic nations have recently begun this process, and I understand that the U.S. is moving in this direction as well.

I believe that you have previously supported Senate ratification of the convention. With this letter, I want to put my administration on record in support of the convention as the predicate for asserting sovereign rights that will be of benefit to Alaska and the nation. Hopefully, this letter will assist you in articulating Alaska's position to your colleagues in the Senate.

Thank you for considering my views.

Sincerely,

Sarah Palin
Governor

Western
Pacific
Regional
Fishery
Management
Council

March 18, 2004

Hon. Daniel K. Akaka
US Senator
SH-141 Hart Senate Office Building
Washington, DC
20510-1103

Dear Senator Akaka:

I would like to express the support of Western Pacific Fishery Management Council for the ratification of the United Nations Convention on the Law of the Sea by the United States. This Council, by virtue of its geography, is the most internationally focused of the eight Regional Fishery Management Councils in the USA, and international fishery management is an integral part of our Pelagic Fishery Management Plan. Thus, the provisions of UNCLOS as they apply to the exploitation of natural resources are of key interest to the Council, quite apart from the important security aspects and key rights of navigation enshrined within the treaty.

Many of the provisions of UNCLOS, and international instruments that have stemmed therefrom, have been incorporated into this Council's management of highly migratory pelagic fish. In the 1980s, even before the UN ban, the Western Pacific Council was aware of the controversy surrounding this gear and banned its use within the EEZ of the US Flag Pacific Islands. This Council was also among those agencies and individuals who supported you and your colleagues in having tuna included within the Magnuson Act, an initiative which recognized the rights of individual countries to manage pelagic fishery resources within their EEZs as outlined within UNCLOS.

More recently, the Western Pacific Council has actively supported the development of an international convention for managing tuna fisheries in the Central and Western Pacific, hosting four out of the seven seminal meetings through which this new management initiative was crafted. This new fishery commission developed by the convention will come into force some time in 2004. This is the first international fishery management arrangement that fully incorporates UNCLOS principles in the articles of the convention, and will assume responsibility for the largest tuna fishery grounds on the globe. Such a development is timely due to the need to limit unconstrained expansion of fishing effort on these important shared economic resources.

As pointed out by your colleagues Senator Lugar and Senator Stevens in recent correspondence with Senate members, the failure to ratify UNCLOS would mean that the US would be unable to participate in the amendment to the Convention and safeguard aspects of concern to this country, including international fishery agreements such as the new fishery commission in the Central and Western Pacific. Naturally this is of paramount concern to this Council, embedded as it is within Micronesia and Polynesia, and with economies reliant to a large degree on ocean resources. The Council therefore hopes that the Senate will recognize the importance of ratifying UNCLOS, both from a strategic and security perspective, and also from our perspective in the US Pacific Islands, where the US voice needs to be heard in the management of shared fishery resources in the Pacific.

Sincerely,

Kitty M. Simonds

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

April 6, 2004

Dear Senator Warner:

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

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

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

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

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

Sincerely,

William H. Taft

William H. Taft, IV

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

R. Reed Harrison III
Vice President/Chief Information and Investment Officer
Network and Computing Services
Room 4C107
900 Route 202/206
P.O. Box 752
Bedminster, NJ 07921-0752
908 234-5200, FAX 908 234-8414

Dear Senator Helms:

AT&T depends upon undersea fiber optic cables to carry the bulk of our international telecommunications traffic. We enclose for your reference an information packet describing AT&T's submarine cable network. We believe this information underscores the critical commercial significance of that network. We hope it also helps to acquaint you with AT&T's interest in the use of the seabed for its provision of global telecommunications services over that network.

It is essential that we protect that undersea cable network from damage and disruption. The main purpose of this letter, therefore, is to urge the United States Senate to give its advice and consent to accede to the Law of the Sea Convention. and to ratify the Agreement relating to the Implementation of Part XI of the Convention. The requested action by the Senate will enable us to better protect our cables and recover for damage to the cables. AT&T respectfully asks that this advice and consent be given at the earliest opportunity.

AT&T's concern is straightforward. AT&T and other U. S. owners of such undersea telecommunications facilities become involved in matters of international law in their efforts to recover their losses from parties whose vessels have damaged their undersea cables. AT&T's efforts against such offending vessel owners and their underwriters have had limited success. Over the past 17 years, we have achieved some recovery in cases involving only 13 such cable failures. The scope of the problem is o evident when one considers that, since 1990, almost half of the 134 reported failures of international submarine cable were caused by third party vessels.

The recovery of damages in these cases reduces the operating expense of the cable owners and enables them, in turn, to benefit their customers in the form of lower rates for international telecommunications. services News of a significant damage recovery also provides a deterrent against careless or uncaring vessel owners. As indicated, however, AT&T and other U. S. cable owners have been frustrated in their cable protection and damage recovery efforts by serious shortcomings in existing submarine cable law. Illustrations of this problem are readily available.

In the typical case of damage by third party vessels, repairing damaged undersea cable and restoring service to telecommunications users costs in excess of $2 million. Yet our existing federal statute (47 U.S.C., Section 21) imposes a maximum criminal penalty of only $5,000 upon those who violate submarine cable laws and cause this level of damage to undersea cables.

Under these circumstances it is not surprising that, in February 1996, the U. S. Attorney in Florida declined to prosecute a vessel owner caught intentionally destroying an undersea telephone cable. And on several other occasions, the U. S. Coast Guard has declined to enforce obligations imposed on vessels and their owners under international law Despite Strong evidence against the violators in each of these cases, these agencies evidently determined that there would be insufficient return on their resource investment to support the assignment of full time legal and investigative personnel to an incident carrying such an Insignificant maximum criminal penalty.

These examples make clear that if we are to have any meaningful protection, we must have in place a level of fines that considers and reflects the level of damage inflicted by such criminal violations. In addition we need legal framework that establishes clear jurisdiction in cable damage cases, and that provides specific

authority to award damages. When nearly half of the 134 failures in intonational submarine cable since 1990 have been externally inflicted as previously noted, the need for increased legal protection is clear.

Many of the shortcomings in existing law are addressed and corrected in the U N. Convention on the Law of the Sea (UNCLOS,). UNCLOS expands the right to lay submarine cable in the oceans of the world and expands international protection for those cables. Articles 79 and 112 of UNCLOS have established the rights of nations and private parties to lay cable on the continental shelf (subject to reasonable review by the adjoining coastal state) and in the bed of the high seas. Universal codification of these rights would inhibit any single such coastal state from attempting unilaterally and unreasonably to thwart such rights.

Article 113 requires that all states must adopt laws that make damage to submarine cable, done willfully or through negligence - including behavior likely to result in cable damage - a punishable offense. Article 114 provides that if owners of a submarine cable, in landing or repairing their cables damage the cable of another, they must bear the cost of repairs. Article 115 provides that vessel owners who can prove they sacrificed an anchor or fishing gear to avoid damaging a cable, can recover their loss against the cable owner, provided that the vessel took reasonable precautionary measures beforehand.

To take full advantage of UNCLOS, the United States must become party and implement its provisions through legislation. This requirement is readily satisfied by much needed updating of the Submarine Cable Act of 1888. This law can and should be amended to conform to UNCLOS. We would be pleased to provide additional information and suggested amendments to your Committee.

Ratification of UNCLOS is of extreme importance to all U.S. providers of intonational telecommunications services. Beyond the obvious matters of national security associated with the protection of our undersea facilities, there are economic impact issues. The U. S. companies whose undersea facilities are at stake here are major U. S. enterprises and significant source of revenue, jobs and economic wellbeing for American citizens and businesses, at home and abroad.

Due to the rapid globalization of business, fiber optic capacity will have increased some 3000% from 1989 to the year 2000. With the explosion of data traffic on the information superhighway, fueled by greater use of the Internet, multimedia services and video conferencing, it has never been more important to our U. S. economic infrastructure to assure the protection and reliability of international submarine cables. UNCLOS will enable us to achieve that goal and maintain that protection.

We have attempted In this letter. Mr. Chairman, to outline the salient points of UNCLOS as they very positively affect U. S. owners and operators of Intonational submarine cables. I would be more than happy, at your convenience, to brief you or any of your staff in person with regard to any of the matters raised in this letter. In addition, AT&T remains ready and willing to appear and testify at any hearings that your Committee may schedule on this subject.

We remain most grateful, Mr. Chairman, for your attention to this matter.

Very truly yours,

R. Reed Harrison III
Vice President
Chief Information and Investment Officer
Network & Computing Services

Copy to: Mr. James W. Nance
Staff Director
Senate Committee on Foreign Relations
403 Dirksen Senate Office Building
Washington D.C. 20510

May 2004

President's Message

Law of the Sea Convention is Essential to U.S. Naval Power

The sea services of our nation must maintain their leading role in shaping global rules and policies that affect our freedom of navigation and maritime mobility, two essential elements of U.S. naval power. That is why it is now time for Congress to ratify the Law of the Sea Convention and thereby strengthen our national security.

The Convention codifies access and transit rights for our ships and enhances the nation's prosecution of the global war on terrorism. Our nation has much to gain and nothing to lose by becoming a party to the Convention, which is a comprehensive international legal framework governing the world's oceans. The United States should now join 145 nations that use the Convention as a means to assure access to the oceans. In November, the Convention will be opened for amendment. As a party to the Convention, the United States would have a major role in shaping changes to come.

The Law of the Sea Convention is a complex document that touches on wide range of U.S. maritime concerns. Since it was finalized in 1982, a primary U.S. interest in the Convention has been to preserve essential navigational freedoms and thereby enhance the mobility of U.S. naval power. That is why every chief of naval operations (CNO), the Joint Chiefs of Staff and the Department of Defense have consistently and strongly supported U.S. ratification.

Our current CNO, Adm. Vern Clark, said in a March 18 letter to Sen. Richard G. Lugar, R-Ind., chairman of the Senate Committee on Foreign Relations, that accession to the Convention will support "our ability to operate around the globe, anytime, anywhere, allowing the Navy to project power where and when needed."

The Convention guarantees, for example, that ships and aircraft may transit straits that otherwise may have been closed by the territorial claims of nearby states. More than 135 straits are affected, including the Strait of Hormuz, entryway to the Persian Gulf, and the Strait of Malacca, the main sea route between the Indian and Pacific oceans.

In fact, the United States' interest as a global naval power was behind its initial participation in talks on the Convention as the United Nations conducted negotiations from 1973 to 1982. Our policy makers were concerned that transit and access rights of U.S. warships could be restricted by the rising number of claims from other nations over territorial seas, fishing zones and offshore high seas areas. Today, Adm. Clark wants the United States to join because, he said, "the Law of the Sea Convention helps 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."

Much of our government's initial delay in ratification was linked to objections by many industrialized countries to sections related to deep seabed mining. However, changes to the Convention in 1994 remedied each of the U.S. objections.

Despite its advantages, the Law of the Sea Convention remains controversial because of widespread — and erroneous — belief that it would adversely affect U.S. sovereignty, inhibit our intelligence gathering activities or hamper the U.S. Proliferation Security Initiative (PSI) through which our forces seek to interdict shipments of weapons of mass destruction.

Critics point to the International Tribunal for the Law of the Sea, created to settle disputes, as a threat to U.S. sovereignty. However, parties to the Convention are free to agree on any method of dispute settlement they desire — and the U.S. will not select the Tribunal.

Fears that ratification would diminish our collection of intelligence are linked to a section of the Convention containing a list of activities that would deprive a vessel of the right of innocent passage through territorial seas. These activities include the collection of certain types of information and the requirement that submarines navigate on the surface. However, such activity is not a violation of the Convention. Intelligence-gathering activities are not prohibited nor adversely affected by the Convention.

The Bush Administration's PSI — potentially a major weapon in the global war on terrorism — seeks the support of all nations in international efforts to board and search

vessels suspected of transporting weapons of mass destruction. Adm. Michael G. Mullen, vice chief of naval operations, told Lugar's committee that being party to the Convention "would greatly strengthen" the Navy's ability to support the PSI by reinforcing freedom of navigation rights on which the service depends for its operational mobility.

We learned in Iraq that even allies sometimes will block access to key battle areas. Our freedom of navigation cannot be contingent on the approval of nations along global sea lanes. A legal regimen for the world's oceans will help guarantee worldwide mobility for our military.

The Law of the Sea Convention is good for our sea services. It strengthens our country. The time for ratification is at hand.

Sheila M. McNeill, National President

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CHAIRMAN OF THE JOINT CHIEFS OF STAFF
WASHINGTON, D.C. 20318-9999

7 April 2004

The Honorable Richard G. Lugar
Chairman, Committee on Foreign
Relations
United States Senate
Washington, D.C. 20510-6225

Dear Mr. Chairman,

The testimony of the Chief of Naval Operations, Admiral Vern Clark, to the Senate Armed Services Committee regarding the Law of the Sea Convention (LOSC) reflects the views of the combatant commanders and the Joint Chiefs. We strongly support US accession to LOSC.

The Convention remains a top national security priority. In today's fast changing world, it ensures the ability of the US Armed Forces to operate freely across the vast expanse of the world's oceans under the authority of widely recognized and accepted international law. It supports efforts in the War on Terrorism by providing much-needed stability and operational maneuver space, codifying essential navigational and overflight freedoms.

The rules under which US forces have operated for over 40 years to board and search ships or to conduct intelligence activities will not be affected. The LOSC does not require permission from the United Nations to conduct these searches and leaves US intelligence activities unaffected. Moreover, the Proliferation Security Initiative is designed to be consistent with international law and frameworks, including the LOSC. While the Administration previously raised a concern regarding dispute resolution, that has been satisfactorily addressed by the proposed Resolution on Advice and Consent. Accession will provide continued US leadership in the development and interpretation of the Law of the Sea and ensure changes are compatible with future military initiatives.

I appreciate your continued strong support of the LOSC and the US Armed Forces.

Sincerely,

RICHARD B. MYERS
Chairman
of the Joint Chiefs of Staff

THE WHITE HOUSE

WASHINGTON

February 8, 2007

Dear Mr. Chairman:

Recognizing the historic bipartisan support for the Law of the Sea Convention, I anticipate our shared interest in moving it forward. As the President believes, and many members of this Administration and others have stated, the Convention protects and advances the national security, economic, and environmental interests of the United States. In particular, 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. I appreciate your efforts as Chairman in bringing this important Convention to the Senate for consideration and look forward to its approval as early as possible during the 110th Congress.

Sincerely,

Stephen J. Hadley
Assistant to the President
for National Security Affairs

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

RICE SAYS ADMINISTRATION SUPPORTS EARLY ACTION ON UN LAW OF SEA TREATY

January 25, 2004 -- During her nomination hearings on January 18-19, 2005, Dr. Condoleezza Rice asserted Administration support for "early Senate action" on the UN Convention on the Law of the Sea and urged the Foreign Relations Committee to report it to the floor again in the 109th Congress. Although the Senate Committee on Foreign Relations unanimously approved the treaty last year, the convention and implementing agreement must be re-reported for consideration in the new Congress. It is reported that the Committee may send the treaty to the floor for consideration as early as the first week of April.

In her testimony, Dr. Rice asserted that "Joining the Convention will advance the interests of the U.S. military," and that the U.S. "will gain economic and resource benefits from the Convention."

Full text of Dr. Rice's responses:

Questions from Senator Richard G. Lugar
Nomination Hearing for Dr. Condoleezza Rice
January 18 & 19, 2005

Law of the Sea: Ratification Efforts

Question #1:

The most recent Treaty Priority List submitted by the Administration to the Committee listed the Law of the Sea Convention as a treaty "for which there is an urgent need for Senate approval." How can we work together to make certain that the treaty is ratified on an urgent basis?

Answer:

The Administration supports early Senate action on the Convention.
The Administration urges the Senate Foreign Relations Committee to again favorably report out the Convention and Implementing Agreement, with the Resolution of Advice and Consent to Ratification as reported by the Committee last March.
The Administration will work with the Senate leadership to bring the Convention and Implementing Agreement to a floor vote in the 109th Congress.

Law of the Sea: Benefits for National Security

Question #2:

I was pleased to see in the U.S. Ocean Action Plan that he submitted to the Congress on December 17, the President states that "as a matter of national security, economic self-interest, and international leadership, the administration is strongly committed to U.S. accession to the UN Convention on the Law of the Sea." Can you cite specific benefits that accession will have for U.S. national security?

Answer:

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 navigation 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, through an exhaustive and objective list of activities that are inconsistent with innocent passage – an improvement over the subjective language in the 1958 Convention on the Territorial Sea and Contiguous Zone;

- 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.

Becoming a party to the Convention would strengthen our ability to deflect potential proposals that would be inconsistent with U.S. national security interests, including those affecting freedom of navigation.

Law of the Sea: Economic Benefits

Question #3:

Support for U.S. accession to the Law of the Sea Convention has been expressed by U.S. companies and industry groups whose businesses depend on the oceans. These include the American Petroleum Institute, the U.S. Oil and Gas Association, the Chamber of Shipping of America, the U.S. Tuna

Foundation, the American Chemistry Council, the National Oceans Industries Association, and the U.S. Council for International Business. Do you agree with these U.S. companies that acceding to the Law of the Sea Convention will advance U.S. economic interests and benefit American businesses?

Answer:

Yes. The United States, as the country with the longest coastline and the largest exclusive economic zone, will gain economic and resource benefits from the Convention:

- The Convention accords the coastal State sovereign rights over non-living resources, including oil and gas, found in the seabed and subsoil of its continental shelf.
- The Convention improves on the 1958 Continental Shelf Convention, to which the United States is a party, in several ways:

by replacing the "exploitability" standard with an automatic♣ continental shelf out to 200 nautical miles, regardless of geology;
by♣ allowing for extension of the shelf beyond 200 miles if it meets certain geological criteria; and
by establishing an institution that can promote♣ the legal certainty sought by U.S. companies concerning the outer limits of the continental shelf.

Concerning mineral resources beyond national jurisdiction, i.e., not subject to the sovereignty of the United States or any other country, the 1994 Agreement meets our goal of guaranteed access by U.S. industry on the basis of reasonable terms and conditions.

Joining the Convention would facilitate deep seabed mining activities of U.S. companies, which require legal certainty to carry out such activities in areas beyond U.S. jurisdiction.

The Convention also accords the coastal State sovereign rights over living marine resources, including fisheries, in its exclusive economic zone, i.e., out to 200 nautical miles from shore.

The Convention protects the freedom to lay submarine cables and pipelines, whether military, commercial, or research.

In addition, the Convention establishes a legal framework for the protection and preservation of the marine environment from a variety of sources, including pollution from vessels, seabed activities, and ocean dumping.

The provisions effectively balance the interests of States in protecting the environment and natural resources with their interests in freedom of navigation and communication.

With the majority of American living in coastal areas, and U.S. coastal areas and EEZ generating vital economic activities, the United States has a strong interest in these aspects of the Convention.

Law of the Sea: Military Operations

Question#4:

It is my understanding that it has been U.S. policy since President Reagan's 1983 Statement of Ocean Policy that the United States, including the U.S. military, will act in accordance with the Law of the Sea Convention's provisions relating to the traditional uses of the oceans. Would acceding to the Law of the Sea Convention require the United States military to make any changes in its existing policies or procedures with respect to the use of the oceans to conduct military operations?

Answer:

No.

As the Chief of Naval Operations, Admiral Vern Clark, testified before the Senate Armed Services Committee on April 8, 2004, "I am convinced that joining the Law of the Sea Convention will have no adverse effect on our operations ..., but rather, will support and enhance ongoing U.S. military operations, including continued prosecution of the global war on terrorism."
The Vice Chief of Naval Operations, Admiral Mike Mullen, testified before the House International Relations Committee on May 12, 2004, that the Navy "currently operate[s] – willingly because it is our national security interests – within the provisions of the Law of the Sea Convention in every area related to navigation. We would never recommend an international commitment that would require us to get a permission slip – from anyone – to conduct our operations." Admiral Mullen concluded his oral statement by emphasizing, "Simply, the Convention does not require a permission slip or prohibit these activities; we would continue operating our military forces as we do today."

Law of the Sea: Weapons Of Mass Destruction

Question #5:

Some commentators have asserted that acceding to the Law of the Sea Convention would prevent the United States from taking action necessary to stop the transportation of weapons of mass destruction across the oceans. I note,

however, that State Department Legal Adviser William Taft testified before the House International Relations Committee that "the Convention will not affect applicable maritime law or policy regarding interdiction of weapons of mass destruction, their means of delivery and related materials." Do you believe that acceding to the Law of the Sea Convention will in any way diminish the ability of the United States to take necessary action to prevent the transport of weapons of mass destruction?

Answer:

No.

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 LOS Convention recognizes numerous legal bases for taking enforcement action against vessels and aircraft suspected of engaging in proliferation of weapons of mass destruction:

- 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.

Nothing in the Convention impairs the inherent right of individual or collective self-defense (a point which is reaffirmed in the Resolution of Advice and Consent proposed in the last Congress).

Law of the Sea: Proliferation Security Initiative

Question #6:

Some commentators have asserted that acceding to the Law of the Sea Convention would prevent or inhibit the United States from implementing the Proliferation Security Initiative. I note, however, that State Department Legal Adviser William Taft testified before our Committee that the PSI is consistent with the Law of the Sea Convention, and that the obligations under the Convention do not present any difficulties for successfully carrying out this important initiative. Chief of Naval Operations Admiral Vern Clark gave similar testimony before the Senate Armed Services Committee. I also note that all of the other countries that are partners with the United States in PSI are themselves parties to the Law of

the Sea Convention. In your view, will acceding to the Convention inhibit the United States and its partners from successfully pursuing the PSI?

Answer:

No.

PSI requires participating countries to act consistent with national legal authorities and "relevant international law and frameworks," which includes the law reflected in the 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, their means of delivery, and related materials.

Like the 1958 conventions, the LOS Convention recognizes numerous legal bases for taking enforcement action against vessels and aircraft suspected of engaging in proliferation of weapons of mass destruction:

- 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.

Nothing in the Convention impairs the inherent right of individual or collective self-defense (a point which is reaffirmed in the Resolution of Advice and Consent proposed in the last Congress).

Law of the Sea: Role of the UN

Question #7:

Some commentators have asserted that the Law of the Sea Convention gives the United Nations the power to regulate the use of the oceans and that U.S. accession to the Convention would allow the United Nations to veto uses of the ocean by the United States, including by the U.S. military. It is my understanding that, under the Convention, the United Nations has no decision-making role with respect to any uses of the oceans. Please explain what role, if any, the United Nations would have in regulating uses of the oceans by the United States if the United States were to accede to the Law of the Sea Convention.

Answer:

The United Nations has no decision-making role under the Convention in regulating uses of the oceans by any State Party to the Convention. Commentators who have made this assertion have argued that the International Seabed Authority (ISA) somehow has regulatory power over all activities in the oceans.
The authority of the ISA is limited to administering the exploration and exploitation of minerals in areas of deep seabed beyond national jurisdiction, generally more than 200 miles from shore. The ISA has no other role and has no general regulatory authority over the uses of the oceans, including freedom of navigation and oversight.

Law of the Sea: Taxation by International Seabed Authority

Question #8:

Some commentators have asserted that acceding to the Law of the Sea Convention would involve giving the International Seabed Authority the power to impose taxes on U.S. citizens. State Department Legal Adviser William Taft has testified before Congress that the International Seabed Authority has no ability or authority to levy taxes. In your view, is there any basis for concern that U.S. accession to the Law of the Sea Convention will result in U.S. citizens being subject to taxation by the International Seabed Authority?

Answer:

No. The Convention does not provide for or authorize taxation of individuals or corporations.

Law of the Sea: Technology Transfer

Question #9:

Some commentators have asserted that the United States would be required to transfer sensitive technology, including technology with military applications, to developing countries if it acceded to the Law of the Sea Convention. It is my understanding, however, that provisions of the Law of the Sea Convention containing mandatory technology transfer requirements were eliminated by the 1994 Agreement addressing the Convention's deep seabed mining regime. Do you believe there is any reason for concern that acceding to the Convention would require the United States to transfer any technology to developing countries?

Answer:

No, technology transfers are not required by the Convention.

Law of the Sea: U.S. Sovereignty over Ocean Resources

Question #10:

Some commentators have asserted that acceding to the Law of the Sea Convention will involve ceding to the International Seabed Authority sovereignty currently enjoyed by the United States over ocean resources. It is my understanding, however, that the jurisdiction of the International Seabed Authority addresses only mining of minerals in areas of the deep seabed beyond the jurisdiction of any country, and that the United States has never asserted sovereignty over such areas. Do you believe that acceding to the Convention would involve any surrender of existing United States claims to sovereignty over ocean resources?

Answer:

No, the United States has never claimed sovereignty over areas or resources of the deep seabed.

The Convention's provisions on the exclusive economic zone and continental shelf preserve and expand U.S. sovereign rights over the living and non-living ocean resources located within, and with regard to the continental shelf beyond, 200 miles of our coastline.

Law of the Sea: Effect of 1994 Implementing Agreement

Question #11:

Some commentators have asserted that there is uncertainty as to the legal status of the 1994 Agreement Relating to the Implementation of Part XI of the Law of the Sea Convention, which addresses the Convention's deep seabed mining regime. I have received a letter from eight former Legal Advisers to the Department of State from both Republican and Democratic Administrations stating that the 1994 Agreement "has binding legal effect in its modification of the LOS Convention." Do you believe there is any basis for questioning the legal effect of the 1994 Agreement?

Answer:

No. My understanding is that the notion that the 1994 Agreement has no legal effect is incorrect.

Last updated:

Statement of Senator Lisa Murkowski
Senate Foreign Relations Committee
Hearing on the UN Convention on the Law of the Sea
September 27, 2007

Mr. Chairman – thank you for holding this hearing and the opportunity to comment on a treaty that is of particular importance to Alaska.

Some of my colleagues may not be aware, but over half of the United States' coastline is in Alaska. Likewise, the Arctic Ocean covers only 3% of the earth's surface, yet it accounts for over 25% of the world's continental shelf area. So when we are considering a Treaty that governs the planet's oceans and the ocean floor, the people of Alaska have a very strong interest.

There are some who do not see the point in joining the rest of the world in ratifying the Convention on the Law of the Sea. They say that the U.S. already enjoys the benefits of the Treaty even though we are not a member – that by not becoming a party to the Treaty we can pick and choose which sections of the Treaty we abide by while not subjecting our actions to international review.

But I would point out, while the situation is favorable now, that may not always be the case. The Treaty opened to amendment in 2004. Do we want a seat at the table to ensure our voice is heard, or do we place our interests in the hands of other nations?

I will give one example. When the U.S. declined to sign the Law of the Sea Treaty in 1982 out of concern over deep sea-bed mining provisions in Part XI, one of the objections was that the United States was not guaranteed a seat on the executive council of the international seabed authority. With the renegotiation in the 1994 agreement, the U.S. is essentially assured a seat on the 36-member State Council by virtue of the "largest economy" provision within the Implementation Agreement.

And I would note that while some decisions by the Council are subject to majority vote if a consensus cannot be formed, there are circumstances where decisions must be made by consensus – including the adoption of rules concerning sea-bed mining, and the adoption of amendments to Part XI of the Treaty. As a party to the Law of the Sea, the U.S. can promote rules and regulations based on market principles and investment protection. But if we do not ratify this Treaty, the Senate will have capitulated the United States' ability to block unfavorable rules and amendments – including potential amendments that could revoke the United States' guarantee of a seat in the Council.

The U.S. waged a global campaign in the developed world to hold off ratifying the Treaty until the sea-bed mining provisions were changed. We got what we wanted, but still we have declined to ratify the Law of the Sea. How can we expect parties in the future to take the U.S. seriously when we negotiate treaties or agreements if we are not willing to follow through in this instance? I believe it is very important for the U.S. to be a party to

this Treaty and be a player in the process, rather than an outsider hoping our interests are not damaged.

Now, there are several topics I would like to comment on relating to the Treaty and its potential impact on Alaska. The first being claims over the continental shelf.

In the 1958 Convention on the Continental Shelf, which the U.S. is a party to, the issue of limitations on the continental shelf was not resolved due to lack of information about the continental shelf. With technological advances and greater knowledge the Law of the Sea provides that a coastal state's continental shelf can extend for 200 nautical miles, with the potential to extend that claim even further.

Russia has submitted a number of claims to the Commission on the Limits of the Continental Shelf that would grant them 45% of the Arctic Ocean's bottom resources – first in 2002 and of course the most recent when Russia placed a flag on the ocean bottom earlier this year. We are fortunate that the Commission so far has withheld its approval of Russia's claim.

According to the U.S. Arctic Research Commission, if we were to become a party to the Treaty, the U.S. stands to lay claim to an area in the Arctic of about 450,000 square kilometers – or approximately the size of California.

But if we do not become a party to the Treaty our opportunity to make this claim, and have the international community respect it, diminishes considerably – as does our ability to prevent claims like Russia's from coming to fruition.

Not only is that a negligent forfeiture of valuable oil, gas, and mineral deposits, but also the ability to perform critical scientific research. The Arctic Ocean is the most poorly understood ocean on the planet. Now is the time to be studying the thinning of the polar cap and its potential impact on the global climate, as well as potential economic activity in the area – not the least of which is the opening of polar routes for maritime commerce.

Also in relation to the Arctic Ocean – and the potential thinning of the polar cap – is the opening of polar routes for maritime commerce. There are predictions that the Arctic Ocean will be ice free for ninety days or more in the summer by the year 2050 – which in turn translates into greater access, and greater utilization.

By utilizing a polar route, the distance between Asia and Europe is 40% shorter than current routes via the Suez or Panama Canals - and is in a much more stable part of the world.

But with greater usage comes greater responsibility. A number of nations have Arctic research programs. Alaska's coastline on the Arctic Ocean is over 1,000 nautical miles. The U.S. can either exercise sea control and protection in this area of the world, or cede that role to whichever nation is willing to assume it. As a party to the Law of the Sea, the

United States' ability to enforce our territorial waters and our Exclusive Economic Zone (EEZ) in the Arctic Ocean is strengthened even further.

Mr. Chairman, the Convention on the Law of the Sea also provides a basis for several international treaties with great relevance to our nation's most productive fisheries, which occur off the coast of Alaska and are of significant value to the economies of Alaska and other Pacific Northwest states.

The Convention on Straddling and Highly Migratory stocks provides both access to, and protections for fish stocks which migrate through the high seas and the jurisdictions of other countries. Among the stocks for which this agreement is of paramount significance is the Bering Sea stock of Alaska pollock, which is the basis for this country's largest single fishery.

The Convention on Fisheries in the Central Bering Sea is another critical piece, which allows us an unprecedented degree of control over the activities of other fishing nations in the central portion of the Bering Sea, beyond both the U.S. and the Russian Exclusive Economic Zones. Without the influence of the Law of the Sea, neither of these important fishing agreements would likely have come into being.

Also, Mr. Chairman, let me note the importance – and the somewhat fragile status of – our maritime boundary agreement with Russia. As you may know, this agreement delineates a specific boundary between our two countries. It is necessary because the agreement under which the United States acquired what is now the State of Alaska was interpreted differently by the two parties.

Both the boundary agreement, and the fisheries enforcement mechanisms that stem from it, are critical to the conduct of fisheries policy in the U.S. and Russian EEZs in the Bering Sea. Although the United States ratified the maritime boundary agreement shortly after it was presented to the Senate, the Russian government has yet to do so, under pressure both from nationalist political interests and Russian Far East economic interests. While observing the provisions of the boundary treaty, the Russian government also has attempted to persuade the U.S. to make a number of significant concessions regarding Russian access to U.S. fishery resources, suggesting meanwhile that such concessions would improve the atmosphere for Russian ratification.

The terms of the boundary treaty are widely regarded as highly favorable to the United States, and are themselves consistent with the Law of the Sea. However, rejection of the latter by the United States could trigger similar rejection by the Russian Duma of the boundary treaty. If that were to occur, it would extremely difficult to renegotiate the boundary agreement with similar positive results for the United States.

The United States and Alaska have tremendous interests in the Arctic Ocean. Our technological capabilities in calculating the extent of the continental shelf are welcomed by other nations. As a party to the Law of the Sea Treaty, we have the opportunity to

stake our claim to a significant chunk of real estate that has the potential for impact on our economy and our national security.

We also have the opportunity to further U.S. leadership in the international community on maritime issues and ensure the continuation of those provisions in the Convention that are so vital to the United States' fisheries industries.

The Convention on the Law of the Sea has my strong support and I look forward to its consideration on the Senate floor.

INFORMATION MEMO
SENATOR MURKOWSKI
From: Isaac
Date: December 10, 2007

RE: Law of the Sea: Myths v. Fact

Below are three of the most common arguments in opposition to the Law of the Sea Treaty and what the text of the Convention actually says.

United Nations:
Myth: This is an abrogation of our sovereignty and hands over control of the United States' waters and seabed to the United Nations.

Reality: The only connection the United Nations Convention on the Law of the Sea has with the United Nations is its title.* Although negotiated under the auspices of the United Nations, the U.N. has no role in the governance of the Treaty nor in the commissions set up by the Treaty. The Treaty establishes several international bodies, most notably the Commission on the Limits of the Continental Shelf and the International Seabed Authority.

The Continental Shelf Commission is composed of 21 members who are "experts in the fields of geology, geophysics, or hydrography" and are nationals of Parties to the Law of the Sea Treaty. This means that unless the United States is a party to the Treaty, no one from the U.S. can serve on the Commission and we will have no say on whether other nations' extended continental shelf claims are internationally recognized. This takes on increased significance with Russia's latest claim to a large portion of the Arctic Ocean. We will not have the opportunity to receive international recognition for our own claims in the Arctic, or refute Russian and other nation's claims, without ratifying the Treaty.

The International Seabed Authority is composed of all parties to the Law of the Sea Treaty. Within the Seabed Authority, a 36-member Council is set up which functions as the executive power of the Seabed Authority. Based on election criteria, the United States would be guaranteed a permanent seat on the Council if we ratify the Treaty. As a result, because most of the Council's substantive decisions are made on a consensus basis, the United States would be able to prevent action against our interests from being adopted.

The Seabed Authority only has jurisdiction over the ocean floor outside of each nation's Exclusive Economic Zone (EEZ). The Law of the Sea grants a nation the exclusive rights over all living and non-living resources within its Exclusive Economic Zone, which extends 200 nautical miles from the shoreline. That includes all fisheries and mineral deposits. No nation may exploit the natural resources within the United States' EEZ without our permission.

* The United Nations does provide a forum for parties to the Treaty to elect members to the Continental Shelf Commission, and funds a secretariat to the Continental Shelf Commission, but plays no other role.

Military:

Myth: The United States Navy's ability to continue its current operations around the world will be subject to an international tribunal. Certain articles in the Treaty prevent military activity, or allow a nation to prevent military passage, in that nation's territorial sea (out to 12 miles from shore). For example, Article 19 says innocent passage is not innocent if a foreign ship undertakes any exercise or practice with weapons of any kind, launches or lands any aircraft, or launches, lands, or takes on board any military device. Article 20 says a submarine must travel on the surface in a nation's territorial sea. Article 30 says that if a warship does not comply with the coastal state's laws, it can be forced to leave. Opponents also say that the exception provided under Article 298 is not clear (more on that below) and would subject U.S. military action to international arbitration or international court.

Reality: A nation has complete sovereignty in its territorial waters and it is understandable that a nation would not want U.S. or any other nation's warships moving through their waters without permission, just as we would not want foreign warships in U.S. waters without abiding by our laws. There are two provisions that refute the opponents arguments.

Article 298 says that when signing, ratifying, or acceding to the Convention, or at any time thereafter, the State may declare that it does not accept any one or more of the procedures with respect to...

> (1)(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service,

Opponents argue that there is no definition of military activity and another nation could challenge the United States' claim of military activity – thus subjecting our military activities to an international tribunal.

So far Argentina, Belarus, Canada, Cape Verde, Chile, China, France, Mexico, Portugal, South Korea, Russia, Slovenia, Tunisia, Ukraine, and the UK have made declarations opting out of dispute settlement provisions with respect to military activities. This includes every other member of the UN Security Council. In the Senate Resolution of Advice and Consent to the Treaty, the U.S. opts out of the dispute resolution mechanisms for disputes concerning military activities. Further, in the Senate Resolution, the U.S. 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." This is a permissible declaration under the Convention.

Innocent Passage: Article 17 grants ships of all states the right of innocent passage through the territorial sea and archipelagic waters (ie: Indonesia). Based on this right, a U.S. warship will always be able to traverse a nation's territorial waters.

On a side note, it is worth pointing out that just about every Resolution on Advice and Consent that the Senate passes contains a RUD (Reservation, Understanding, or Declaration) and sometimes multiple RUDs. Treaties are purposefully written to be vague so that more nations will support them – the RUDs provide for the individual interpretation of the Treaty. By arguing that a certain item is not specifically spelled out (ie: definition of military activity) you're essentially saying that you don't support any treaty the U.S. has ever become a party to because a RUD is needed to clarify the text.

International Tribunal – Dispute Resolution:

Myth: The United States will be subjecting itself to mandatory international arbitration when we currently enjoy the benefits of the Law of the Sea Treaty without limiting our sovereignty.

Reality: Start with the fact that as a non-party to the Treaty, the U.S. enjoys Law of the Sea Treaty benefits at the pleasure of other nations – they have no obligation to recognize U.S. claims (12 mile territorial sea, 200 mile Exclusive Economic Zone, etc...).

Article 287 permits states to choose from a number of mechanisms for dispute resolution, including: the International Tribunal for the Law of the Sea; the International Court of Justice; an arbitral tribunal; or a special arbitral tribunal. Under the Senate's Resolution of Advice and Consent, the U.S. will choose arbitration. At present, the U.S. is party to 16 multilateral agreements, and a large number of bilateral agreements that require dispute settlement through arbitration. Not the least of these is the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks agreement which is based on the Law of the Sea dispute resolution mechanisms and is highly important to Alaska and the Pacific Northwest's fisheries. The Senate has ratified this Treaty.

Under the special arbitration process, which is principally chosen, both parties select two arbitrators and then those four arbitrators select a fifth and final arbitrator. If they are unable to agree on a fifth arbitrator, they can agree on a third party to select a fifth arbitrator. If still no agreement can be reached, the Secretary General of the U.N. appoints an arbitrator.

In a regular arbitration, each party selects one arbitrator, and then mutually agree on three other arbitrators. If there is no agreement, a third party may appoint the three remaining arbitrators.

Bottom line is that if an arbitration panel returns a decision that the United States strongly opposes, there is no true enforcement mechanism and the U.S. can veto and U.N. Security Council measure.

Law of the Sea Treaty crucial to U.S. - COMPASS: Points of view from the community

Anchorage Daily News (AK) - November 8, 2007

Author: *SEN. LISA MURKOWSKI ; Commentary*

It's ironic that an international treaty that can do much good for the nation, especially Alaska, is only now moving closer to Senate approval because of actions by Russia, Denmark and Canada. Steps taken by those three nations to strengthen or establish claims in the Arctic Ocean have highlighted for many Americans -- and many of my colleagues -- the need of the Senate to approve the Law of the Sea Treaty. Otherwise, we could be left standing on the shore, watching as other nations divvy up the wealth and scientific riches of the valuable Arctic seabed.

Without ratification, the U.S. will have no permanent seat on the decision-making body that would settle disputed claims.

Without ratification, the United States, with 1,000 miles of Arctic coast along Alaska, would be the only Arctic nation not party to the treaty. Currently, 155 nations have ratified the treaty, including all of our allies and the world's maritime powers.

International negotiators first approved the Convention on the Law of the Sea in 1982. President Ronald Reagan wisely saw a serious shortcoming in how the new treaty would deal with deep-seabed mining. Negotiators went back to work and, in 1994, presented an improved treaty.

U.S. Senate approval is required of all international treaties, and a Senate committee held hearings in 1994 but the full Senate never voted on the measure. Committee hearings resumed in 2003 and 2004, but still no vote.

The Senate Foreign Relations Committee, of which I am a member, again took up the treaty last month. I hope this is the year for final passage.

Several events of the past few months have pushed the treaty to the front of the agenda, including Russia's decision to send two small submarines into Arctic waters in August to plant their nation's flag under the North Pole. Russia believes its continental shelf extends that far into the Arctic. Like-minded Denmark has sent scientists to determine if a mountain ridge beneath the Arctic Ocean is connected to its territory of Greenland. And Canada, getting nervous at the thought of underwater flags and ice-free shipping lanes through the Northwest Passage, is talking about setting up military bases and expanding its fleet to patrol the waters.

The United States cannot sit by and watch as other nations draw their own maps.

Under the Law of the Sea Treaty, member nations can claim an exclusive economic zone out to 200 miles, with sovereign rights to explore, develop and manage the resources within that zone. Nations' claims can extend even farther if they can prove a real connection to their continental shelf. The U.S. Arctic Research Commission believes the United States could lay claim, beyond our 200 mile exclusive economic zone, to the northern seabed around Alaska equal in size to the state of California.

This isn't just about the oil, gas and mineral resources in the Arctic. It's also about managing the critical scientific research that is so important to Alaskans' way of life. It's about the United States defining and defending its rights on uses of the sea, rules of navigation,

economic development and environmental standards. This is about our future, for without Senate ratification of the treaty, the future of miles of ocean north of Alaska is in someone else's hands.

"We have more to gain from legal certainty and public order in the world's oceans than any other country," Deputy Secretary of State John Negroponte said in Senate committee hearings last month. Negroponte, who also has served as director of national intelligence and U.N. ambassador, said the treaty would not interfere with U.S. intelligence-gathering efforts or our Navy's navigational freedom.

Support for Senate ratification is coming from all sides of the political world, including the ranking Republican on the Foreign Relations Committee, Indiana Sen. Richard Lugar, and the Democratic chairman of the committee, Delaware Sen. Joseph Biden.

I urge Alaskans to join me in supporting the Law of the Sea Treaty. It's time the United States signed on the bottom line to protect our rights.

Republican Lisa Murkowski represents Alaska in the U.S. Senate.

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Oceans and Law of the Sea

Division for Ocean Affairs and the Law of the Sea

The United Nations Convention on the Law of the Sea
(A historical perspective)

A Historical Perspective

The oceans had long been subject to the freedom of-the-seas doctrine - a principle put forth in the seventeenth century essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas was proclaimed to be free to all and belonging to nc While this situation prevailed into the twentieth century, by mid-century there was an impetus to extend national claims over offshore resources. There was growi concern over the toll taken on coastal fish stocks by long-distance fishing fleets and over the threat of pollution and wastes from transport ships and oil tankers car noxious cargoes that plied sea routes across the globe. The hazard of pollution was ever present, threatening coastal resorts and all forms of ocean life. The navies maritime powers were competing to maintain a presence across the globe on the surface waters and even under the sea.

A tangle of claims, spreading pollution, competing demands for lucrative fish stocks in coastal waters and adjacent seas, growing tension between coastal nation rights to these resources and those of distant-water fishermen, the prospects of a rich harvest of resources on the sea floor, the increased presence of maritime pow and the pressures of long-distance navigation and a seemingly outdated, if not inherently conflicting, freedom-of-the-seas doctrine - all these were threatening to transform the oceans into another arena for conflict and instability.

In 1945, President Harry S Truman, responding in part to pressure from domestic oil interests, unilaterally extended United States jurisdiction over all natural resources on that nation's continental shelf - oil, gas, minerals, etc. This was the first major challenge to the freedom-of-the-seas doctrine. Other nations soon follo suit.

In October 1946, Argentina claimed its shelf and the epicontinental sea above it. Chile and Peru in 1947, and Ecuador in 1950, asserted sovereign rights over a 2 mile zone, hoping thereby to limit the access of distant-water fishing fleets and to control the depletion of fish stocks in their adjacent seas.

Soon after the Second World War, Egypt, Ethiopia, Saudi Arabia, Libya, Venezuela and some Eastern European countries laid claim to a 12-mile territorial sea clearly departing from the traditional three-mile limit.

Later, the archipelagic nation of Indonesia asserted the right to dominion over the water that separated its 13,000 islands. The Philippines did likewise. In 1970, Canada asserted the right to regulate navigation in an area extending for 100 miles from its shores in order to protect Arctic water against pollution.

From oil to tin, diamonds to gravel, metals to fish, the resources of the sea are enormous. The reality of their exploitation grows day by day as technology opens ways to tap those resources.

In the late 1960s, oil exploration was moving further and further from land, deeper and deeper into the bedrock of continental margins. From a modest beginni 1947 in the Gulf of Mexico, offshore oil production, still less than a million tons in 1954, had grown to close to 400 million tons. Oil drilling equipment was already as far as 4,000 metres below the ocean surface.

The oceans were being exploited as never before. Activities unknown barely two decades earlier were in full swing around the world. Tin had been mined in the shallow waters off Thailand and Indonesia. South Africa was about to tap the Namibian coast for diamonds. Potato-shaped nodules, found almost a century earlie lying on the seabed some five kilometres below, were attracting increased interest because of their metal content.

And then there was fishing. Large fishing vessels were roaming the oceans far from their native shores, capable of staying away from port for months at a time. Fish stocks began to show signs of depletion as fleet after fleet swept distant coastlines. Nations were flooding the richest fishing waters with their fishing fleets virtually unrestrained: coastal States setting limits and fishing States contesting them. The so-called "Cod War" between Iceland and the United Kingdom had brought about the spectacle of British Navy ships dispatched to rescue a fishing vessel seized by Iceland for violating its fishing rules.

Offshore oil was the centre of attraction in the North Sea. Britain, Denmark and Germany were in conflict as to how to carve up the continental shelf, with its rich oil resources.

It was late 1967 and the tranquillity of the sea was slowly being disrupted by technological breakthroughs, accelerating and multiplying uses, and a super-Power rivalry that stood poised to enter man's last preserve - the seabed.

It was a time that held both dangers and promises, risks and hopes. The dangers were numerous: nuclear submarines charting deep waters never before explored; designs for antiballistic missile systems to be placed on the seabed; supertankers ferrying oil from the Middle East to European and other ports, passing through congested straits and leaving behind a trail of oil spills; and rising tensions between nations over conflicting claims to ocean space and resources.

The oceans were generating a multitude of claims, counterclaims and sovereignty disputes.

The hope was for a more stable order, promoting greater use and better management of ocean resources and generating harmony and goodwill among States that would no longer have to eye each other suspiciously over conflicting claims.

Third United Nations Conference on the Law of the Sea

On 1 November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to look around them and open their eyes to a looming conflict that could devastate the oceans, the lifeline of man's very survival. In a speech to the United Nations General Assembly, he spoke of the super-Power rivalry that was spreading to the oceans, of the pollution that was poisoning the seas, of the conflicting legal claims and their implications for a stable order and of the rich potential that lay on the seabed.

Pardo ended with a call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction". "It is the only alternative by which we can hope to avoid the escalating tension that will be inevitable if the present situation is allowed to continue", he said.

Pardo's urging came at a time when many recognized the need for updating the freedom-of-the-seas doctrine to take into account the technological changes that had altered man's relationship to the oceans. It set in motion a process that spanned 15 years and saw the creation of the United Nations Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of the declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind and the convening of the Stockholm Conference on the Human Environment. What started as an exercise to regulate the seabed turned into a global diplomatic effort to regulate and write rules for all ocean areas, all uses of the seas and all of its resources? These were some of the factors that led to the convening of the Third United Nations Conference on the Law of the Sea, to write a comprehensive treaty for the oceans.

The Conference was convened in New York in 1973. It ended nine years later with the adoption in 1982 of a constitution for the seas - the United Nations Convention on the Law of the Sea. During those nine years, shuttling back and forth between New York and Geneva, representatives of more than 160 sovereign States sat down and discussed the issues, bargained and traded national rights and obligations in the course of the marathon negotiations that produced the Convention.

United Nations Convention on the Law of the Sea - key provisions

- Setting Limits
- Navigation
- Exclusive Economic Zone
- Continental Shelf
- Deep Seabed Mining

The Convention

Navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and, a more unique feature, a binding procedure for settlement of disputes between States - these are among the important features of the treaty. In short, the Convention is an unprecedented attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean, and thus bring a stable order to mankind's very source of life.

"Possibly the most significant legal instrument of this century" is how the United Nations Secretary-General described the treaty after its signing. The Convention was adopted as a "Package deal", to be accepted as a whole in all its parts without reservation on any aspect. The signature of the Convention by Governments carries the undertaking not to take any action that might defeat its objects and purposes. Ratification of, or accession to, the Convention expresses the consent of a State to be bound by its provisions. The Convention came into force on 16 November 1994, one year after Guyana became the 60th State to adhere to it.

Across the globe, Governments have taken steps to bring their extended areas of adjacent ocean within their jurisdiction. They are taking steps to exercise their rights over neighbouring seas, to assess the resources of their waters and on the floor of the continental shelf. The practice of States has in nearly all respects been carried out in a manner consistent with the Convention, particularly after its entry into force and its rapid acceptance by the international community as the basis for all actions dealing with the oceans and the law of the sea.

The definition of the territorial sea has brought relief from conflicting claims. Navigation through the territorial sea and narrow straits is now based on legal principles. Coastal States are already reaping the benefits of provisions giving them extensive economic rights over a 200-mile wide zone along their shores. The right of landlocked countries of access to and from the sea is now stipulated unequivocally. The right to conduct marine scientific research is now based on accepted principles and cannot be unreasonably denied. Already established and functioning are the International Seabed Authority, which organize and control activities in the deep seabed beyond national jurisdiction with a view to administering its resources; as well as the International Tribunal for the Law of the Sea, which has competence to settle ocean related disputes arising from the application or interpretation of the Convention.

Wider understanding of the Convention will bring yet wider application. Stability promises order and harmonious development. However, Part XI, which deals with mining of minerals lying on the deep ocean floor outside of nationally regulated ocean areas, in what is commonly known as the international seabed area, had raised many concerns especially from industrialized States. The Secretary-General, in an attempt to achieve universal participation in the Convention, initiated a series of informal consultations among States in order to resolve those areas of concern. The consultations successfully achieved, in July 1998, an Agreement Related to the Implementation of Part XI of the Convention. The Agreement, which is part of the Convention, is now deemed to have paved the way for all States to become parties to the Convention.

Setting Limits

The dispute over who controls the oceans probably dates back to the days when the Egyptians first plied the Mediterranean in papyrus rafts. Over the years and centuries, countries large and small, possessing vast ocean-going fleets or small fishing flotillas, husbanding rich fishing grounds close to shore or eyeing distant harvests, have all vied for the right to call long stretches of oceans and seas their own.

Conflicting claims, even extravagant ones, over the oceans were not new. In 1494, two years after Christopher Columbus' first expedition to America, Pope Alexander VI met with representatives of two of the great maritime Powers of the day - Spain and Portugal - and neatly divided the Atlantic Ocean between them. A Papal Bull gave Spain everything west of the line the Pope drew down the Atlantic and Portugal everything east of it. On that basis, the Pacific and the Gulf of Mexico were acknowledged as Spain's, while Portugal was given the South Atlantic and the Indian Ocean.

Before the Convention on the Law of the Sea could address the exploitation of the riches underneath the high seas, navigation rights, economic jurisdiction, or any other pressing matter, it had to face one major and primary issue - the setting of limits. Everything else would depend on clearly defining the line separating national and international waters. Though the right of a coastal State to complete control over a belt of water along its shoreline - the territorial sea - had long been recognized in international law, up until the Third United Nations Conference on the Law of the Sea, States could not see eye to eye on how narrow or wide this belt should be.

At the start of the Conference, the States that maintained the traditional claims to a three-mile territorial sea had numbered a mere 25. Sixty-six countries had by then claimed a 12-mile territorial sea limit. Fifteen others claimed between 4 and 10 miles, and one remaining major group of eight States claimed 200 nautical miles.

Traditionally, smaller States and those not possessing large, ocean-going navies or merchant fleets favoured a wide territorial sea in order to protect their coastal waters from infringements by those States that did. Naval and maritime Powers, on the other hand, sought to limit the territorial sea as much as possible, in order to protect their fleets' freedom of movement.

As the work of the Conference progressed, the move towards a 12-mile territorial sea gained wider and eventually universal acceptance. Within this limit, States are in principle free to enforce any law, regulate any use and exploit any resource.

The Convention retains for naval and merchant ships the right of "innocent passage" through the territorial seas of a coastal State. This means, for example, that a Japanese ship, picking up oil from Gulf States, would not have to make a 3,000-mile detour in order to avoid the territorial sea of Indonesia, provided passage is not detrimental to Indonesia and does not threaten its security or violate its laws.

In addition to their right to enforce any law within their territorial seas, coastal States are also empowered to implement certain rights in an area beyond the territorial sea, extending for 24 nautical miles from their shores, for the purpose of preventing certain violations and enforcing police powers. This area, known as the "contiguous zone", may be used by a coast guard or its naval equivalent to pursue and, if necessary, arrest and detain suspected drug smugglers, illegal immigrants and customs or tax evaders violating the laws of the coastal State within its territory or the territorial sea.

The Convention also contains a new feature in international law, which is the regime for archipelagic States (States such as the Philippines and Indonesia, which are made up of a group of closely spaced islands). For those States, the territorial sea is a 12-mile zone extending from a line drawn joining the outermost points of the outermost islands of the group that are in close proximity to each other. The waters between the islands are declared archipelagic waters, where ships of all States enjoy the right of innocent passage. In those waters, States may establish sea lanes and air routes where all ships and aircraft enjoy the right of expeditious and unobstructed passage.

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Navigation

Perhaps no other issue was considered as vital or presented the negotiators of the Convention on the Law of the Sea with as much difficulty as that of navigational rights.

Countries have generally claimed some part of the seas beyond their shores as part of their territory, as a zone of protection to be patrolled against smugglers, warships and other intruders. At its origin, the basis of the claim of coastal States to a belt of the sea was the principle of protection; during the seventeenth and eighteenth centuries another principle gradually evolved: that the extent of this belt should be measured by the power of the littoral sovereign to control the area.

In the eighteenth century, the so-called "cannon-shot" rule gained wide acceptance in Europe. Coastal States were to exercise dominion over their territorial seas as far as projectiles could be fired from a cannon based on the shore. According to some scholars, in the eighteenth century the range of land-based cannons was approximately one marine league, or three nautical miles. It is believed that on the basis of this formula developed the traditional three-mile territorial sea limit.

By the late 1960s, a trend to a 12-mile territorial sea had gradually emerged throughout the world, with a great majority of nations claiming sovereignty out to that seaward limit. However, the major maritime and naval Powers clung to a three-mile limit on territorial seas, primarily because a 12-mile limit would effectively close off and place under national sovereignty more than 100 straits used for international navigation.

A 12-mile territorial sea would place under national jurisdiction of riparian States strategic passages such as the Strait of Gibraltar (8 miles wide and the only open access to the Mediterranean), the Strait of Malacca (20 miles wide and the main sea route between the Pacific and Indian Oceans), the Strait of Hormuz (21 miles wide and the only passage to the oil-producing areas of Gulf States) and Bab el Mandeb (14 miles wide, connecting the Indian Ocean with the Red Sea).

At the Third United Nations Conference on the Law of the Sea, the issue of passage through straits placed the major naval Powers on one side and coastal States controlling narrow straits on the other. The United States and the Soviet Union insisted on free passage through straits, in effect giving straits the same legal status as the international waters of the high seas. The coastal States, concerned that passage of foreign warships so close to their shores might pose a threat to their national security and possibly involve them in conflicts among outside Powers, rejected this demand.

Instead, coastal States insisted on the designation of straits as territorial seas and were willing to grant to foreign warships only the right of "innocent passage", a term that was generally recognized to mean passage "not prejudicial to the peace, good order or security of the coastal State". The major naval Powers rejected this concept, since, under international law, a submarine exercising its right of innocent passage, for example, would have to surface and show its flag C an unacceptable security risk in the eyes of naval Powers. Also, innocent passage does not guarantee the aircraft of foreign States the right of overflight over waters where only such passage is guaranteed.

In fact, the issue of passage through straits was one of the early driving forces behind the Third United Nations Conference on the Law of the Sea, when, in early 1967, the United States and the Soviet Union proposed to other Member countries of the United Nations that an international conference be held to deal specifically with the entangled issues of straits, overflight, the width of the territorial sea and fisheries.

The compromise that emerged in the Convention is a new concept that combines the legally accepted provisions of innocent passage through territorial waters and freedom of navigation on the high seas. The new concept, "transit passage", required concessions from both sides.

The regime of transit passage retains the international status of the straits and gives the naval Powers the right to unimpeded navigation and overflight that they had insisted on. Ships and vessels in transit passage, however, must observe international regulations on navigational safety, civilian air-traffic control and prohibition of vessel-source pollution and the conditions that ships and aircraft proceed without delay and without stopping except in distress situations and that they refrain from any threat or use of force against the coastal State. In all matters other than such transient navigation, straits are to be considered part of the territorial sea of the coastal State.

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Exclusive Economic Zone

The exclusive economic zone (EEZ) is one of the most revolutionary features of the Convention, and one which already has had a profound impact on the management and conservation of the resources of the oceans. Simply put, it recognizes the right of coastal States to jurisdiction over the resources of some 38 million square nautical miles of ocean space. To the coastal State falls the right to exploit, develop, manage and conserve all resources - fish or oil, gas or gravel,

nodules or sulphur - to be found in the waters, on the ocean floor and in the subsoil of an area extending 200 miles from its shore.

The EEZs are a generous endowment indeed. About 87 per cent of all known and estimated hydrocarbon reserves under the sea fall under some national jurisdiction as a result. So too will almost all known and potential offshore mineral resources, excluding the mineral resources (mainly manganese nodules and metallic crusts) of the deep ocean floor beyond national limits. And whatever the value of the nodules, it is the other non-living resources, such as hydrocarbons, that represent the presently attainable and readily exploitable wealth.

The most lucrative fishing grounds too are predominantly the coastal waters. This is because the richest phytoplankton pastures lie within 200 miles of the continental masses. Phytoplankton, the basic food of fish, is brought up from the deep by currents and ocean streams at their strongest near land, and by the upwelling of cold waters where there are strong offshore winds.

The desire of coastal States to control the fish harvest in adjacent waters was a major driving force behind the creation of the EEZs. Fishing, the prototypical cottage industry before the Second World War, had grown tremendously by the 1950s and 1960s. Fifteen million tons in 1938, the world fish catch stood at 86 million tons in 1989. No longer the domain of a lone fisherman plying the sea in a wooden dhow, fishing, to be competitive in world markets, now requires armadas of factory-fishing vessels, able to stay months at sea far from their native shores, and carrying sophisticated equipment for tracking their prey.

The special interest of coastal States in the conservation and management of fisheries in adjacent waters was first recognized in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. That Convention allowed coastal States to take "unilateral measures" of conservation on what was then the high seas adjacent to their territorial waters. It required that if six months of prior negotiations with foreign fishing nations had failed to find a formula for sharing, the coastal State could impose terms. But still the rules were disorderly, procedures undefined, and rights and obligations a web of confusion. On the whole, these rules were never implemented.

The claim for 200-mile offshore sovereignty made by Peru, Chile and Ecuador in the late 1940s and early 1950s was sparked by their desire to protect from foreign fishermen the rich waters of the Humboldt Current (more or less coinciding with the 200-mile offshore belt. This limit was incorporated in the Santiago Declaration of 1952 and reaffirmed by other Latin American States joining the three in the Montevideo and Lima Declarations of 1970. The idea of sovereignty over coastal-area resources continued to gain ground.

As long-utilized fishing grounds began to show signs of depletion, as long-distance ships came to fish waters local fishermen claimed by tradition, as competition increased, so too did conflict. Between 1974 and 1979 alone there were some 20 disputes over cod, anchovies or tuna and other species between, for example, the United Kingdom and Iceland, Morocco and Spain, and the United States and Peru.

And then there was the offshore oil.

The Third United Nations Conference on the Law of the Sea was launched shortly after the October 1973 Arab-Israeli war. The subsequent oil embargo and skyrocketing of prices only helped to heighten concern over control of offshore oil reserves. Already, significant amounts of oil were coming from offshore facilities: 376 million of the 483 million tons produced in the Middle East in 1973; 431 million barrels a day in Nigeria, 141 million barrels in Malaysia, 246 million barrels in Indonesia. And all of this with barely 2 per cent of the continental shelf explored. Clearly, there was hope all around for a fortunate discovery and a potential to be protected.

Today, the benefits brought by the EEZs are more clearly evident. Already 86 coastal States have economic jurisdiction up to the 200-mile limit. As a result, almost 99 per cent of the world's fisheries now fall under some nation's jurisdiction. Also, a large percentage of world oil and gas production is offshore. Many other marine resources also fall within coastal-State control. This provides a long-needed opportunity for rational, well-managed exploitation under an assured authority.

Figures on known offshore oil reserves now range from 240 to 300 billion tons. Production from these reserves amounted to a little more than 25 per cent of total world production in 1996. Experts estimate that of the 150 countries with offshore jurisdiction, over 100, many of them developing countries, have medium to excellent prospects of finding and developing new oil and natural gas fields.

It is evident that it is archipelagic States and large nations endowed with long coastlines that naturally acquire the greatest areas under the EEZ regime. Among the major beneficiaries of the EEZ regime are the United States, France, Indonesia, New Zealand, Australia and the Russian Federation.

But with exclusive rights come responsibilities and obligations For example, the Convention encourages optimum use of fish stocks without risking depletion through overfishing. Each coastal State is to determine the total allowable catch for each fish species within its economic zone and is also to estimate its harvest capacity and what it can and cannot itself catch. Coastal States are obliged to give access to others, particularly neighbouring States and land-locked countries, to the surplus of the allowable catch. Such access must be done in accordance with the conservation measures established in the laws and regulations of the coastal State.

Coastal States have certain other obligations, including the adoption of measures to prevent and limit pollution and to facilitate marine scientific research in their EEZs.

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Continental Shelf

In ancient times, navigation and fishing were the primary uses of the seas. As man progressed, pulled by technology in some instances and pushing that technology at other times in order to satisfy his needs, a rich bounty of other resources and uses were found underneath the waves on and under the ocean floor - minerals, natural gas, oil, sand and gravel, diamonds and gold. What should be the extent of a coastal State's jurisdiction over these resources? Where and how should the lines demarcating their continental shelves be drawn? How should these resources be exploited? These were among the important questions facing lawyers, scientists and diplomats as they assembled in New York in 1973 for the Third Conference.

Given the real and potential continental shelf riches, there naturally was a scramble by nations to assert shelf rights. Two difficulties quickly arose. States with a naturally wide shelf had a basis for their claims, but the geologically disadvantaged might have almost no shelf at all. The latter were not ready to accept geological discrimination. Also, there was no agreed method on how to define the shelf's outer limits, and there was a danger of the claims to continental shelves

being overextended - so much so as to eventually divide up the entire ocean floor among such shelves.

Although many States had started claiming wide continental-shelf jurisdiction since the Truman Proclamation of 1945, these States did not use the term "continental shelf" in the same sense. In fact, the expression became no more than a convenient formula covering a diversity of titles or claims to the seabed and subsoil adjacent to the territorial seas of States. In the mid-1950s the International Law Commission made a number of attempts to define the "continental shelf" and coastal State jurisdiction over its resources.

In 1958, the first United Nations Conference on the Law of the Sea accepted a definition adopted by the International Law Commission, which defined the continental shelf to include "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas".

Already, as the Third United Nations Conference on the Law of the Sea got under way, there was a strong consensus in favour of extending coastal-State control over ocean resources out to 200 miles from shore so that the outer limit coincides with that of the EEZ. But the Conference had to tackle the demand by States with a geographical shelf extending beyond 200 miles for wider economic jurisdiction.

The Convention resolves conflicting claims, interpretations and measuring techniques by setting the 200-mile EEZ limit as the boundary of the continental shelf for seabed and subsoil exploitation, satisfying the geologically disadvantaged. It satisfied those nations with a broader shelf C about 30 States, including Argentina, Australia, Canada, India, Madagascar, Mexico, Sri Lanka and France with respect to its overseas possessions C by giving them the possibility of establishing a boundary going out to 350 miles from their shores or further, depending on certain geological criteria.

Thus, the continental shelf of a coastal State comprises the seabed and its subsoil that extend beyond the limits of its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 miles from the baselines from which the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance.

In cases where the continental margin extends further than 200 miles, nations may claim jurisdiction up to 350 miles from the baseline or 100 miles from the 2,500 metre depth, depending on certain criteria such as the thickness of sedimentary deposits. These rights would not affect the legal status of the waters or that of the airspace above the continental shelf.

To counterbalance the continental shelf extensions, coastal States must also contribute to a system of sharing the revenue derived from the exploitation of mineral resources beyond 200 miles. These payments or contributions - from which developing countries that are net importers of the mineral in question are exempt C are to be equitably distributed among States parties to the Convention through the International Seabed Authority.

To control the claims extending beyond 200 miles, the Commission on the Limits of the Continental Shelf was established to consider the data submitted by the coastal States and make recommendations

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Deep Seabed Mining

Deep seabed mining is an enormous challenge that has been compared to standing atop a New York City skyscraper on a windy day, trying to suck up marbles off the street below with a vacuum cleaner attached to a long hose.

Mining will take place at a depth of more than fifteen thousand feet of open ocean, thousands of miles from land. Mining ships are expected to remain on station five years at a time, working without a stop, and to transfer the seabed minerals they bring up to auxiliary vessels.

At the centre of the controversy were potato-sized manganese nodules found on the deep ocean floor and containing a number of important metals and minerals.

On 13 March 1874, somewhere between Hawaii and Tahiti, the crew of the British research vessel HMS *Challenger*, on the first great oceanographic expedition of modern times, hauled in from a depth of 15,600 feet a trawl containing the first known deposits of manganese nodules. Analysis of the samples in 1891 showed the Pacific Ocean nodules to contain important metals, particularly nickel, copper and cobalt. Subsequent sampling demonstrated that nodules were abundant throughout the deep regions of the Pacific.

In the 1950s, the potential of these deposits as sources of nickel, copper and cobalt ore was finally appreciated. Between 1958 and 1968, numerous companies began serious prospecting of the nodule fields to estimate their economic potential. By 1974, 100 years after the first samples were taken, it was well established that a broad belt of sea floor between Mexico and Hawaii and a few degrees north of the equator (the so-called Clarion Clipperton zone) was literally paved with nodules over an area of more than 1.35 million square miles.

In 1970 the United Nations General Assembly declared the resources of the seabed beyond the limits of national jurisdiction to be "the common heritage of mankind". For 12 years from then, up to 1982 when the Convention on the Law of the Sea was adopted, nothing tested so sorely the ability of diplomats from various corners of the world to reach common ground than the goal of conserving that common heritage and profiting from it at the same time.

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The Exploitation Regime

Having established that the resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind, the framers of the treaty faced the question of who should mine the minerals and under what rules. The developed countries took the view that the resources should be commercially exploited by mining companies in consortia and that an international authority should grant licenses to those companies. The developing countries objected to this view on the grounds that the resource was unique and belonged to the whole of mankind, and that the most appropriate way to benefit from it was for the international community to establish a public enterprise to mine the international seabed area.

Thus, the gamut of proposals ran from a "weak" international authority, noting claims and collecting fees, to a "strong" one with exclusive rights to mine the common heritage area, involving States or private groups only as it saw fit. The solution found was to make possible both the public and private enterprises on one hand and the collective mining on the other - the so-called "parallel system".

This complex system, though simplified to a great degree by the Agreement on Part XI, is administered by the International Seabed Authority, headquartered in Jamaica. The Authority is divided into three principal organs, an Assembly, made up of all members of the Authority with power to set general policy, a council, with powers to make executive decisions, made up of 36 members elected from among the members of the Authority, and a secretariat headed by a secretary-general.

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Technological Prospects

Unfortunately, the road to the market is long, hard and expensive. The nodules lie two to three miles - about 5 kilometres - down, in pitch-black water where pressures exceed 7,000 pounds per square inch and temperatures are near freezing. Many of the ocean floors are filled with treacherous hills and valleys. Appropriate deep-sea mining technology must be developed to accommodate this environment.

Many mining systems have been tried, and some have appeared more promising than others. For a while, hydraulic suction dredge airlifts and a continuous-line bucket system were thought to be a promising answer to the mining dilemma. Another system, the so-called shuttle system, involves sending down a remotely operated, Jules Verne-like vehicle, with television "eyes" and powerful lights, to crawl over the ocean floor, gobble up and crush nodules and resurface with its catch.

Today, the continuous-line bucket system, where empty buckets are lowered to the bottom of the ocean and later raised, partially filled with nodules, has been discarded because of low recovery rates. The shuttle system has been shelved because its operational and investment costs far exceeded the costs of more conventional approaches. However, this system is thought to be the technology of the future. Thus, the current focus is on the hydraulic suction and dredge method. But there are a number of technological problems to be worked out before it will be ready for commercial application.

Keeping a steady ship position, since a vessel cannot anchor 5 kilometres above the sea floor and making sure that the pipe does not snap or that the recovery vehicle is not lost or permanently stuck on the ocean floor are among the many headaches involved in developing the necessary technology for commercial exploitation.

Extracting metals from the nodules is another task altogether. All agree that this phase will be the most expensive, even if only at the initial investment stage. Technologically, however, processing does not pose as much of a challenge as the recovery of manganese nodules. That is because it is thought that the two processing techniques applied to land-derived ores - heat and chemical separation of the metals - will apply just as well to the seabed resources.

Because of their porous nature, recovered nodules retain a great deal of water. Heat processing would therefore require a great amount of energy in order to dry the nodules prior to extracting the metals. It is for that reason that some believe that chemical techniques will prove to be the most efficient and least costly.

Moreover, processing would involve such waste that special barren sites would have to be found to carry out operations. Yet, others believe that the economic viability of seabed mining would be greatly enhanced if a method is devised to process the nodules at sea, saving enormous energy costs involved in the transfer of nodules to land-based processing plants.

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The Question of Universal Participation in the Convention

Prospects for seabed mining depend to a large degree on the market conditions for the metals to be produced from seabed nodules. While one of the driving forces behind the Convention on the Law of the Sea was the prevailing belief in the 1970s that commercial seabed mining was imminent, today the prospects for the inherently expensive process of mining the seabed have greatly receded with changing economic and other conditions since the early 1980s. Indeed, some experts predict that commercial mining operations are not likely to begin until well after the year 2000.

A number of important political and economic changes have taken place in the 10 years that have elapsed since the adoption of the Convention, some directly affecting the deep seabed mining provisions of the Convention, others affecting international relations in general. In the meantime, the prevailing economic prognosis on which the seabed mining regime was built has not been realized.

The Convention on the Law of the Sea holds out the promise of an orderly and equitable regime or system to govern all uses of the sea. But it is a club that one must join in order to fully share in the benefits. The Convention - like other treaties - creates rights only for those who become parties to it and thereby accept its obligations, except for the provisions which apply to all States because they either merely confirm existing customary law or are becoming customary law.

However, as its preamble states, the Convention starts from the premise that the problems of ocean space are closely interrelated and need to be considered as a whole. The desire for a comprehensive Convention arose from the recognition that traditional sea law was disintegrating and that the international community could not be expected to behave in a consistent manner without dialogue, negotiations and agreement.

In this context, it must be underscored that the Convention was adopted as a "package deal", with one aim above all, namely universal participation in the Convention. No State can claim that it has achieved quite all it wanted. Yet every State benefits from the provisions of the Convention and from the certainty that it has established in international law in relation to the law of the sea. It has defined rights while underscoring the obligations that must be performed in order to benefit from those rights. Any trend towards exercising those rights without complying with the corresponding obligations, or towards exercising rights inconsistent with the Convention, must be viewed as damaging to the universal regime that the Convention establishes.

The adoption of the Agreement on Part XI has eliminated this threat. With nearly all States now adhering, even on a provisional basis pending ratification or accession, to the Convention, the threat to the Convention has been eliminated. The Agreement has particularly removed those obstacles which had prevented the industrialized countries from adhering to the Convention. Those same countries have either ratified the Convention or submitted it for their internal legislative procedures. Even more important, is their active participation in the institutions created by the Convention and their strong support for the regime contained in it.

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Pioneer Investors

The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was established, prior to the entry into force of the Convention, to prepare for the setting up of both institutions. The Preparatory Commission proceeded with the implementation of an interim regime adopted by the Third United Nations Conference on the Law of the Sea, designed to protect those States or entities that have already made a large investment in seabed mining. This so-called Pioneer Investor Protection regime allows a State, or consortia of mining companies to be sponsored by a State, to be registered as a Pioneer Investor. Registration reserves for the Pioneer Investor a specific mine site in which the registered Investor is allowed to explore for, but not exploit, manganese nodules. Registered Investors are also obligated to explore a mine site reserved for the Enterprise and undertake other obligations, including the provision of training to individuals to be designated by the Preparatory Commission.

The Preparatory Commission had registered seven pioneer investors: China, France, India, Japan, the Republic of Korea, and the Russian Federation, as well as a consortium known as the Interoceanmetal Joint Organization (IMO). With the Convention in force and the International Seabed Authority being functioning, those pioneer investors will become contractors along the terms contained in the Convention and the Agreement, as well as regulations established by the International Seabed Authority.

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Protection of the Marine Environment

Thor Heyerdahl, sailing the Atlantic in his papyrus raft, Ra, found globs of oil, tar and plastics stretching from the coast of Africa to South America. Parts of the Baltic, Mediterranean and Black Sea are already so polluted that marine life is severely threatened. And waste dumped in the Pacific and Atlantic Oceans has washed up on the shores of Antarctica.

In the United States, long stretches of beaches are often closed because of medical and other waste washing up on shore. And every time an oil tanker is involved in an accident, the world's pulse quickens a bit in fear of a major catastrophe, In fact, every time a tanker cleans its tanks at sea, every time a factory channels toxic residues to coastal waters or a city conveniently releases raw sewage into the sea, every time a service station changes the oil of an automobile and pours the waste oil into the sewers, the oceans become a little more polluted. Eventually, scientists fear, the oceans' regenerative capacity will be overwhelmed by the amount of pollution it is subjected to by man. Signs of such catastrophe are clearly observed in many seas—particularly along the heavily populated coasts and enclosed or semi-enclosed seas.

There are six main sources of ocean pollution addressed in the Convention: land-based and coastal activities; continental-shelf drilling; potential seabed mining; ocean dumping; vessel-source pollution; and pollution from or through the atmosphere.

The Convention lays down, first of all, the fundamental obligation of all States to protect and preserve the marine environment. It further urges all States to cooperate on a global and regional basis in formulating rules and standards and otherwise take measures for the same purpose.

Coastal States are empowered to enforce their national standards and anti-pollution measures within their territorial sea. Every coastal State is granted jurisdiction for the protection and preservation of the marine environment of its EEZ. Such jurisdiction allows coastal States to control, prevent and reduce marine pollution from dumping, land-based sources or seabed activities subject to national jurisdiction, or from or through the atmosphere. With regard to marine pollution from foreign vessels, coastal States can exercise jurisdiction only for the enforcement of laws and regulations adopted in accordance with the Convention or for "generally accepted international rules and standards". Such rules and standards, many of which are already in place, are adopted through the competent international organization, namely the International Maritime Organization (IMO).

On the other hand, it is the duty of the "flag State", the State where a ship is registered and whose flag it flies, to enforce the rules adopted for the control of marine pollution from vessels, irrespective of where a violation occurs. This serves as a safeguard for the enforcement of international rules, particularly in waters beyond the national jurisdiction of the coastal State, i.e., on the high seas.

Furthermore, the Convention gives enforcement powers to the "port State", or the State where a ship is destined. In doing so it has incorporated a method developed in other Conventions for the enforcement of treaty obligations dealing with shipping standards, marine safety and pollution prevention. The port State can enforce any type of international rule or national regulations adopted in accordance with the Convention or applicable international rules as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals. This has already become a significant factor in the strengthening of international standards.

Finally, as far as the international seabed area is concerned, the International Seabed Authority, through its Council, is given broad discretionary powers to assess the potential environmental impact of a given deep seabed mining operation, recommend changes, formulate rules and regulations, establish a monitoring programme and recommend issuance of emergency orders by the Council to prevent serious environmental damage. States are to be held liable for any damage caused by either their own enterprise or contractors under their jurisdiction.

With the passage of time, United Nations involvement with the law of the sea has expanded as awareness increases that not only ocean problems but global problems as a whole are interrelated. Already, the 1992 United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil in 1992, placed a great deal of emphasis on the protection and preservation of the oceans' environment in harmony with the rational use and development of their living resources, thus establishing the concept of "sustainable development" embodied in Agenda 21, the programme of action adopted at the Conference.

The necessity to combat the degradation and depletion of fish stocks, both in the zones under national jurisdiction and in the high seas and its causes, such as overfishing and excess fishing capacity, by-catch and discards, has been one of the recurrent topics in the process of implementation of the programme of action adopted in Rio de Janeiro.

In this respect, among the most important outputs of the Conference was the convening of an intergovernmental conference under United Nations auspices with a view to resolving the old conflict between coastal States and distant-water fishing States over straddling and highly migratory fish stocks in the areas adjacent to the 200 nautical-mile exclusive economic zones. This Conference adopted the 1995 Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks which introduces a number of innovative measures, particularly in the area of environmental and resource protection obliging States to adopt a precautionary approach to fisheries exploitation and giving expanded powers to port States to enforce proper management of fisheries resources.

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Marine Scientific Research

With the extension of the territorial sea to 12 miles and the establishment of the new 200-mile EEZ, the area open to unrestricted scientific research was circumscribed. The Convention thus had to balance the concerns of major research States, mostly developed countries, which saw any coastal-state limitation on research as a restriction of a traditional freedom that would not only adversely affect the advancement of science but also deny its potential benefits to all nations in fields such as weather forecasting and the study of effects of ocean currents and the natural forces at work on the ocean floor.

On the other side, many developing countries had become extremely wary of the possibility of scientific expeditions being used as a cover for intelligence gathering or economic gain, particularly in relatively uncharted areas, scientific research was yielding knowledge of potential economic significance.

The developing countries demanded "prior consent" of a coastal State to all scientific research on the continental shelf and within the EEZ. The developed countries offered to give coastal States "prior notification" of research projects to be carried out on the continental shelf and within the EEZ, and to share any data pertinent to offshore resources.

The final provisions of the Convention represent a concession on the part of developed States. Coastal State jurisdiction within its territorial sea remains absolute. Within the EEZ and in cases involving research on the continental shelf, the coastal State must give its prior consent, However, such consent for research for peaceful purposes is to be granted "in normal circumstances" and "shall not be delayed or denied unreasonably", except under certain specific circumstances identified in the Convention. In case the consent of the coastal State is requested and such State does not reply within six months of the date of the request, the coastal State is deemed to have implicitly given its consent. These last provisions were intended to circumvent the long bureaucratic delays and frequent burdensome differences in coastal State regulations.

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Settlement of Disputes

Provisions for the settlement of disputes arising out of an international treaty are often contained in a separate optional protocol. Parties to the treaty could choose to be bound by those provisions or not by accepting or not accepting the Protocol. The Convention on the Law of the Sea is unique in that the mechanism for the settlement of disputes is incorporated into the document, making it obligatory for parties to the Convention to go through the settlement procedure in case of a dispute with another party.

During the drafting of the Convention, some countries were opposed in principle to binding settlement to be decided by third party judges or arbitrators, insisting that issues could best be resolved by direct negotiations between States without requiring them to bring in outsiders. Others, pointing to a history of failed negotiations and long-standing disputes often leading to a use of force, argued that the only sure chance for peaceful settlement lay in the willingness of States to bind themselves in advance to accept the decisions of judicial bodies.

What emerged from the negotiations was a combination of the two approaches, regarded by many as a landmark in international law.

If direct talks between the parties fail, the Convention gives them a choice among four procedures - some new, some old: submission of the dispute to the International Tribunal for the Law of the Sea, adjudication by the International Court of Justice, submission to binding international arbitration procedures or submission to special arbitration tribunals with expertise in specific types of disputes. All of these procedures involve binding third-party settlement, in which an agent other than the parties directly involved hands down a decision that the parties are committed in advance to respect.

The only exception to these provisions is made for sensitive cases involving national sovereignty. In such circumstances, the parties are obliged to submit their dispute to a conciliation commission, but they will not be bound by any decision or finding of the commission. The moral pressure resulting was argued as being persuasive and adequate to ensure compliance with the findings. The Convention also contains so-called "optional exceptions", which can be specified at the time a country signs, ratifies or accedes to the Convention or at any later time. A State may declare that it chooses not to be bound by one or more of the mandatory procedures if they involve existing maritime boundary disputes, military activities or issues under discussion in the United Nations Security Council.

Disputes over seabed activities will be arbitrated by an 11-member Seabed Disputes Chamber, within the International Tribunal for the Law of the Sea. The Chamber has compulsory jurisdiction over all such conflicts, whether involving States, the International Seabed Authority or companies or individuals having seabed mining contracts.

The United Nations and the Law of the Sea

Throughout the years, beginning with the work of the Seabed Committee in 1968 and later during the nine-year duration of the Third United Nations Conference on the Law of the Sea, the United Nations has been actively engaged in encouraging and guiding the development and eventual adoption of the Law of the Sea Convention. Today, it continues to be engaged in this process, by monitoring developments as they relate to the Convention and providing assistance to States, when called for, in either the ratification or the implementation process.

The goal of the Organization is to help States to better understand and implement the Convention in order to utilize their marine resources in an environment relatively free of conflict and conducive to development, safeguarding the rule of law in the oceans.

In this context, the Division for Ocean Affairs and the Law of the Sea (DOALOS) of the United Nations Office of Legal Affairs helps to coordinate the Organization's activities and programmes in the area of marine affairs. It is active in assisting and advising States in the integration of the marine sector in their development planning. It also responds to requests for information and advice on the legal, economic and political aspects of the Convention and its implications for States. Such information is used by States during the ratification process, in the management of the marine sector of their economies and in the development of a national sea-use policy.

The United Nations also gives assistance to the two newly created institutions - the International Seabed Authority and the International Tribunal for the Law of the Sea.

The Future

The entry into force of the Convention, together with extended jurisdiction, new fields of activity and increased uses of the oceans, will continue to confront all States with important challenges. These challenges will include how to apply the new provisions in accordance with the letter and spirit of the Convention, how to harmonize national legislation with it and how to fulfil the obligations incumbent upon States under the Convention.

Another major challenge will be to provide the necessary assistance, particularly to developing States, in order to allow them to benefit from the rights they have acquired under the new regime. For example, a great many of the States that have established their EEZs are not at present in a position to exercise all their rights and perform duties under the Convention. The delimitation of EEZ, the surveying of its area, its monitoring, the utilization of its resources and, generally speaking, its management and development are long-term endeavours beyond the present and possibly near-term capabilities of most developing countries.

The United Nations will continue to play a major role in the monitoring of, collection of information on and reporting on State practice in the implementation of the new legal regime. It will also have a significant role to play in reporting on activities of States and relevant international organizations in marine affairs and on major trends and developments. This information will be of great assistance to States in the acceptance and ratification of the Convention, as well as its early entry into force and implementation.

A number of new duties falls upon the Secretary-General of the United Nations. These include the depositing of charts and coordinates showing the maritime limits of coastal States and servicing of the Commission on the Limits of the Continental Shelf The Secretary-General is also called upon to convene meetings of States Parties to elect the members of the International Tribunal for the Law of the Sea and to adopt its budget. Meetings of States Parties may also be called for a Review Conference dealing with the provisions on deep seabed mining or for amending the Convention.

The United Nations will continue to strengthen the cooperation that has developed over the last two decades among the organizations in the United Nations system involved in marine affairs. Such close cooperation would be of great benefit to States, since it would avoid duplication and overlapping of activities. It would also help to coordinate multidisciplinary activities related to the management of marine affairs.

With the passage of time, United Nations involvement with the law of the sea is expected to expand as awareness increases that not only ocean problems but also global problems as a whole are interrelated.

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