

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 19, 2009

8:06 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Paul Seaton, Vice Chair
Representative Carl Gatto
Representative Craig Johnson
Representative Peggy Wilson
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 2

Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document.

- MOVED HJR 2 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 22

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

- MOVED HJR 22 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 2

SHORT TITLE: CONST AM: GENDER-NEUTRAL REFERENCES

SPONSOR(S): REPRESENTATIVE(S) GATTO, GRUENBERG

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|----------|-----|---------------------------------|
| 01/20/09 | (H) | PREFILE RELEASED 1/9/09 |
| 01/20/09 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/20/09 | (H) | STA, JUD, FIN |
| 03/19/09 | (H) | STA AT 8:00 AM CAPITOL 106 |

BILL: HJR 22

SHORT TITLE: URGING US TO RATIFY LAW OF THE SEA TREATY

SPONSOR(s): REPRESENTATIVE(s) SEATON

03/02/09 (H) READ THE FIRST TIME - REFERRALS
03/02/09 (H) STA
03/19/09 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

JESSICA SRADER, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Responded to a question during the hearing on HJR 2.

REAR ADMIRAL ARTHUR E. BROOKS
Seventeenth District
United States Coast Guard
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HJR 22.

WALTER PARKER
(No address provided)

POSITION STATEMENT: Testified during the hearing on HJR 22.

ACTION NARRATIVE

[8:06:42 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:06 a.m. Representatives Seaton, Gatto, Wilson, Petersen, and Lynn were present at the call to order. Representatives Johnson and Gruenberg arrived as the meeting was in progress.

HJR 2-CONST AM: GENDER-NEUTRAL REFERENCES

[8:06:48 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE JOINT RESOLUTION NO. 2, Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document.

[8:07:35 AM](#)

REPRESENTATIVE GATTO, as prime sponsor, introduced HJR 2. He said the resolution would change the Alaska State Constitution, which would require a two-thirds vote of the body, followed by a vote of the people. The Alaska State Constitution includes references to male gender, but not female gender. Representative Gatto indicated that some people may say the resolution is unnecessary [because] it is known what is meant by "he" and "him." However, he noted that seven states have already made the change, and he opined that Alaska should "take the lead" and make the change, because it is a state with a higher percentage of females involved in politics. The resolution would ask the legal department to replace all the male gender references with job titles, such as "the commissioner," "the governor," "the judge," "the person," and "the auditor."

[8:10:30 AM](#)

JESSICA SRADER, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), in response to Chair Lynn, offered her belief that [the administration] has no objection [to the resolution].

[8:10:59 AM](#)

REPRESENTATIVE SEATON moved to report HJR 2 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GATTO noted there may be a cost related to the reprinting of the Alaska State Constitution. He remarked that there is another bill being considered that proposes that the term "secretary of state" be changed to "governor". Although both pieces of proposed legislation are separate, both would require a reprinting of the Alaska State Constitution.

REPRESENTATIVE SEATON pointed out that there is a zero fiscal note in the committee packet.

[8:11:53 AM](#)

REPRESENTATIVE SEATON renewed his motion to report HJR 2 out of committee with individual recommendations and the attached zero fiscal note. There being no objection, HJR 2 was reported out of the House State Affairs Standing Committee.

HJR 22-URGING US TO RATIFY LAW OF THE SEA TREATY

[8:12:15 AM](#)

CHAIR LYNN announced that the last order of business was HOUSE JOINT RESOLUTION NO. 22, Urging the United States Senate to ratify the United Nations Convention on the Law of the Sea (the Law of the Sea Treaty).

[8:12:45 AM](#)

REPRESENTATIVE SEATON introduced HJR 22 as prime sponsor. He offered information from the sponsor statement, which read as follows [original punctuation provided]:

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 overflight 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.

[8:15:56 AM](#)

REPRESENTATIVE SEATON said [the U.S.] has been using a 200-mile limit for quite awhile, but unless it signs the treaty, other nations do not have to recognize that 200-mile limit. He noted that concern has been expressed that signing the treaty may subvert the nation's sovereignty, but he pointed out that "we have 16 other treaties that recognize this same dispute resolution that is included in the Law of the Sea Treaty."

[8:17:54 AM](#)

REPRESENTATIVE SEATON directed attention to a map included in the committee packet, produced by the International Boundaries Research Unit (IBRU) of Durham University, which shows maritime jurisdiction and boundaries in the Arctic region - "about a doubling of the area in which we could exert claim." He directed attention to another map included in the committee packet, from the U.S. Department of State, which shows [as stated beneath the map] the "eight regions (in red) adjacent to the U.S. and its dependences where there likely exists extended continental shelf (ECS) beyond 200 nautical miles (in blue)." Representative Seaton clarified, "These lines on the map - these blocked out portions - are portions that theoretically could be claimed; it doesn't mean that the continental shelf in every

case goes out to exactly those [lines]." He highlighted areas of continental shelf in the Gulf of Alaska, the East Coast, the Gulf of Mexico, the Johnston Atoll, and the Mariana Islands - areas which the U.S. would not be able to claim without signing the treaty.

8:20:23 AM

REPRESENTATIVE SEATON directed attention to a handout in the committee packet entitled, "Stakeholder Endorsements of U.S. Accession to the UN Convention on the Law of the Sea and the 1994 Agreement on Implementation." Included in the handout, he noted, is a list of categorized endorsements, which includes, among others: the Obama Administration, the Bush Administration, nine current service chiefs and legal advisers, eight former secretaries of state, and twelve other former cabinet and sub-cabinet officers.

8:21:05 AM

CHAIR LYNN asked which administrations did not support the treaty.

REPRESENTATIVE SEATON noted that the secretaries of state of numerous administrations supported the treaty. He explained that there was a period of time before a certain number had signed the treaty when the decision was whether or not to be proactive and endorse the treaty. Once the treaty was in international effect, the choice was whether or not to participate in it.

CHAIR LYNN asked about the ability to dispute the claim made by the Russians, who placed their flag under the sea at the North Pole.

REPRESENTATIVE SEATON said the U.S. cannot dispute that claim without having signed the treaty. In response to a follow-up question, he described the process of dispute resolution among countries who have signed the treaty. He confirmed that all nations that are permanent members of the United Nations Security Council have veto authority of council resolutions, which are necessary before considering enforcement action. Most of the other countries are not permanent members of the council. There are several mechanisms set up by which to achieve peaceful resolution, he said.

8:27:08 AM

REPRESENTATIVE WILSON asked why the U.S. has not wanted to sign the treaty.

REPRESENTATIVE SEATON reiterated that some people think signing the treaty would mean giving up sovereignty; that agreeing to solve disputes peacefully may inhibit the nation from being able to "resolve the disputes in other ways." In response to Representative Wilson, he confirmed that the other option would be going to war. He pointed out that also on the aforementioned list are current military chiefs and legal advisors. He offered his understanding that present at the House State Affairs Standing Committee meeting were representatives of the U.S. Navy and U.S. Coast Guard, and he expressed interest in hearing what they have to say.

[8:29:42 AM](#)

REPRESENTATIVE GATTO said he thinks the treaty holds significant weight.

REPRESENTATIVE SEATON related that the treaty extends to the continental shelf. In response to Chair Lynn, he clarified that the 200-mile exclusive economic zone (EEZ) - a factor of the Law of the Sea - is measured from shore, whether or not the continental shelf is there. If there is a continental shelf which extends beyond that 200 mile limit, the country from whose land it extends can extend its jurisdiction to that area extending beyond that 200-mile limit. He reiterated that the 200-mile EEZ has been beneficial to Alaska's fisheries, but without signing the treaty, the state does not have legitimate claim.

REPRESENTATIVE SEATON, in response to a question about state versus federal off-shore boundaries, said a 3-mile limit applies to state land extending into the sea; the territorial sea extends to 12 miles; and the purpose of the 200-mile EEZ is to allow for management of economic activities in those waters. He reiterated that Alaska is familiar with the 200-mile EEZ, because it dealt with the issue while the treaty was being developed. In response to Chair Lynn, he said [in the case where two countries own land separated by water but closer than 200 miles], international boundary lines have been negotiated. In response to Representative Wilson, he specified that the 12-mile and 200-mile areas are federal jurisdictions. The EEZ is overseen between the federal government and "whatever management team they've set up."

8:38:39 AM

REPRESENTATIVE PETERSEN opined that the treaty makes sense for Alaska and the U.S. and should be expedited. He noted that 155 countries have signed the treaty, and he asked if there are countries, for example, in the Middle East, that have not signed the treaty. He questioned what effect the treaty might have on shipping routes in places like the Mediterranean or Black Seas.

8:39:47 AM

REPRESENTATIVE SEATON relayed that peaceful transit is guaranteed under the treaty. For countries that have signed it, the treaty applies to their coastal lands that are adjacent to water. Furthermore, it protects vessels, including aircraft, owned by landlocked countries. He reiterated the meaning of the red and blue lines on the aforementioned map.

8:42:36 AM

REPRESENTATIVE GRUENBERG offered information related to what happened under the Reagan administration regarding the treaty. He paraphrased from the Senate Foreign Relations Commission's report, dated November 19, 2007, on the Convention of the Law of the Sea Treaty, as follows:

President Nixon, as early as 1970, first proposed the concept of a treaty that would set forth a legal framework on the ocean, and about three years later, negotiations were commenced on that, and they occupied a nine-year span between December '73 and December 1982, when the final text was adopted. And ... this grew out of concern among a number of coastal nations and naval nations that the rapidly proliferating number of expansive claims regarding ocean space would restrict fundamental freedom of the seas and navigation rights. And a number of developing countries wanted to guarantee access to resources in the area beyond national jurisdiction. And also, national and multi-national corporations wanted an international Convention that would provide legal certainty to companies interested in deep seabed mining.

REPRESENTATIVE GRUENBERG related an anecdote about a time in the early '70s, when he was then Senator Ted Stevens' assistant and

a bill was proposed related to deep seabed mining of copper nodules on the ocean floor. He said the bill did not pass, but the issue is important for the development of American commerce under sea. Representative Gruenberg refocused on the treaty as follows:

Now, in 1982, the treaty was forthcoming, and there were only problems with provisions relating to mining of resources from the seabed, ocean floor, and subsoil thereof, beyond the limits of national jurisdiction. And therefore, in '83, President Ronald Reagan, entered a statement on oceans policy that explained [that] because of those particular provisions, the U.S. wouldn't sign the Convention. But otherwise, the treaty "contains provisions with respect to traditional uses of the ocean, which generally confirm existing maritime law and practice, and fairly balance the interests of all states." So, therefore, he stated at that time that the U.S. would act in accordance with the balance of interest.

Now, since that time, they amended the treaty, and therefore, the administration of George H. W. Bush - the first Bush - laid the groundwork for ... a new agreement that would modify the deep seabed mining regime on the Convention, to address the ... various concerns raised. And the result was that in 1994, a new agreement, which dealt with each of the problems identified with the U.S., was adopted. And we signed the agreement ..., and, at that time, President Clinton, who was in office, presented both new agreements to the Senate for ratification, and that is the current situation. The agreements have been sent twice to the Senate floor, and they remain under Senate Rules on the Senate floor to this day awaiting ratification by two-thirds vote.

[8:47:07 AM](#)

REPRESENTATIVE GRUENBERG continued:

And the key thing ..., as Representative Seaton says, is this will peacefully, without result to war, result in an adjudication of our claims. They've set up an international court. The first country to take advantage of that was Australia, which dramatically increased its boundaries as a result, and claimed the

continental shelf as a result of a decree under that court. And the only way you can do it peacefully, as I understand it, is to get a decree from the international court recognizing title to those particular deep seabed and the water column above it. And it is extremely important for that reason, because that will ..., in fact, resolve these disputes without us going to war.

[8:48:08 AM](#)

REPRESENTATIVE JOHNSON directed attention to a memorandum from Senator Lisa Murkowski, dated December 10, 2007, which he said addresses myths regarding the treaty. He cited the final paragraph, which read as follows [original punctuation provided]:

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 [sic] U.N. Security Council measure.

REPRESENTATIVE JOHNSON concluded that "this is a treaty that we don't have to live up to."

[8:49:13 AM](#)

REPRESENTATIVE WILSON surmised that Alaska would not really stand to benefit from the treaty in terms of oil and gas issues.

REPRESENTATIVE SEATON responded that Alaska would benefit from extended jurisdiction, because it would control the gas and oil production, development, and drilling. He spoke of overlapping areas on the map, and warned, "If we don't extend our jurisdiction, there is nothing to prevent others from extending their jurisdiction."

REPRESENTATIVE WILSON questioned whether those in the oil industry would perhaps try to drill outside Alaska's territory to avoid paying royalties.

REPRESENTATIVE SEATON responded that he does not know what the oil and gas provisions are outside of any international waters, but he noted that the oil industry supports the "extension of this treaty."

REPRESENTATIVE WILSON speculated that the oil industry would rather deal with the U.S. than another country.

[8:53:44 AM](#)

REPRESENTATIVE SEATON directed attention to a handout in the committee packet entitled, "Summary of the Responses to the Six Reagan Criteria Contained in the 1994 Agreement on Implementation." He listed the following areas, other than the U.S., which have not endorsed the treaty: Andorra, Azerbaijan, Ecuador, Eritrea, Israel, Kazakhstan, Kyrgyzstan, Peru, San [Marino], Syria, Tajikistan, Timor-Leste, Turkey, Turkmenistan, Uzbekistan, Vatican City, Venezuela, and [Western] Sahara.

[8:55:12 AM](#)

REAR ADMIRAL ARTHUR E. BROOKS, Seventeenth District, United States Coast Guard, stated that in his current position, he is responsible for directing Coast Guard operations - including search and rescue, maritime safety, environmental protection, fisheries law enforcement, and military readiness - in Alaska and the North Pacific. He commenced paraphrasing his written testimony, the first portion of which read as follows [original punctuation provided]:

Although the 1982 UN Convention on the Law of the Sea entered into force in 1994, the U.S. has continued to rely upon customary international law as reflected in the Convention to advance our oceans policy goals. While reliance upon customary international law has served us well for many years, it will not adequately protect our key ocean interests in the future. Customary international law is based on the evolving practice of States; therefore, it can and does erode over time. The Law of the Sea Convention provides the legal certainty and stability that the Coast Guard needs to exercise its navigational rights and freedoms, to protect fisheries, to control marine pollution, and to maintain a legal order of the oceans against criminals and terrorists.

The first UN effort at codifying the Law of the Sea took place in 1958, when the first UN Conference on the Law of the Sea concluded four separate Conventions dealing with the Law of the Sea. These four Conventions, for the most part, represented codifications of customary international law at the

time and the United States became party to them. While these Conventions addressed issues of the day, it must be remembered that, at the time, pollution of the world's oceans was not considered an important issue, fish stocks were thought to be inexhaustible, and the need for maritime domain awareness was not present. In the 1960's, the oceans began experiencing significant change in such areas as pollution standards and fisheries management. Moreover, these Conventions failed to provide a maximum breadth for the territorial sea or other specific limitations on claims to sovereignty over resources.

REAR ADMIRAL BROOKS paraphrased another portion of his written testimony, which read as follows [original punctuation provided]:

All of these factors led the United States and other major maritime powers to call for the Third United Nations Conference on the Law of the Sea, which met between 1973 and 1982 to develop the 1982 UN Convention on the Law of the Sea. With 156 States and the European Union now party to the 1982 UN Convention on the Law of the Sea, the Convention already is playing a central role in resolving these issues. It will also serve as a foundation upon which future oceans agreements will be based. In order to carry out its natural leadership role in promoting the most appropriate legal order of the oceans, the United States must become party to the Convention.

REAR ADMIRAL BROOKS reminded the committee that the United States had been one of the principal nations pushing for this Convention, and he indicated the United States' influence, noting that most of the provisions for territorial claims, transit, and passage were things desired by the U.S. and achieved by the U.S. in building this Convention.

REAR ADMIRAL BROOKS returned to paraphrasing his written testimony; the next section read as follows [original punctuation provided]:

On November 16, 1994, the Law of the Sea Convention entered into force. That event represented a milestone in the United States' efforts to achieve a widely ratified, comprehensive law of the sea treaty that protects and promotes a wide range of U.S. ocean

interests, many of which affect the U.S. Coast Guard. Because of our law enforcement and national security 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 aids our interests by stabilizing the trend towards expansion of national jurisdiction over coastal waters, while furthering our efforts to protect and manage fishery resources and to protect the marine environment. From the Coast Guard perspective, public order of the oceans is best established and maintained by a stable, universally accepted law of the sea treaty reflective of U.S. national interest.

8:59:45 AM

One of the core foundations of the Convention was codification of rights and responsibilities of states as port States, flag States, and coastal States. During the negotiations leading to the Law of the Sea Convention, the U.S. aggressively sought both clarification and delimitation of seaward territorial claims by coastal States to ensure navigational freedoms while at the same time recognizing the U.S.'s interest as a coastal State with sovereignty to protect its living and non-living marine resources. The result was an appropriate balance between the exclusive interests of coastal States and the inclusive interests of maritime States. It limits the maximum breadth of the territorial sea that a coastal State could claim to 12 nautical miles. Our fishery conservation management interests, as reflected in the Magnuson-Stevens Fishery Conservation Management Act of 1977, were instrumental in the international development of the concept of the 200-nautical mile Exclusive Economic Zone (EEZ). In the EEZ, all nations enjoy freedoms of navigation and overflight as on the high seas, while the coastal State possesses sovereign rights to protect and exploit the living and non-living marine resources. The United States, with its extraordinarily large and resource-rich EEZ, is perhaps the greatest beneficiary of this concept.

The Convention also provides for a balanced and effective approach to protecting the marine environment. The *Amoco Cadiz* and subsequent vessel oil

spill incidents prompted the participating States to address marine pollution in the 1982 UN Convention on the Law of the Sea. The Convention contains provisions that have been described as perhaps the most far-reaching and effective environmental accord yet devised. The Convention struck the appropriate balance of competing claims so that all nations could engage in high seas freedoms, including non-resource related law enforcement in the waters of another nation's EEZ, and the coastal State could enjoy the right to protect its marine environment, including damage from oil spills by vessels, fisheries conservation, and enforcement of domestic laws designed to conserve and protect the living marine resources in its EEZ. The Convention also recognized a port state regime adequate to ensure their interests were protected when vessels voluntarily entered their ports or places subject to their jurisdiction.

[9:02:13 AM](#)

The Coast Guard and other U.S. military forces already rely heavily on the navigational freedoms and overflight rights codified in the Law of the Sea Convention. These protections allow the use of the world's oceans to meet changing national security requirements. In this regard, worldwide mobility requires undisputed access through international straits and archipelagic waters. The Convention ensures that our warships, including our Coast Guard cutters, will have their sovereign immunity protected wherever in the world they may be operating. In addition, the Convention limits a nation's territorial sea to no more than 12 nautical miles, beyond which all nations enjoy a high seas navigation regime that includes the freedom to engage in law enforcement activities. The Convention codifies the right to operate freely beyond a nation's territorial sea and protects this right by limiting excessive maritime claims that often have the effect of creating maritime safe havens for drug traffickers and other criminals. Each year, Coast Guard maritime interdiction operations occurring on international waters result in the seizure of tens of thousands of pounds of cocaine, dozens of vessels, and hundreds of arrests. Most of these seizures take place on distant maritime transit routes far from our shores. However, during bi-

lateral negotiations, several nations have, in the past, questioned our authority to contest some of their excessive maritime claims simply because we have yet to become party to the Convention.

The Convention contains effective provisions for dealing with illegal activities at sea. Article 108 of the Convention requires international cooperation in the suppression of the transport of illegal drugs. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, also known as the 1988 Vienna Convention, is a fine example of this. The United States has been at the forefront of international cooperation in the war against illegal drugs, and the use of ocean space to transport them. We have aggressively pursued bilateral agreements with many nations that border drug transit zones as well as States with large registries to facilitate the effective interdiction of vessels suspected of transporting illegal drugs and the eventual prosecution of the drug traffickers.

The Convention also contains provisions that enhance our ability to interdict foreign-flagged vessels off our own coasts. The Convention codifies a coastal nation's right to establish a 12-nautical mile contiguous zone just beyond the territorial sea, where it may exercise control to prevent and punish infringements of its customs, immigration, fiscal, and sanitary laws. Adoption by the U.S. of an expanded contiguous zone has doubled the area where we can exercise these increased authorities.

REAR ADMIRAL BROOKS stated that the construct of maritime boundaries follows a baseline, which is "points to points of land," and there is argument about where that baseline is. Anything inside the baseline is "internal waters," and a country has full sovereignty on those waters. The territorial sea goes out 12 nautical miles from the baseline, and that is where states exercise "almost complete jurisdiction," but it is subject to innocent and other transit passage by other nations. He related that there is a contiguous zone that goes from 12-24 nautical miles where it is allowable for certain things to be done, "like marine pollution, immigration, [and] sanitation" - the typical customs functions of the nation. There is less control in that zone than there is in the 0- to 12-mile range. Beyond 24 miles, out to 200 miles, the Convention recognizes an

EEZ for specific economic purposes, such as fisheries, mining, and oil. Beyond 200 miles, "we have the ability to claim sea floor and access to resources on the sea floor, depending on the nature of the continental shelf itself."

[9:06:26 AM](#)

REAR ADMIRAL BROOKS relayed that the Convention contains numerous provisions that advance the economic interests of the U.S. He concluded paraphrasing his written testimony, the final portion of which read as follows [original punctuation provided]:

The Convention calls for international cooperation among the States in preserving the world's high-seas fisheries. This provision on cooperation supports the UN ban on high seas drift net fishing and other illegal fishing practices. Each year, the Coast Guard patrols the North Pacific to conduct boardings and inspections under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Over two dozen nations participate in this effort, which is a direct outcome of the Law of the Sea Convention.

[9:07:14 AM](#)

The Convention makes specific provision for asserting jurisdiction over the resources of an extended continental shelf. All coastal States may exercise their sovereign rights to the natural resources of the seabed and subsoil of the continental shelf out to 200 nautical miles. The Convention sets forth the requirements and procedures for parties to the Convention to claim an extended continental shelf beyond 200 nautical miles. For example, the U.S.'s extended continental shelf, which may extend as far out as 600 nautical miles in the Arctic, has enormous potential oil and gas reserves. In contrast to Russia, Canada, Denmark, and Norway, all of which are party to the Convention, the U.S. is presently unable to file a claim for an extended continental shelf in order to obtain secure title to our potentially vast resources in the Arctic. The U.S. also has potential continental shelf resources off the Gulf Coast and other coastal areas. Moreover, the United States currently has no role to play on the Continental Shelf

Commission, whose members evaluate all claims to extended continental shelves to ensure compliance with objective legal standards.

The Convention is also an environmental accord that provides a comprehensive framework for the prevention, reduction, and control of maritime pollution. The Coast Guard conducts a wide-ranging port-state-control program to purge our waters of substandard ships and is assisting other nations in doing the same. This initiative will be enhanced through the consistent application of the Convention's broad enforcement mechanisms. Additionally, the Convention carefully balances the rights of coastal States to adopt certain measures to protect the marine environment adjacent to their shores with the primary right of a flag State to set and enforce standards and requirements concerning the operation of its vessels. Moreover, it does all this without unduly burdening international maritime navigation and sea-borne trade.

As the lead Federal agency for maritime safety and security, the Coast Guard believes that the 1982 UN Convention on the Law of the Sea would benefit the Coast Guard in its efforts to improve maritime safety and ensure the security of our maritime borders, thus promoting homeland security. The Convention recognizes that various UN subsidiary bodies may serve as competent international organizations for the further Conventional development of the law of the sea. The International Maritime Organization has always been the recognized competent international organization for maritime safety and marine environmental protection. More recently, it has assumed a similar role in port facility and vessel security. The Coast Guards has worked at the [International Maritime Organization] (IMO) to amend the [Safety of Life at Sea] (SOLAS) Convention for vessel and port facility security, to enhance maritime domain awareness through Long Range Identification and Tracking (LRIT) of vessels bound for U.S. ports and waters, and to increase the operational effectiveness of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention). The negotiations necessary to support efforts such as these take place in the context of the overwhelming number of nations at IMO being parties to

the Law of the Sea Convention. Because of this fact, the Law of the Sea Convention provides the framework for the discussions and agreements. Although we have enjoyed success in the international security agreements so far, those negotiations have not always been easy. Frankly, the fact that the United States is not a party to the Law of the Sea Convention, when the overwhelming number of our international partners are parties, has repeatedly placed us in a difficult negotiating position at IMO and other forums. I see this situation only getting worse in the future as long as we are not a State Party.

In summation, the provisions of the Law of the Sea Convention fairly balance the exclusive interests of coastal States in controlling activities off their coasts against the inclusive interests of all States in freedom of navigation and overflight. The practical effect for the United States is to control economic activities within the world's largest Exclusive Economic Zone, while enabling our military forces and merchant vessels to freely operate in every part of the globe. The Convention more than doubles the resource jurisdiction of the United States and, once we become a party, will extend our sovereign rights to develop oil and gas resources on the extended continental shelf that we so desperately need. The Convention guarantees our military and transportation industries critical navigation and overflight rights, U.S. fishermen enjoy exclusive fishing out to 200 nautical miles, and much, much more. In the view of the Coast Guard, the Convention for the Law of the Sea greatly improves our ability to protect the American public as well as our efforts to manage our ocean resources and to protect the marine environment.

[9:12:36 AM](#)

REAR ADMIRAL BROOKS, in response to Representative Gatto, related that the most common argument he has heard in opposition to the United States' signing the treaty is that if the nation accedes to the Convention, it would abrogate some of its sovereignty. He stated his opinion that all treaties require giving up sovereignty to some extent, because "you give up something in order to get something else." He said [the U.S.] has lived off the benefits of the treaty since 1982, and

although the international forums are perhaps not as supportive of [the U.S.] as desired, without being a signatory, the U.S. will be "outside the door peeking in."

REPRESENTATIVE GATTO questioned why the U.S. created the structure, but did not sign on.

[9:14:37 AM](#)

REPRESENTATIVE GRUENBERG noted that Representative Wilson had asked the same question, and he referred once more to the report of the [U.S. Senate Committee on Foreign Relations]. He recalled that four members of that committee signed against the treaty, giving six reasons. He indicated that one of the reasons was that Article 13 imposes direct fees on U.S. corporations in deep seabed mining, which, in fact, he said is not correct. He said he has a letter from the Department of State to that effect. Another reason was that land-based sources of pollution could continue. The response to that, he said, was that just because one country is polluting does not mean every other country should do so; there needs to be attempts to control pollution. The third reason was that the UN Secretary General picks the arbitrators, which Representative Gruenberg said is not correct. The fourth reason was that the nations would vote against the interests of the U.S. Representative Gruenberg said, "Obviously when you have a Convention and you have a mechanism for peacefully solving disputes, it's a way of resolving those." He indicated that the fifth and sixth reasons had to do with military and intelligence gathering activities, and he said Rear Admiral Brooks has ably addressed those issues. Representative Gruenberg said he thinks the federal government believes that it is essential to homeland security that the nation is party to this treaty.

[9:17:02 AM](#)

REPRESENTATIVE GRUENBERG noted that during his testimony, Rear Admiral Brooks had warned that "if we don't pass this," it will be more difficult to address the interests of the U.S. in international disputes. He asked for clarification through example.

[9:18:00 AM](#)

REAR ADMIRAL BROOKS responded that the Russians dropped a flag on the North Pole, reinforcing a preexisting claim they had made under the Convention to the Lomonosov Ridge as an extension of

the Russian continental shelf. He stated his understanding that the committee that considered the continental shelf claim has already reviewed and rejected that claim, but the Russians now have the opportunity to submit further data to support their claim. He offered his understanding that that data would be reviewed in 2011. The U.S. has no say in the matter, was not involved in any of the meetings, and currently has no role to play in the matter. The only way to have a say is to accede to the Convention. He relayed that several Canadian counterparts have told him that right now the world is missing American leadership in all these issues.

[9:19:53 AM](#)

REAR ADMIRAL BROOKS, in response to Chair Lynn and Representative Gruenberg, explained what that Lomonosov Ridge is part of the range of land on the sea floor that runs over the North Pole. He said people map the sea floor as they map above sea land. The question is whether the ridge is contiguous or whether there is a break in the mountain chain that would determine that end of Russian or Canadian land mass. He said there are ice breaker vessels currently mapping sea floors in that area to support future potential claims to extended continental shelf. He related that the complications in mapping have to do with sloping.

[9:21:50 AM](#)

REAR ADMIRAL BROOKS noted that there is a large finger of land that comes out from Alaska into the Arctic, called the Chukchi Plateau. It is a land mass on the sea floor that follows the Russia/U.S. boarder out over 350 miles into the Arctic Ocean. Documenting of the plateau as a continuous and contiguous part of the Alaskan land mass would enable the state claim to it if the U.S. were part of the Convention. There are other features of the sea floor in the Arctic that are being debated in terms of ownership. Rear Admiral Brooks said China has sent an ice breaker up to collect data, because it would like to disprove that any of the continental shelf is attached to a coastal state; China is interested in keeping as much of that area as possible international so that it can mine the area.

[9:24:06 AM](#)

REPRESENTATIVE PETERSEN related that during his recent trip to the Energy Conference in Washington, D.C., a representative of Shell told him how promising the Chukchi Plateau area is for oil

development. Representative Petersen concluded that the treaty is extremely important in securing America's oil in the future.

[9:24:58 AM](#)

REAR ADMIRAL BROOKS, in response to Representative Gruenberg, confirmed that the U.S. cannot present its own scientific conclusions without being a signatory. In response to a follow-up question, he said he does not know the exact size of undersea land that the United States could gain by signing the treaty, but he said it would be substantial.

[9:26:37 AM](#)

REAR ADMIRAL BROOKS, in response to a request from Representative Gruenberg, offered a synopsis of his history with the military, talked about what the legislature might do for the Coast Guard, related his experience working in Alaska in particular, and answered questions from the committee regarding the Coast Guard.

[9:45:44 AM](#)

WALTER PARKER told the committee that he has been a U.S. delegate to the Arctic Council, and was one of the two Alaska delegates to the third Law of the Sea Conference. Mr. Parker noted that there are approximately 173 countries in the United Nations, 32 of which are not members of the Convention, and the U.S. is the only major power that is not a member. He stated:

And then the pressure's not been on, particularly, from the fisheries, because we took care of those pretty much in the [Magnuson-Stevens Fishery Conservation and Management Act] of 1976, most elements of which were incorporated in the third Law of the Sea Convention.

MR. PARKER said he worked with Russians on the Arctic Council. He indicated that a lot of game playing occurs, and he emphasized how important it is for the U.S. to "be at the table." He encouraged the legislature to do what it can to encourage Congress and the Administration to "get moving with this."

MR. PARKER emphasized the importance of the Northeast Passage across the top of Russia, in terms of shipping. Regarding the first two Law of the Sea Conferences, he said, "I was there for

federal aviation and it pretty well took care of the acreage part, so I don't worry about that."

[9:49:59 AM](#)

CHAIR LYNN closed public testimony.

[9:50:06 AM](#)

REPRESENTATIVE SEATON moved to report HJR 22 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 22 was reported out of the House State Affairs Standing Committee.

[9:50:38 AM](#)

CHAIR LYNN announced the upcoming calendar.

[9:50:52 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:50 a.m.