

Why we need the Law of the Sea treaty

By Meg Giles, Special Assistant

The United Nations Convention on the Law of the Sea (UNCLOS) was established in 1982 and came into force on 16 November 1994. It has been ratified by 159 countries and the European Community. Despite broad bipartisan support in Congress and the recommendations for approval by the Senate Foreign Relations Committee, it has failed to reach the Senate floor for a vote.¹ Both the Clinton and Bush Administrations supported the Treaty, and President Obama has announced his strong support for ratification as well. Other backers include the Joint Chiefs of Staff, the American Petroleum Institute, the U.S. Chamber of Commerce, and the governors of seven coastal states. While a few Republican Senators strongly oppose joining UNCLOS, arguing that accession to the Convention would infringe upon US sovereignty, there are enough supporters in the Senate to ratify the Treaty, if the time is found to bring it to the Senate floor.²

In terms of our national security, economy, and the environment, the benefits of becoming a part of the Convention far outweigh any costs. The provisions of the Treaty establish territorial sea limits, navigational rights, rules to govern commercial and military use of the sea, a system for settling disputes between States, and protection of the marine environment. Specifically, the exclusive economic zone (EEZ) recognizes the right of each coastal state to all resources in the water and on the ocean floor within 200 nautical miles off its shore. Depending upon certain geological criteria, a country may claim the right to resources on its outer continental shelf, beyond the 200 mile limit.³ The Commission on the Limits of the Continental Shelf was set up to assess these claims.

By acceding to the Convention, the US could claim the rights to resources worth more than \$1 trillion beyond its EEZ, and it would have a say in assessing the

claims of other countries.⁴ As Secretary of State, Hillary Clinton stated in an 16 October 2009 letter to Senator John Kerry, Chairman of the Senate Foreign Relations Committee, endorsing ratification of UNCLOS, "The United States, as a major maritime power, the country with the largest exclusive economic zone, and one of the largest continental shelves, stands to gain more from this treaty in terms of economic and resource rights than any other country."⁵

Among its other provisions, the Convention also guarantees the right of a member state's air, surface, and submarine forces to transit the high seas, EEZs, international straits, and archipelagic sea routes, and permits warships to board vessels reasonably suspected of being involved in piracy.⁶ By ratifying the Treaty, the US would be better able to protect the Navy's ability to navigate freely the oceans and fulfill its missions. The Navy, therefore, strongly supports ratification. In his statement before the Senate Foreign Relations Committee in October of 2007, Former Chief of Naval Operations Admiral Vern Clark stated, "Joining the Convention now will support and enhance ongoing U.S. military operations, including the continued prosecution of the global war on terrorism. It will enable our armed forces to defend us at home and abroad with legal certainty. It will provide a stable and predictable legal regime within which to conduct our operations today, and realize our vision for the future."⁷ In terms of the environment, the Treaty includes measures to prevent, reduce and control marine pollution, and to protect and preserve ecosystems and endangered species.⁸

Opponents of the Treaty claim that joining the Convention would harm American interests, as it would relinquish sovereignty to the United Nations. Prior to 1994, these

Mr. President:
Our Security Can't Wait.
It's time to ratify the Law of the Sea Treaty.

With each passing day, America's military, economic and environmental security are further threatened by our failure to ratify the treaty that governs ocean navigation and overflight, submarine telecommunications cables and access to undersea resources. The melting sea ice of the Arctic, for example, is opening up new shipping routes and access to potentially vast oil and mineral deposits, setting off an international scramble for rights of passage and claims to undersea treasure. Yet the United States, with the most to gain or lose in this struggle, has no seat at the table where these matters will be decided.

That's why former U.S. Presidents and Secretaries of State of both major parties along with a very broad range of business, civic, military and environmental leaders strongly support ratification of Law of the Sea. America can't wait any longer to take this critical step.

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Some prominent organizations and individuals who support ratification:

American Association for the Advancement of Science	Former U.S. Rep. James C. Greenwood	Natural Resources Defense Council
American Bar Association	Former U.S. Rep. Lee H. Hamilton,	The Pew Charitable Trusts
American Chemistry Council	President and Director of the Woodrow Wilson International Center for Scholars	The Port Authority of New York and New Jersey
American Geological Institute	International Association of Drilling Contractors	Rule of Law Committee for the Oceans
American Geophysical Union	Institute for 21st Century Energy	Shall
American Petroleum Institute	Joint Ocean Commission Initiative	U.S. Arctic Research Commission
Robert L. Armitage, former Deputy Secretary, U.S. Department of State	Admiral Robert Korman, USCG (Ret.), former Commandant of the U.S. Coast Guard	U.S. Chamber of Commerce
Association of the United States Navy	Oregon Governor Ted Kulongoski	US Telecom
AT&T	Admiral James M. Loy, USCG (Ret.), former Commander of the U.S. Coast Guard	Venues
James Baker II, former U.S. Secretary of State	John B. Ballegeer II, former Legal Advisor, U.S. Department of State	Former Senator John W. Warner, former Secretary of the Navy and former Chairman of the Senate Armed Services Committee
Chamber of Shipping of America	Admiral Thomas Collins USCG (Ret.), former Commandant of the U.S. Coast Guard Consortium for Ocean Leadership	Admiral James D. Watkins USN (Ret.), former Chief of Naval Operations
Citizen's for Global Solutions		World Wildlife Fund - US
Admiral Thomas Collins USCG (Ret.), former Commandant of the U.S. Coast Guard Consortium for Ocean Leadership		Admiral Paul A. Tort, Jr. USCG (Ret.), former Commandant of the U.S. Coast Guard

criticisms had merit. President Reagan refused to sign the Treaty for numerous reasons pertaining to seabed mining and the mandatory transfer of private technology. For example, provisions related to seabed mining could be amended and become binding to the US without our consent. However, in July of 1994, President Clinton signed the Agreement Relating to the Implementation of Part XI, which enacted all of the changes deemed necessary by President Reagan to ensure that American interests would be protected under UNCLOS.⁹

As provisional members of UNCLOS between 1994 and 1998, the US was part of the negotiations to establish the Rules, Regulations and Procedures of the International Seabed Authority (ISA), the body which regulates deep sea mining. These rules can only be amended with the consensus of the ISA Council, of which the US would be a permanent member. In other words, the US would have veto power over any provisions related to deep sea mining.¹⁰ Amendments to non-seabed dispute settlement provisions could be blocked by the US as well. In all other provisions, amendments may be adopted through a Conference of Parties or a simplified procedure – both of which could be blocked by the US. In either of these cases, amendments only apply to those parties which explicitly ratify or accede to them, and to new parties to the

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Convention. Those countries that have not ratified them are not affected by the amendments.¹¹

Furthermore, contrary to what some critics claim, the LOS Tribunal would not be able to interfere in US military activity. The Convention also provides different options for countries to settle disputes, which include submitting disputes to the LOS Tribunal or the World Court. The default mechanism is arbitration, and that would be the choice of the US.¹² Opponents have also claimed that Article 19 of the Treaty would inhibit our intelligence collection capabilities. However, Article 19 is simply a restatement of part of the 1958 Geneva Convention on the Territorial Sea. Being party to UNCLOS has no effect on our intelligence gathering capabilities. There is also the argument that President Bush's Proliferation Security Initiative (PSI), which gives the Navy the authority to stop ships under suspicion of being engaged in terrorism or WMD

proliferation, would be rendered invalid if the US ratified the Treaty. This, too, is false, as the PSI was drafted in complete accordance with UNCLOS.¹³

In short, the US stands only to gain by ratifying the LOS Treaty. The rapidly changing environment of the Arctic region makes it all the more urgent for the US to join. Receding ice due to global warming has opened up new waterways and led to an increase in development of the region's vast oil and gas reserves, and countries are laying claims to these resources. By joining UNCLOS, we would be able to secure the rights over resources in the Arctic and play a prominent role in the governance of this region and beyond.

¹ Scott G. Borgerson, "The National Interest and the Law of the Sea," Special Report No. 46, Council on Foreign Relations, May 2009, Page 3.

² Allison Winter, "Sen. Kerry looks for window to ratify Law of the Sea," *The New York Times*, May 7, 2009.

³ "The United Nations Convention on the Law of the Sea (A historical perspective)," Oceans and Law of the

Sea, Division for Ocean Affairs and the Law of the Sea, United Nations, Accessed October 28, 2009 from http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Key%20provisions.

⁴ John Moore and Paul Kelly, "Convention on the Law of the Sea," The Henry L. Stimson Center, Security for a New Century: A Study Group Report, March 10, 2004. <http://www.stimson.org/newcentury/pdf/031004MooreKelly.pdf>.

⁵ Quoted in "Letter of Endorsement by Secretary of State Clinton," OceanLaw.org: A service of the Rule of Law Committee for the Oceans, <http://www.ocean-law.org/index.php?name=News&topic=8&startrow=31>.

⁶ Borgerson, 23-25.

⁷ Admiral Vernon Clark, U.S. Navy (Ret.), Statement before the Senate Committee on Foreign Relations, October 4, 2007, <http://foreign.senate.gov/hearings/2007/hrg071004a.html>.

⁸ Borgerson, 30.

⁹ James E. Mielke, "Deep Seabed Mining: U.S. Interests and the U.N. Convention on the Law of the Sea," CRS Report for Congress, April 7, 1995, <http://ncseonline.org/nle/crsreports/marine/mar-33.cfm>.

¹⁰ Caitlyn Antrim, Executive Director at Rule of Law Committee for the Oceans and Expert on UNCLOS, Interview on October 30, 2009.

¹¹ "The LOS Amendment Process and How It Relates to the United States," Rule of Law Committee for the Oceans, Issue Brief IB-6: A Note on Amendments to the Convention, November 27, 2007.

¹² Caitlyn Antrim.

¹³ *Ibid*.