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Ocean Law:

Senate Approval of the UN Convention

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Maritime Interests of the United States

The United States is a maritime nation with long standing interests in the oceans. From the founding of the country, the oceans have been an integral part of the nation's security and defense and economic strength. This is as true today as in the past. The United States continues to rely on the freedom of the seas to maintain naval and air access and mobility to defend its global interests. U.S. marine resource and commercial interests are equally critical. The country has the largest exclusive economic zone and the most abundant offshore fishery. As the largest single economy, the United States is the major importer and exporter of marine-related goods and services, including the placement of submarine cables and pipelines. The U.S. interest in protection and preservation of the marine environment is matched by its preeminence in marine scientific capabilities.

To promote these interests, the United States participates in all important ocean forums, in particular the United Nations Convention on the Law of the Sea. The Department of Defense has been a consistent proponent of the convention. Secretary William Perry explained that support when he said:

> *The Nation's security has depended upon our ability to conduct military operations over, under and on the oceans. We support the Convention because it confirms traditional high seas freedoms of navigation and overflight; it details passage rights through international straits; and it reduces prospects for disagreements with coastal states during operations.*

The 1982 UN Convention was submitted to the Senate for approval in fall 1994, together with an internationally agreed revision of chapter XI on seabed mining. Once part XI had been reformed the United States was ready to enjoy all the benefits of the treaty that President Reagan extolled in 1982.

National security interests in having a stable oceans regime are, if anything, even more important today than in 1982, when the world had a roughly bipolar political dimension and the United States had more abundant forces to project power to wherever it was needed. ...Without international respect for the freedoms of navigation and overflight set forth in the Convention, exercise of our forces' mobility rights would be jeopardized. Disputes with littoral states would delay action and be resolved only by protracted political discussions. The response time for U.S. and allied/coalition forces based away from potential areas of conflict would lengthen....Forces may arrive on the scene too late to make a difference, affecting our ability to influence the course of events consistent with our interests and treaty obligations.

From the 1994 DOD white paper,

National Security and the

Convention on the Law of the Sea

Today the Law of the Sea Convention awaits consideration by the Senate. Delays to Senate approval are more likely to be a function of domestic political considerations than of the merits of the treaty. When this is the case, issues of long range strategic importance, such as the law of the sea treaty, receive lower priority. Pending treaties may be put on hold as the Congress grapples with the Administration over control of foreign policy.

Evolving Maritime Security and Strategy

Several forces are reshaping U.S. security interests in the oceans and the corresponding naval strategy: a changing threat and reduced resources to address the threat. The Cold War has been superseded by multiple regional challenges to U.S. interests around the globe. The potential adversaries are diverse, dispersed and individually less powerful. The Navy has updated and redefined its strategic thinking and prospective Navy missions to take account of these changes. The new focus of maritime forces, set out in the 1992 Navy and Marine Corps white paper ...From the Sea and amplified two years later in ...Forward From the Sea, signaled an emphasis on the projection of power ashore and the use of the maritime forces in conjunction with land and air forces to influence events in littoral areas. The anticipated missions include the traditional roles such as presence, strategic deterrence, sea control, crisis response, power projection, and sealift. Peacetime roles include embargoes, counternarcotics and humanitarian operations.

The second factor impacting naval strategy is the reality of significant budget cuts. The Department of the Navy has aggressively implemented the direction of the Secretary of Defense's 1990 Base Force concept. From nearly 600 ships in 1988, the Navy is reducing personnel and operating expenses by a third. By the end of the century, the number of ships will be 40 percent smaller, roughly 330. Greater integration of the naval forces with other services, enhanced interoperability with allied forces and redesign of basic operations will achieve meaningful savings. Marine Expedi-tionary Forces will integrate amphibious forces and work more closely with other services. Engaging in near-shore areas, however, poses special legal, tactical and strategic problems. Weapons systems tailored to this complex environment must be highly discriminating and defense systems must be adapted to the short warning

times that characterize littoral warfare.

The UNCLOS Treaty Deals with Coastal State Claims

A fundamental challenge to U.S. military operations in near-shore areas is to maintain U.S. access rights in the face of coastal state claims. As ocean resources have become scarcer and crowding has occurred, governments have tried either to regulate or alternatively to lay claim to offshore resources. Cooperation has been possible in the case of some shared ocean activities. Navigation and safety codes and shipping lanes are examples of cooperative approaches undertaken by established international organizations. In other cases, coastal states have attempted to act unilaterally to extend national jurisdiction to areas that were previously part of the global commons. China's claim to the South China Sea and Canada's attempts to control foreign fishing beyond the 200 mile Exclusive Economic Zone (EEZ) are recent instances of this approach.

It was the threat of these unilateral coastal state claims that prompted international efforts to establish rules to govern ocean uses in a "law of the sea." From 1973 through 1982, the Third UN Conference on the Law of the Sea developed a comprehensive legal framework covering virtually all uses of the oceans and the respective rights and obligations of states. Of particular concern to the United States military was the need to address the proliferation of claims to territorial seas of twelve miles or more. If universally applied, a twelve-mile territorial sea would overlap more than 135 international straits. Under the territorial sea rules of "innocent passage" set out in the 1958 UN Convention on the Law of the Sea (to which the United States is a party), overflight would not be allowed and submarines would be required to navigate on the surface.

The 1982 Convention achieved important consensus on the extent of jurisdiction that a coastal state may exercise offshore: a territorial sea of twelve nautical miles (with a contiguous zone of an additional twelve miles for customs, fiscal, immigration and sanitary regulation); coastal state jurisdiction over resources in an EEZ of 200 miles; and coastal state jurisdiction over the continental shelf in those cases where it extends beyond the EEZ. Within these offshore zones, the treaty balances coastal state rights with explicit provisions to preserve rights of navigation and overflight. Transit passage through and over straits and archipelagoes used for international navigation is guaranteed.

A framework is laid for resource and environmental issues including the management and conservation of living resources, the preservation and protection of the marine environment, and the conduct of marine scientific research. As reformed, the treaty now provides for national mining of deep seabed minerals according to market principles on a first-come-first-served basis with clearly defined rights and responsibilities that prevent frivolous denials of applications. The singular application of the common heritage concept is the provision for revenue sharing from seabed mining royalties. Since this is also part of U.S. mining legislation, this should not pose an obstacle to Senate acceptance of the Convention.

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