NAVY LEAGUE BREMERTON-OLYMPIC PENINSULA

Frequently Asked Questions about the Law of the Sea Convention

Q. What does the Law of the Sea Convention do?

A. The Convention establishes a comprehensive set of rules governing the uses of the world's oceans, including the airspace above and the seabed and subsoil below. It carefully balances the interests of states in controlling activities off their own coasts and the interests of all states in protecting the freedom to use the oceans without undue interference. Among the central issues addressed by the Convention and Implementing Agreement are navigation and overflight of the oceans, exploitation and conservation of ocean resources, protection of the marine environment, and marine scientific research.

As the world's preeminent maritime power, the largest importer and exporter, the leader in the war on terrorism, and the owner of the largest Exclusive Economic Zone off our shores, the Convention is highly beneficial to U.S. interests in advancing economic order and freedom of navigation on the oceans.

Q. How does the Convention advance U.S. national interests?

A. The Convention preserves and solidifies the rights of navigation and overflight across the world's oceans on which our military relies to protect U.S. interests around the world.

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The Convention advances U.S. economic interests by enshrining the right of the United States to explore and exploit the vast natural resources of the oceans out to 200 miles from our coastline, and of our continental shelf beyond 200 miles, and by protecting freedom of navigation on the oceans over which more than 28 percent of all U.S. exports and 48 percent of all U.S. imports are transported.

The Convention protects the environment by creating obligations binding on all States to protect and preserve the marine environment from pollution from a variety of sources, and by establishing a framework for further international action to combat pollution.

Becoming party to the Convention also advances the ability of the United States to play a leadership role in global oceans issues. As a party to the Convention, the United States will be a leader in discussions about international ocean policy. If we are not a party, we will have far less ability to protect our maritime interests and advance our perspectives about ocean policy.

Q. Specifically, how does the Convention advance U.S. national security?

A. Our armed forces rely on the ability to navigate freely on, over, and under the world's oceans to protect U.S. security interests worldwide. The Convention enshrines key rights of navigation and overflight.

Admiral Vern Clerk, the Chief of Naval Operations, has stated that "the Convention supports U.S. efforts in the war on terrorism by providing important stability and codifying navigational freedoms, while leaving unaffected intelligence collection activities. Future threats will likely emerge in places and 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."

Admiral Michael Mullen, the Vice Chief of Naval Operations, testified before the Foreign Relations Committee that, "We support the Convention because it protects military mobility by codifying favorable transit rights in key international straits, archipelagic waters, and waters adjacent to coastal states where our forces must be able to navigate freely."

Mark Esper, Deputy Assistant Secretary of Defense for Negotiations Policy, cited the following as "examples of rights that exist under the Convention that are critical to military operations":

- Freedom of navigation and overflight on the high seas and within the 200 nm Exclusive Economic Zone (EEZ);
- Freedom of navigation and overflight through key international straits (such as Hormuz, Gibraltar, and Malaca) and archipelagoes (such as Indonesia and the Philippines);
- Limitation of territorial seas to 12 nm and limitations on the jurisdiction of coastal states within their EEZs and beyond;
- Innocent passage through foreign territorial seas, without notification or permission, regardless of armament or means of propulsion; and
- Freedom to conduct military surveys seaward of foreign territorial seas without the permission of coastal states.

The Convention also strengthens the President's Proliferation Security Initiative (PSI), which aims to impede and stop shipments of weapons of mass destruction, their delivery systems, and related materials. As Admiral Mullen told the Foreign Relations Committee, being party to the Convention "would greatly strengthen [the Navy's] ability to support the objectives" of PSI by reinforcing and codifying freedom of navigation rights on which the Navy depends for operational mobility. In a similar vein, Deputy Assistant Secretary Esper observed that "as a party to the Law of the Sea Convention, the United States will have another avenue through which to achieve consensus proscribing the maritime trafficking

of weapons of mass destruction, their delivery systems, and related materials to and from states of concern and terrorists."

Q. Why does the United States need to accede to the Convention now? What is the urgency?

A. The Convention comes open for amendment for the first time in November of this year. If the United States is not party to the Convention at that time, we will not have a seat at the table to protect against proposed amendments to the Convention that would roll back Convention rights we fought hard to achieve, including the navigation and overflight rights on which our Armed Forces rely to protect U.S. security interests worldwide.

In addition, the Convention's Commission on the Limits of the Continental Shelf will soon begin making decisions on claims to continental shelf areas that could impact the United States' own claims to the area and resources of its broad continental margin. Russia is already making excessive claims in the Arctic. Unless we are party to the Convention, we will not be able to fully protect our national interest in these discussions.

Q. Does the Bush Administration support the Law of the Sea Convention?

A. Yes. The Bush Administration strongly supports U.S. accession to the Law of the Sea Convention. The Law of the Sea was one of only five treaties that the Administration placed in its "urgent" category on their most recent Treaty Priority List. Representatives from the Department of State, the Office of the Secretary of Defense, the U.S. Navy, and the U.S. Coast Guard testified in support of the Convention at hearings in October before the Senate Foreign Relations Committee. The Administration helped write the resolution of advice and consent accompanying the treaty. Representatives of the State Department, the Office of Secretary of Defense, the Navy, the Coast Guard, the Justice Department, the Commerce Department, and the EPA participated in this interagency drafting process.

Q. Do industries that depend on the oceans support the Law of the Sea Convention?

A. Yes. Every major ocean industry, including shipping, fishing, oil and natural gas, drilling contractors, ship builders, and telecommunications companies that use underwater cables, support U.S. accession to the Law of the Sea. This includes the:

American Petroleum Institute
American Chemistry Council
International Association of Drilling Contractors
National Oceans Industries Association
National Marine Manufacturers Association
Chamber of Shipping of America
U.S. Tuna Foundation
Western Pacific Regional Fishery Management Council

Q. Do environmental, legal, naval, and research organizations concerned with the oceans support the Law of the Sea?

A. Yes, the Convention is supported by the:

Navy League of the United States
Naval Reserve Association
Transportation Institute
U.S. Commission on Ocean Policy
Pew Oceans Commission
The Ocean Conservancy
Oceana
Center for International Environmental Law
IUCN/World Conservation Union

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Natural Resources Defense Council
Scenic America
Environmental Defense
National Environmental Trust
Physicians for Social Responsibility
U.S. Public Interest Research Group
League of Conservation Voters
World Wildlife Fund
Humane Society of the United States
American Bar Association
Maritime Law Association of the United States
Council on Ocean Law
U.S. Arctic Research Commission

Q. What process did the Senate Foreign Relations Committee follow in considering the Convention?

A. The SFRC took up the Convention in 2003 in response to the Bush Administration's placement of Law of the Sea in the uppermost "urgent" category on its most recent Treaty Priority List. The Committee held two public hearings on the Convention in October 2003, at which Administration and private witnesses testified. Between October and February, the SFRC held four briefings on Law of the Sea for Committee staff and the staff of all Committee members. Two of these briefings were headlined by an Administration interagency team. In February, the Committee met to vote on the Law of the Sea. The treaty was approved 19-0.

Q. Before the Committee vote, did the Committee receive negative comments concerning the treaty?

A. During the more than two weeks that elapsed between the public notice of the first hearing on Law of the Sea and the completion of the second hearing, the Committee received no communications opposing the treaty or requests to testify against it.

During the four months between the completion of the second hearing and the Committee vote to report out the Convention, the Committee received just one inquiry voicing opposition to the Convention from an individual representing himself. Staff offered to receive written testimony from this individual, but none was sent.

Information about the October hearings remained on the Committee website throughout this period and Senator Lugar's statements on Law of the Sea were released to the press.

Q. Did President Reagan oppose the Law of the Sea Convention?

A. President Reagan accepted all of the Convention's provisions except for those dealing with deep seabed mining. He expressed a series of specific objections to the Convention's deep seabed mining provisions. In 1994, an agreement was concluded that fundamentally restructured the Convention's deep seabed mining regime and resolved all of President Reagan's stated concerns.

President Reagan stated in 1982 that "while most provisions of the [then] draft convention are acceptable and consistent with U.S. interests, some major elements of the deep seabed mining regime are not acceptable." President Reagan's statement specified his particular objections to the deep seabed mining regime, which included lack of adequate U.S. representation in decision-making about deep seabed mining, requirements for industrialized states to transfer to developing states technology related to deep seabed mining, rules providing for artificial limits on production of deep seabed minerals, and rules providing for burdensome regulations and financial costs on private companies seeking to conduct

deep seabed mining. Because of these concerns, the United States and many other industrialized declined to become party to the Convention when it was first concluded in 1982.

In a 1983 proclamation of United States ocean policy, President Reagan stated that, while the United States would not become party to the Convention, the United States accepted and would act in accordance with the provisions of the Convention relating to the traditional uses of the oceans, which generally comprise all of the Convention's substantive provisions except for those relating to deep seabed mining. It has remained U.S. policy since President Reagan's 1983 statement to act in accordance with these Convention provisions.

In 1990, President George H.W. Bush initiated further negotiations to resolve U.S. objections to the deep seabed mining regime. These talks culminated in a 1994 agreement that comprehensively revised the regime and resolved each of the problems President Reagan identified in 1982.

Q. Does the Convention, specifically Articles 19 and 20, impose new regulations and restrictions on U.S. intelligence and submarine activities?

A. No, the Convention does nothing to change the status quo with respect to U.S. intelligence and submarine activities. The United States is already party to the 1958 Convention on the Territorial Sea and Contiguous Zone, a predecessor Convention to the Law of the Sea Convention. Articles 19 and 20 of the Law of the Sea Convention do not expand the rules with respect to intelligence and submarine activities beyond those the United States is already subject to under the comparable provisions of the 1958 Convention.

Indeed, by specifically limiting the range of activities that may be considered prejudicial to the peace, good order, or security of the coastal state – something not done in the 1958 Convention – the Law of the Sea Convention protects the United States from efforts by other states to regulate other categories of conduct in the territorial sea.

Admiral Vern Clark, the Chief of Naval Operations, stated in his letter of support for the Convention that it had no detrimental effect on intelligence gathering.

Q. Does the Convention prohibit interdictions of weapons of mass destruction on the high seas to be undertaken under President Bush's new Proliferation Security Initiative (PSI)?

A. No, the Convention neither prohibits nor inhibits any activities to be undertaken pursuant to the Proliferation Security Initiative; in fact the Convention strengthens PSI.

State Department Legal Adviser William Taft testified before the Senate Environment and Public Works Committee that the rules contained in the Law of the Sea Convention applicable to boarding and searching foreign ships at sea are not materially different than rules in this regard the United States is already subject to under the 1958 Geneva Conventions on the Law of the Sea, to which the United States is a party. Acceding to the Law of the Sea Convention thus will not effect any change in the legal status quo with respect to PSI.

Moreover, it has been U.S. policy since President Reagan's 1983 Statement of Oceans Policy to act in accordance with the Convention's provisions with respect to the traditional uses of the oceans, which include the Convention's provisions regarding the boarding and searching of foreign ships at sea. The elements of the U.S. Armed Forces carrying out PSI are thus already operating under the Convention's rules, and have been doing so for over 20 years.

Admiral Michael Mullen, Vice Chief of Naval Operations, testified before the Foreign Relations Committee that being party to the Convention "would greatly strengthen [the Navy's] ability to support the objectives" of PSI by reinforcing and codifying freedom of navigation rights on which the Navy depends for operational mobility. Deputy Assistant Secretary of Defense for Negotiations Policy Mark Esper testified that "as a party to the Law of the Sea Convention, the United States will have another avenue

through which to achieve consensus proscribing the maritime trafficking of weapons of mass destruction, their delivery systems, and related materials to and from states of concern and terrorists."

In addition, PSI's own rules require that PSI activities be consistent with the Convention. The Statement of Interdiction Principles pursuant to which the PSI operates explicitly states that interdiction activities under PSI will be undertaken "consistent with national legal authorities and relevant international law and frameworks" (White House Fact Sheet, September 4, 2003). All of the United States' partners in the PSI are parties to the Convention and accordingly observe its provisions.

Q. Does the Convention give any decision-making role to the United Nations?

A. No, contrary to some uninformed claims, the U.N. does not have a decision-making role related to ANY aspect of the Law of the Sea.

Q. Does the Convention threaten U.S. sovereignty?

A. No, in fact, the Convention strengthens and codifies our claims to our own Exclusive Economic Zone, which extends 200 miles beyond our shores.

The Convention deals with many issues in the open ocean beyond this 200 mile zone. The United States has never claimed sovereignty over the open ocean, nor have we recognized the claims of other countries to the open ocean. By definition, these are areas that lie outside the bounds of national sovereignty. The only way to establish legal norms in an area where no sovereignty exists is through international agreement.

Q. If the U.S. does not ratify the Convention, will it still go into effect?

A. Actually, the Convention went into effect in 1994 when the 60th nation ratified it. To date, 145 countries have ratified it. Unlike some treaties (like the Kyoto Treaty and the Comprehensive Test Ban Treaty) where U.S. non-participation renders the treaty irrelevant or inconsequential, the Law of the Sea will continue to form the basis of maritime law regardless of whether the U.S. is a party. International decisions related to national claims on continental shelves beyond 200 miles from our shore, resource exploitation in the open ocean, navigation rights, and other matters will be made in the context of the treaty.

Q. If the U.S. does not ratify the Convention, can we ignore it?

A. No, unlike treaties that deal primarily with what happens within the domestic territory of parties, the United States cannot insulate itself from the Convention merely by declining to ratify. There are 145 parties to the Convention, including every major industrialized country. The Convention is the accepted standard in international maritime law. Americans who use the ocean and interact with other nations on the ocean, including the Navy, shipping interests, and fisherman, have to contend with provisions of the Law of the Sea on a daily basis. In practice, they will have to continue to do so regardless of whether the United States is a party.

Q. What does the United States risk if it does not ratify the Convention?

A. In addition, to forfeiting a leadership role in ocean policy, the United States' absence from the Convention increases the chance that amendments to the Convention will be adopted that harm U.S. freedom of navigation and economic interests. The Convention is highly favorable to U.S. interests as it exists now. Some nations may press for restrictions on the movement of naval or commercial vessels near their coastline that would be harmful to the United States. Others may pursue the right to exclude nuclear-powered vessels from their territorial waters. (Under the Convention, a ship's propulsion system cannot be used as an argument to restrict its movements.) As explained above, even if the United States is not a party to the Convention, it must contend with the Law of the Sea. As a party, we will be in a very strong position to prevent harmful amendments.

In addition, the Convention's Commission on the Limits of the Continental Shelf will soon begin making decisions on claims to continental shelf areas that could impact the United States' own claims to the area and resources of its broad continental margin. Russia is already making excessive claims in the Arctic. Unless we are party to the Convention, we will not be able to fully protect our national interest in these discussions.

Q. Does the Convention require the United States to transfer sensitive technology to other countries or international organizations?

A. No, the Convention does not require the United States to transfer any technology to any party.

Elimination of such a requirement was a key objective of the United States and other industrialized nations when they renegotiated the Convention's deep seabed mining provisions in the 1990s. The Convention's mandatory technology transfer provisions were repealed by Section 5, paragraph 2 of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions.

The Convention as revised contains only a general undertaking by states to encourage the promotion of the transfer of technology and scientific knowledge relating to deep seabed mining. Should developing states or the International Seabed Authority be unable to obtain relevant technology on the open market, they may request assistance in this regard from states parties to the Convention.

Q. What is the purpose of the International Seabed Authority created by the Convention?

A. The International Seabed Authority (ISA) was created to administer deep seabed mining in areas beyond a nation's "exclusive economic zone" (generally areas more than 200 nautical miles from the coastline of any state). The United States has never claimed sovereign control over seabed resources beyond its exclusive economic zone. Similarly, we do not recognize unilateral claims by other countries to control over such resources.

Most exploitable ocean resources are located within 200 nm of a coastal state and thus are unaffected by the ISA. The United States has an exclusive economic zone of 3.36 million square miles – the largest exclusive economic zone in the world. This is an area larger than the area of the lower 48 states. The Convention recognizes that all the seabed resources within this area belong to the United States.

At present, mining the seabed in the deep ocean 200 nautical miles beyond the coast is economically infeasible. The investment in equipment and technology costs more than the current value of whatever could be extracted. Consequently, such mining is not being conducted.

Someday deep seabed mining under the open ocean may become profitable from an engineering standpoint. But no company will make the large investments required to conduct such mining in waters beyond their country's exclusive economic zone unless they can establish legal title to the sites they wish to mine. They would not want to risk having their claims disputed or having competitors free ride off their exploration investments. Given that no nation has sovereignty beyond their national jurisdiction, the only way to establish property rights in the open ocean is through an international regime.

Establishing that legal title is precisely what the ISA is designed to make possible. This is one of the reasons why companies with an interest in deep seabed mining have supported the treaty.

Q. Does the Convention provide for production controls on mining of minerals from the deep seabed?

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A. No, the Convention does not provide for production controls for deep seabed mineral resources. This was a problem deep seabed mining provision as originally concluded and was resolved through the renegotiation of the provision.

The Convention's production control provisions were repealed by Section 6 of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions. The revised rules permit production without arbitrary limit.

Q. Does the Convention permit decisions about deep seabed mining to be made by developing countries over the objection of the United States through the International Seabed Authority?

A. No, the International Seabed Authority's (ISA) rules do not permit the ISA to be controlled by the Developing World. This was the subject of the one part of the Convention that the Reagan Administration asked to be renegotiated in 1983. The problem was resolved through the renegotiation of the deep seabed mining regime concluded in 1994.

As revised, the ISA's rules give the United States the ability to prevent decisions contrary to U.S. interests.

If the United States were party to the Convention, the ISA's voting rules would allow the United States to veto the adoption of any rules, regulations, and procedures relating to the deep seabed mining regime, decisions having financial or budgetary implications, decisions relating to distribution of ISA revenues, and decisions on proposed amendments to the regime. (Convention Article 161(8)(d); Section 3(7) of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions).

The United States can veto other decisions acting together with two other countries that are major consumers of minerals. (Section 3(5) of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions).

Q. Does the Convention permit the International Seabed Authority to exercise direct global taxing power?

A. No, the ISA has no authority to levy taxes. The Convention does contemplate the elaboration of rules for payments of royalties to the ISA from revenues generated from deep seabed mining. Under the Convention's rules, such royalty payments would be used to cover the ISA's expenses. (Section 7 of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions).

Should any surplus revenues be generated, they could be used in certain cases to provide economic assistance to developing countries.

The United States has veto power over any decisions about distribution of royalty proceeds. (Convention Article 161(8)(d); Section 3(7) of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions).

Q. Under the Convention, will U.S. companies have the opportunity to acquire rights to conduct deep seabed mining?

A. Yes. In fact, without the Convention, deep seabed mining will be less likely to occur. The Convention's rules provide for awards of mining rights to be made on first-come, first-served basis to qualified applicants meeting objective criteria. (Convention Annex III, Article 6(3)) American companies will be eligible to apply for such rights on an equal basis with companies from other countries; Convention provisions that could have resulted in discrimination against U.S. companies were repealed by Section 6(7) of the Annex to the 1994 Agreement Implementing the Convention's deep seabed mining provisions). Given that U.S. companies are among the leaders in seabed mining technology, our ability to pursue these resources is more advanced than most.