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United States Non-Ratification of the United Nations Convention on the Law of the Sea Treaty, Arguments Pro and Con: Is the United States Moving Toward an Isolationist Foreign Policy?

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**United States Non-Ratification of the United Nations
Convention on the Law of the Sea Treaty
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***IS THE UNITED STATES MOVING TOWARD AN
ISOLATIONIST FOREIGN POLICY?***

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Introduction

Is the United States reverting back to the isolationist politics of its past? Isolationism is defined as “the policy or doctrine of isolating one's country from the affairs of other nations by declining to enter into alliances, foreign economic commitments, international agreements, etc., seeking to devote the entire efforts of one's country to its own advancement and remain at peace by avoiding foreign entanglements and responsibilities.”¹ The foreign policy doctrine of isolationism played a prominent role in American politics from this country's inception until World War II. Isolationism was firmly implanted into the national psyche of the United States long before independence was achieved. The early colonists had suffered economic privations, religious persecution and wars on the European continent prior to setting sail for America.² The colonists viewed the New World as a chance to make things better than the Old World had been.³ Among the prominent, early leaders in the United States that espoused disentanglement with foreign affairs and alliances were George Washington, Thomas Jefferson, James Monroe, the author of the Monroe Doctrine, a policy that advocated non participation in European wars, and Thomas Paine.⁴ In his work, *Common Sense*, Thomas Paine so strongly influenced the United State's Second Continental Congress that Congress rejected an alliance with France, only to

¹ Isolationism, Dictionary.com. Dictionary.com Unabridged. Random House, Inc. <http://dictionary.reference.com/browse/isolationism> (accessed: September 30, 2009).

² Isolationsm, <http://www.u-s-history.com> (accessed: October 3, 2009).

³ *Id.*

⁴ *Id.*

reluctantly approve of it when it became obvious that the war of independence could not be won without it.⁵

When World War I ended, America was forced to abandon its isolationist policies in order to defend American ships against German submarine warfare.⁶ After the war, the United States was in a strong position to command a leadership role in the peace process. President Woodrow Wilson, convinced that a legal framework such as the League of Nations was crucial to international peace and stability, negotiated this into the Treaty of Versailles that ended the First World War.⁷ However, once again, isolationist views were embraced by the American people due to disillusionment with the war and the fear of further foreign entanglements, and, as a result, the United States Senate refused to ratify the Treaty of Versailles and to join the League of Nations.⁸ Opponents to joining the League of Nations argued that it was a threat to American security and sovereignty.⁹ The United States' absence and failure to join the League of Nations has been cited as one of the underlying causes of the Second World War, as it was too weak to circumvent the tide of Nazi armament and aggression. Tariffs were also imposed on exports coming into the United States in order to protect American manufacturing and thus its

⁵ United States Non-interventionism, <http://en.wikipedia.org> (accessed: October 3, 2009).

⁶ Isolationism, <http://www.u-s-history.com> (accessed: October 3, 2009).

⁷ The United States and the Founding of the United Nations, August 1941-October 1945 <http://www.state.gov/r/pa/ho/pubs/fs.com> (accessed October 3, 2009)

⁸ *Id.*

⁹ *Id.*

economy.¹⁰ With Europe's inability to sell its products to America, it could not buy American products which contributed to one of the leading causes of the Great Depression.¹¹

With the advent of World War II and the Cold War, the United States emerged as a world leader on the world stage. President Franklin Roosevelt recognizing the failures and weaknesses of the League of Nations and the crucial role that the United States needed to play as both a leader and an organizer, set about establishing a new international organization that would maintain post war peace.¹² He named it the United Nations.¹³ In the aftermath of the creation of the United Nations, isolationism was to never again to figure prominently in American policies; however, it has never completely disappeared from American political discourse either.

In spite of the United States' leadership role that it has maintained since the aftermath of World War II, is it repeating the same pre World War II failures by going down the same path of adopting an isolationist foreign policy doctrine that is fueled by unreasonable fears with regard to the United Nations Law of the Sea Treaty?

Since the ratification of the United Nations Law of the Sea Treaty in 1982, the United States has persistently and true to the form of its past, exhibited a reticence to execute the treaty despite having been the crucial player in the treaties inception, creation and organization. Why? In not becoming a party to this treaty, we stand with such rogue nations as Iran, Lybia and North Korea, who have also not ratified the treaty. This is strange company indeed for the leader of the free world to entertain. This paper explores the reasons why the United States has stymied the

¹⁰ American Isolationism, <http://www.schoolshistory.org.uk/america/isolationism.htm> (accessed October 3, 2009).

¹¹ *Id.*

¹² The United States and the Founding of the United Nations, *supra* note 1, at 1.

¹³ *Id.*

ratification process of this unprecedented maritime treaty for over twenty-seven years and what arguments both for and against its ratification have shaped the political dynamics and fueled its debate. Is the security and ultimate freedom of the United States as a nation in jeopardy if this treaty is ratified as some would argue, or, are the ghosts of the past and a present political agenda crippling the nation's resolve to continue its leadership role in the world which could ultimately bring about the very demise of the security and sovereignty that it seeks to protect?

Historical Background

“THE CONSTITUTION FOR THE OCEANS”

The United Nations Convention on the Law of the Sea Treaty, (a/k/a “UNCLOS”, a/k/a the “Treaty” a/k/a the “Convention”) has been called the Constitution for the Oceans.¹⁴ It is a comprehensive codification of customary maritime law and defines the rights and responsibilities of nations, their use of the oceans and provides a legal framework for the management of marine resources and the environment.¹⁵ UNCLOS came into force in 1994 and replaced the four 1958 treaties and the two prior conventions on the law of the sea.¹⁶

Prior to UNCLOS coming into force, the world's oceans were governed by the 17th century customary law concept of “freedom of the seas”.¹⁷ Nation states also adhered to the customary law concept of the “cannon shot rule” which established a nation's right to claim three

¹⁴ Constitution for the Oceans, International Foundation for the Law of the Sea, <http://www.iflos.org/en/background/the-constitution.aspx> (accessed October 3, 2009).

¹⁵ *Id.*

¹⁶ United Nations Convention on the Law of the Sea, <http://en.wikipedia.org> (accessed October 3, 2009).

¹⁷ *Id.*

nautical miles from their coastline as their sovereign territory which was the extent of the reach of their cannons.¹⁸ Hugo Grotius, known as the father of International Law, established the principle that beyond a nation's territorial waters were the international waters, free to everyone, but belonging to none.¹⁹

With the advent of the twentieth century, things began to change for the world's oceans due to increased technology and knowledge of the seabed. In the early part of the twentieth century, the United States, furthering its interest in the codification of the law of the sea and exerting its leadership role to that end, extended its sovereign control of its natural resources to the continental shelf contiguous to its coastline through the Truman Proclamations.²⁰ Other nations began to follow suit extending their territorial rights to two hundred nautical miles to cover fishing grounds and others to twelve nautical miles, rendering the three mile nautical mile limit almost obsolete.²¹ It became apparent that territorial waters and the continental shelf needed to be clearly defined and in 1956 the first UNCLOS meeting began which culminated in four treaties.²² However, it did not clearly define the extent of the territorial waters and the extent to which the natural resources could be exploited. This was a vague and open-ended concept subject to interpretation. By the late 1950's and 1960's, new technology opened the way for oil exploration into deeper sections of the ocean floor. Indonesia and South Africa began to

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

mine for diamonds and tin off their coasts.²³ The environment became an issue of concern due to super oil tankers carrying oil through congested passages leaving behind a trail of oil spills.²⁴ Also, large fishing vessels were able to stay away from port for longer periods of time enabling them to over fish, resulting in the depletion of fish stocks.²⁵ This led to conflicting claims to the ocean's resources from coastal states and distant fishing states.²⁶ More nations were also seeking to expand their territorial limits. A second United Nations conference was held, however, there was no consensus and most developing countries were not significantly represented.²⁷ Meanwhile, new issues arose.

As a result of the American initiative in securing expansive research rights on the high seas and the continental shelf, an American scientist, John Mero, identified nodules on the deep seabed floor as being rich with black manganese, copper, nickel and cobalt.²⁸ His projections as to their value along with other discoveries on the deep seabed of biological creatures that could yield pharmaceutical benefits initiated the debate over who had the right to extract these riches from the deep seas.²⁹ Once the riches of the deep seabed became known and the technology existed to have them extracted by mostly the industrialized nations, the Third World nations,

²³ Brief History of the Law of the Sea, <http://www.geocities.com>. (accessed October 4, 2009)

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ John Briscoe and Peter Prows, *The U.N. Convention on the Law of the Sea Turns 27, and American Ratification is Not in Sight – Still*, 1 BERKELEY J. INT'L L. PUBLICIST 22 (2008), <http://www.boalt.org/bjil/docs/Publicist01-Briscoe-Prows.pdf> (accessed October 4, 2009)

²⁹ *Id.*

who did not have this technology, began to worry. In 1967, the United Nations Ambassador of Malta, Dr. Pardo, in a meeting before the General Assembly of the United Nations, gave an impassioned speech on behalf of the Third World to declare the deep seabed beyond national jurisdiction and “The Common Heritage of Mankind.”³⁰ Dr. Pardo also called for the creation of an international authority to supervise the wealth of the deep seabed.³¹ With concerns over the ocean’s problems looming and with the failure of the first two conferences, the general consensus among the nations of the world was the need for a universal conference.³² In 1969, the United Nations General Assembly passed a resolution that barred further exploration of the ocean floor beyond a nation’s territorial limits.³³ In reaction to this, the United States, under the leadership initiative of Richard Nixon, together with the Soviet Union, led the way for the third United Nations conference on the Law of the Sea, UNCLOS III, (*hereinafter referred to as UNCLOS*).³⁴

In 1973 UNCLOS convened.³⁵ The United States was able to advance its interests and to score a diplomatic victory by establishing navigational freedoms for naval vessels as well as merchant ships.³⁶ It was more successful than its predecessor conventions had been in defining

³⁰ Robert L. Friedheim, *Negotiating the New Ocean Regime* 29 (University of South Carolina Press 1993) available at <http://books.google.com/books> (accessed October 4, 2009).

³¹ *Id.* at .29-30.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 22.

³⁵ *Id.*

³⁶ *Id.*

baselines from which territorial waters, contiguous zones, exclusive economic zones and the continental shelf could be measured. It also championed regulations for the marine environment and its resources and the freedom to conduct scientific research. The third convention resulting in UNCLOS opened for signatures in 1982, and officially went into force in 1994, when the last country necessary for it to go into force signed it.³⁷ However, there was one sticking point for the United States and the other industrialized nations, including the Soviet Union, mining of the deep seabed minerals specifically outlined in Part XI of UNCLOS.³⁸ Part XI, consisting of Articles 133-191, provides a framework for regulating the seabed minerals outside of a nation's territorial waters and sets up a regulating body known as the International Seabed Authority also referred to in the Treaty as the "Authority" (*hereinafter referred to as ISA*) that supervises deep seabed mining and explorations and provides for the collection of royalties.³⁹ President Ronald Reagan rejected Part XI on the basis that it did not conform to free economic principles and compromised American security and economic interests. Although, Reagan agreed with the remaining provisions of UNCLOS, he nevertheless refused to sign due to Part XI.⁴⁰ From 1990-1994, under the Bush and Clinton Administrations efforts were underway to resolve Reagan's objections that prevented the United States' full participation in UNCLOS. In 1994 this resulted in the "Agreement Relating to the Implementation of Part XI," (*hereinafter referred to as the "Implementing Agreement"*) in which all of Reagan's initial objections to Part XI, specifically the

³⁷ United Nations Convention on the Law of the Sea, <http://en.wikipedia.org> (accessed October 4, 2009).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

administration of the ISA, mandatory technology transfers and dispute resolution were resolved.⁴¹ The Implementing Agreement became a single, legally binding instrument and prevails in instances in which there is an inconsistency between it and UNCLOS.⁴² That same year, President Clinton signed UNCLOS and the Implementing Agreement and submitted it before the United States Congress for ratification pursuant to Article 2 of the United States Constitution.⁴³ It is at this point that UNCLOS started to flounder.

UNCLOS was met with fierce opposition by Republican Senator Jesse Helms, a self-professed isolationist and Chairman of the Senate Foreign Relations Committee, who was suspicious of most multilateral treaties as compromising American sovereignty.⁴⁴ Despite bipartisan support and the endorsements of Presidents Clinton and George W. Bush, Helms single-handedly, refused to hold any hearings on UNCLOS during his tenure.⁴⁵ During this time, Helms also refused to hold hearings on the Chemical Weapons Convention Treaty, negotiated by the Reagan and Bush administrations and which was later ratified, that banned the production and stock piling of chemical weapons.⁴⁶

⁴¹ The 1994 Implementing Agreement to the LOS Treaty, <http://unlawofthesea.wordpress.com> (accessed October 4, 2009).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Andrew King, *Thawing a Frozen Treaty: Protecting United States Interest in the Arctic with a Congressional-Executive Agreement on the Law of the Sea*, 34 *Hastings Const. L.Q.* 336 (2007).

⁴⁵ *Id.*

⁴⁶ Sanford Gottlieb, *The New Isolationist Paradox-Against Sadam and Against the U.N.*, *JINN Magazine*. Feb. 13, 1998, available at <http://www.pacificnews.org/jinn/stories/4.03/980213-isolationism.html> (accessed October 5, 2009).

Also at this time, isolationist tendencies in American politics started to resurface among political conservatives. This was fueled mainly by the mistrust and hatred of the United Nations as being viewed as a political body controlled by the Third World, spewing forth an anti-United States agenda that threatened the sovereignty of the United States. Many Republican conservatives in the House of Representatives were calling for the United States to withdraw from the United Nations and to have it expelled from United States soil. This was evidenced by legislation that was introduced, but later defeated, by the House of Representatives in 1997, called the American Sovereignty Restoration Act.⁴⁷ The John Birch Society was another leading advocate of United States withdrawal from the United Nations and is a leading UNCLOS opponent. An anti-communist organization founded in 1958, it opposes what it views as a compromise of the American constitution through social and economic globalization, a “one-world government”, through the arm of the United Nations and thus opposes most free trade agreements such as the North American Free Trade Agreement.⁴⁸ A war of ideas with UNCLOS in the middle of it began to ensue. To combat what was seen as a threat to American global leadership, on February 11, 1998, a two page ad was placed in the Washington Post and New York Times by Gerald Ford, Jimmy Carter, former Secretary of State Henry Kissinger and other key business and government leaders that stated “modern isolationism seriously damages American interests, and a “dangerous drift toward disengagement from the responsibilities of

⁴⁷ American Withdrawal from the United Nations, <http://en.wikipedia.org> (accessed October 4, 2009).

⁴⁸ John Birch Society, <http://en.wikipedia.org> (accessed October 4, 2009).

global leadership.”⁴⁹ Despite the urgings for ratification by American businesses that had a major stake in the development of the ocean, such as the oil and gas, fishing and shipping industries, it never went before the senate for debate. Also, the military and intelligence communities were calling for ratification to ensure military vessels’ safe movement through international straits, still it never happened. It wasn’t until Jesse Helms’ retirement in 2003 that a possibility for UNCLOS to be brought before the Senate for debate became a possibility.⁵⁰ UNCLOS had been single-handedly obstructed by one man in a democratic society from 1994 to 2003.

Things began to change for UNCLOS when Senator Richard Lugar, a proponent of UNCLOS, became the chairman of the Senate Foreign Relations committee in 2003.⁵¹ Although UNCLOS had the unanimous approval of the Senate Foreign Relations committee in 2004 (19-0), it was again never brought to the Senate for a full vote because it continued to meet with opposition from senators such as Senate Republican leader Bill Frist and the Republican Senator from Oklahoma, James Inhofe, who, like Helms, viewed UNCLOS as a threat to United States sovereignty.⁵² In 1997, President George W. Bush urged the Senate to ratify UNCLOS, stating that it would ensure the free movement of our military on the oceans.⁵³ Secretary of State, Condoleezza Rice, the Office of Secretary of Defense, the U.S. Navy, the Coast Guard, the

⁴⁹Gottlieb, *supra* note 46 (quoting Advertisement, A Time for American Leadership on Key Global Issues, Wash. Post, Feb. 11, 1998.).

⁵⁰ *Id.*

⁵¹ Scott Paul, *Big News: Bush will push the law of the Sea*, The Washington Note, at <http://www.thewashingtonnote.com/archives/002128.php> (accessed October 9, 2009).

⁵² *Id.*

⁵³ Reuters, *U.S. Senate Panel Backs Law of the Sea Treaty*, <http://www.reuters.com/article/latestCrisis> (accessed October 9, 2009).

Commerce Department and the Pentagon testified before Congress that the Treaty is vital to American interests and urged ratification.⁵⁴ Again, in 2007 the Senate Foreign Relations Committee voted 17-4 to back the Treaty and to send it to the Senate for approval.⁵⁵

Here it is continuing to languish as it has consistently failed to be brought before the Senate for debate and a vote. The reasons for the failure of the Senate to take up the UNCLOS debate is varied ranging from such pressing issues as the war on terror, the recent presidential election, the current global economic crisis and healthcare debate as well as politics as usual. Also, the Oil-for-Food Scandal at the United Nations and the raping of women by United Nations peacekeepers has also hurt the Treaty due to its affiliation with the United Nations.⁵⁶ Another scandal that has surfaced is the news from a top ranking official with the ISA, who has shown documentary evidence to the Senate, that has revealed corruption and bribes made to the ISA Secretary-General and other officials.⁵⁷ All of which is enough to hurt any multilateral treaty's chances, negotiated under the auspices of the United Nations, of being passed in the Senate. Currently, President Obama and Secretary of State, Hillary Clinton has vowed to make ratification of this Treaty a top priority of its administration.⁵⁸

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Cliff Kincaid, *Senate Republicans May Sink Bush's UN Treaty*, Oct. 25, 2007, at <http://www.aim.org/special-report/senate-republicans-may-sink-bushs-un-treaty/> (accessed October 12, 2009).

⁵⁷ *Id.*

⁵⁸ Transcript of Hillary Clinton's Confirmation Hearing, Council on Foreign Relations, http://www.cfr.org/publication/18225/transcript_of_hillary_clintons_confirmation_hearing.html (accessed October 12, 2009).

Meanwhile, as the debate for and against ratifying UNCLOS continues to rage in the United States, the world moves on. As of October 5, 2009, one hundred and fifty nine countries have already ratified UNCLOS including most of the industrialized nations, with the exception of the United States who is the only major maritime power that has not ratified the Treaty.⁵⁹ Also, fifty-one countries are currently scrambling to file claims to establish their rights, pursuant to Article 76 of the Treaty, which allows countries to file claims that will extend their continental shelf and exert sovereignty over valuable resources. Nations are rushing to assert their rights over the “new land rush” the opening of the Arctic sea lanes. With the United States Senate on the sidelines of inaction with regard to UNCLOS, the United States cannot file any claims with regard to establishing its sovereignty over its extended continental shelf and resources because it is not a party to the Treaty. Nor can the United States oversee any of the claims that are being made on behalf of other countries. This has potential serious consequences for the future of United States economic interests in the Arctic, such as the ability to protect as well as to access resources that it may have legitimate rights to and the demise of its global leadership and influence.

⁵⁹ Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements, http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm (accessed October 11, 2009).

The Debate

“This Law of the Sea Treaty represents a permanent loss of national sovereignty. Hence, it is inherently un-American. Sink it.”⁶⁰

Patrick Buchanan

One of the major arguments that opponents of UNCLOS puts forward is that the sovereignty of the United States would be compromised by the ISA and its judicial arm for dispute resolutions, the International Tribunal for the Law of the Sea, (the “Tribunal”). ISA, created under Part XI, Article 156 of UNCLOS, is empowered through its Authority to oversee and control all deep seabed mining activities for the extraction of important minerals, such as the manganese rich nodules, that lie beyond a nation’s territorial waters.⁶¹ The overriding principle prevalent in the negotiations of UNCLOS, which brought forth the idea behind the creation of the ISA, and which was later contained within Article 136 of the Treaty, was that the resources beyond a nation’s territorial waters were reserved for the “Common Heritage of Mankind.”⁶²

Among the outspoken opponents, to name just a few, of the ISA and the threat to American sovereignty have been Phyllis Schlafly, a conservative, political activist and constitutional attorney, Frank Gaffney, founder and President of the Center for Security Policy and Doug Bandow, senior fellow of the CATO Institute, who served as deputy representative to the Third U.N. Conference on the Law of the Sea. They contend that the ISA creates a new

⁶⁰ Patrick J. Buchanan, *Should the U.N. Be Lord of the Oceans?*, The American Cause, Feb. 28, 2005, at <http://www.theamericancause.org/a-pjb-050228-lordoftheoceans.htm> (accessed October 12, 2009).

⁶¹ United Nations Convention on the Law of the Sea - Part XI. Section 4, at http://www.un.org/depts/los/convention_agreements/texts/unclos/closindxAgree.htm (accessed October 15, 2009).

⁶² *Id.*

ocean bureaucracy that will prove to be just as corrupt and as ineffective as the United Nations. The directive of the ISA, they contend, that it shall act on behalf of mankind in governing the deep seabed is based on a socialist ideology. They argue that it would be to the United States' detriment to ratify this Treaty because the ISA imposes restrictions and obligations on the mining of the deep seabed that would be too high a price for the United States to pay. For instance, the ISA has the power to levy international taxes which would compel the United States companies to pay royalties under the guise of granting licensing and permits to mine the deep seabed. This would be a form of indirect taxation without representation for the American people. The money obtained from this, it is argued, would then be transferred to developing nations irregardless of whether they harbor terrorists, liberation movements, adhere to socialism, or are ruled by despotic tyrants. Since the ISA has the exclusive power to regulate all ocean research and exploitation, they can deny any claims to obtain licenses to mine the deep seabed. The United States would have no veto power in the council that governs the ISA and would thus have no role in the decision-making process. In exchange for licenses and permits, the ISA is empowered to mandate that the United States adhere to production quotas and transfer its private technology to the developing world, which may not have the technology to mine the deep seabed. The United States would even be forced to share its intelligence and military information. Why would we kowtow to the ISA, according to Frank Gaffney, Jr., with regard to obtaining permits to mine the seabed, when prior to UNCLOS, "resources were considered to be exploitable by whomever could gain access to them."⁶³ Should any dispute arise, the United States would be forced to adjudicate their disputes before the Tribunal in Hamburg, Germany which also has the power to

⁶³ Frank J. Gaffney, Jr., *Protect U.S. Sovereignty: Sink the Law of the Sea Treaty*, Human Events.com Jan. 28, 2005, at <http://www.humanevents.com/article.php?id=6431> (accessed October 15, 2009).

enforce its judgments. Likewise, any nation and/or environmentalist organization could bring a lawsuit against the United States before this international court where the United States is not represented and which is anti-American. As a result, any judgment rendered by this international court, say with regard to pollution in American streams and lakes that have their outlets to the ocean would have a binding effect on American jurisprudence.

UNCLOS also has many leading proponents who take an opposite view of the sovereignty issue. If anything, according to proponents, United States' ratification of UNCLOS would codify and broaden the sovereignty of the United States. Part VI, Article 76 of UNCLOS allows for nations that have ratified the Treaty to claim an extension, supported by scientific data, of their continental shelf beyond the 200 nautical mile limit.⁶⁴ This would allow a nation that is a party to UNCLOS, to lay claim and exploit the natural resources of the seabed up to 350 miles from its land. According to John Bellinger, III, former legal advisor to the U.S. Department of State, it is within the United States' best interest to ratify the Treaty because the United States as one of the longest coastlines in the world and thus could lay claim to one of the most vast energy rich resources in the world, especially off the coast of Alaska.⁶⁵

William H. Taft, IV, former legal advisor to the U.S. Department of State, testified before the Senate Armed Services Committee on April 8, 2004 concerning accession to the 1982 Law of the Sea Convention in which he addressed most of the opponent's arguments with regard

⁶⁴ United Nations Convention on the Law of the Sea, *supra* note 61, at Section 5.

⁶⁵ Daniel Gorelick, *Law of the Sea Convention Enjoys Broad U.S. Support*: American.gov Nov. 20, 2008 <http://www.america.gov/st/env-english/2008/November/20081120164958adkcilerog0.3376581.html> (quoting John B. Bellinger, III, Legal Advisor Sec'y of State, Address at the Law of the Sea Institute (Nov. 3, 2008)).

to ISA.⁶⁶ According to Taft, the arguments against ratification are a combination of misunderstandings of UNCLOS that overlook the fact that Reagan's objections to ISA have been comprehensively addressed and worked out as reflected in the Implementing Agreement. Pursuant to Section 5 of the Annex of the Implementing Agreement, relating to ISA, it was amended to reflect free market principles in that mandatory transfers of technology and production controls were eliminated.⁶⁷ Also, the Implementing Agreement allows for the United States, by virtue of it being the nation with the largest gross domestic national product, to have a permanent seat on the Council of the ISA, the main decision-making body, and to have a veto power with regard to distribution of revenues and thus a greater role in the decision-making process. This would enable the United States to have an influence over any future decisions that would affect its interests. Joining UNCLOS would further United States' interests in that the United States would be allowed to nominate members for the Law of the Sea Tribunal and the Continental Shelf commission. This would ensure that the provisions of UNCLOS are being interpreted appropriately and applied pursuant to United States' security interests. The ISA has no authority to levy taxes on individuals or corporations, only the power to collect fees with regard to deep seabed mining. Taft also addressed the argument that the ISA might display some arbitrariness with regard to granting the United States permission to access deep seabed minerals. According to Taft, the Implementing Agreement "provides for access by U.S. industry to deep seabed minerals on the basis of non-discriminatory and reasonable terms and conditions."⁶⁸

⁶⁶ William Taft, IV, Legal Advisor, Dep't. of State, Armed Servs. Comm, 2004, <http://www.oceanlaw.org/index.php?name=Sections&req=viewarticle&artid=2&page=1> (accessed October 15, 2009).

⁶⁷ *Id.*

⁶⁸ *Id.*

Although UNCLOS established the Tribunal, the United States is free to choose other methods of dispute resolution, such as its preferred method, arbitration. Dispute resolution would not include sensitive military and intelligence activities which was another triumph of the United States negotiators to UNCLOS. Also, only states would have standing not environmental groups. According to a statement from John F. Turner, Assistant Secretary Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, “the Convention [UNCLOS] would not create private rights of action or other enforceable rights in United States’ courts, apart from its provisions regarding privileges and immunities to be accorded to the Convention’s institutions.”⁶⁹ How international legal decisions would be enforced in American courts would be addressed in legislation that would be approved by both houses of Congress pursuant to a Draft Resolution of Advice and Consent.

In conclusion, it would appear that the major concerns voiced by the opponents of UNCLOS have been addressed by the Implementing Agreement which has addressed Reagan’s objections. It is important to note, that in 1983, prior to the Implementing Agreement, in his Oceans Policy statement, Reagan announced that all provisions of UNCLOS were to be adhered to with the exception of Part XI.⁷⁰ To date, the United States has already been adhering to all of the provisions of UNCLOS which has become the standard for international maritime law. United States sovereignty is being compromised not by the ISA, which only has jurisdiction over the mining of resources in the deep seabed, but by the inability to file legitimate claims that would extend its sovereignty over its continental shelf. The United States does not have any

⁶⁹ John F. Turner, Assistant Sec’y Bureau of Oceans and Int’l Env’t and Scientific Affairs Dep’t of State, Statement at U.S. Senate Comm.on Env’t & Pub. Works (Mar. 23, 2004), http://74.125.113.132/search?q=cache:e4KUtygY7aMJ:epw.senate.gov/hearing_statements.cfm%09(accessed October 15, 2009).

⁷⁰ *Id.*

sovereignty over the deep seabed and has historically fought against any claims with regard to it. So, it's not as simple as the United States just going in and getting the treasures of the deep seabed whenever and however it wants. Thus, United States sovereignty is not being compromised or harmed.

Far from being a socialist principle and Third World conspiracy for the distribution of wealth, UNCLOS' common heritage of mankind principle was first set forth by American president, Lyndon B. Johnson in 1966, in which he stated, "We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings."⁷¹ This principle was even further advanced during UNCLOS's negotiations, prior to the Implementing Agreement, by then Secretary of State Henry Kissinger under the Nixon administration. Kissinger sought to appease Third World countries by proposing a sharing plan called the "parallel system" wherein an applicant would submit two applications, one for its extraction of the deep seabed minerals and the other would be reserved for the Enterprise under the ISA, who could then relinquish its reserved site to a developing country. ISA is an organization that will not go away because the United States refuses to ratify UNCLOS. It has existed since 1994 and will continue to process claims with regard to the mining of deep seabed minerals and to award title to the resources recovered. Consequently, should the United States continue to misunderstand its rights that have been afforded to it under UNCLOS and the Implementing Agreement, then it will lose out on the right to claim sovereignty over additional territory and to exploit the riches of the deep seabed minerals that will result in its deep seabed mining industry becoming obsolete.

⁷¹ Louis B. Sohn, *Cases and Materials on the Law of the Sea* (2004).

“It will fall--as is so often the case--to conservatives to ensure that the national interest is protected by defeating a treaty Reagan rightly concluded was unacceptable, and that remains so today.”⁷²
Frank J. Gaffney, Jr.

The critics of UNCLOS also make the argument that the United States’ national security is at stake should the Treaty be ratified. According to Frank J. Gaffney, Jr., American founder and president of the think tank Center for Security Policy, America’s military operations will be impeded pursuant to Article 20 of UNCLOS that deals with innocent passage. Article 20 allows for the passage of submarines and other underwater vehicles such as drones and AUV’s through a nation’s territorial waters; however it must navigate on the surface and display its flag which is detrimental to American intelligence gathering. Gaffney states that this activity is crucial to our ability to detect and prevent future terrorist attacks.⁷³ Proponents of UNCLOS, such as Taft, argue that Article 20 contains the same provision as Article 14 of the 1958 Convention that the United States has been bound to comply with since it was ratified by the Senate.⁷⁴ So, it is nothing new and does not compromise our intelligence gathering because it does not prohibit the activity. The benefits to this requirement are reciprocal, in other words we would not want a submerged Russian vessel off the coast of the United States’ territorial waters either.

Another critic of UNCLOS, Dr. Bonner Cohen, senior fellow at the National Center for Public Policy Research, is alarmed that there are no provisions within the Treaty allowing the United States Navy to board vessels suspected of terrorist activities or harboring terrorists. Per

⁷² Gaffney , *supra* note 63 at 1.

⁷³ *Id.*

⁷⁴ Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 516 U.N.T.S. 205 (http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_territorial_sea.pdf) (accessed October 16, 2009).

Dr. Cohen, this seriously cripples the Proliferation Security Initiative or PSI, a multinational effort negotiated by President Bush to interdict terrorist activities and weapons of mass destruction on the high seas. Dr. Cohen uses the scenario of the super tanker being hijacked by terrorists carrying massive oil supplies and being blown up spilling massive amounts of gas and toxic chemicals on a nation's coastline⁷⁵. Per Cohen, the provisions in Article 110 of the Treaty would not allow for the boarding of this vessel if suspected of terrorism because the Treaty provisions only allow for boarding if the vessel is suspected of piracy, the slave trade, transmitting illegal radio broadcasts or not flying a jurisdictional flag.⁷⁶ Proponents of UNCLOS concede that the Treaty's provisions were drafted and ratified prior to the 911 terrorist attacks and consequently the war on terror to come. As such, the Treaty is silent with regard to provisions for boarding vessels when terrorism or weapons of mass destruction may be suspected. However, proponents are quick to point out the navigational and air flight freedoms for the military that the Treaty affords which are critical to meeting national security requirements through military operations that aid the war on terror. This was the United States' goal as to why it initiated the initial conferences on the law of the sea in the first place and, they argue, must not be overlooked.

Among the Treaty's strongest proponents have been a plethora of naval commanders, defense department and Pentagon personnel who have strongly urged that the Senate ratify the Treaty. According to Commander James Kraska, former lawyer with the United States' armed forces, the Treaty locks in generous navigational provisions essential to the movements of our

⁷⁵ Bonner Cohen, Ph.D., *Law of the Sea Treaty Could Prove Dangerous to America*, National Policy Analysis, (2005), <http://www.nationalcenter.org/NPA534LawofSea.html> (accessed, October 16, 2009).

⁷⁶ *Id.*

military.⁷⁷ Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, believes that joining UNCLOS will strengthen military operations and avoid the need for gunboat diplomacy and reliance on customary law. Admiral Thad Allen, Commandant of the Coast Guard, believes that the establishment of the twelve mile territorial limit allows law enforcement outside of that area and limits the “safe havens” of drug-traffickers. According to former Secretary of State, Condoleezza Rice, of the Bush administration, “UNCLOS advances the interests of the United States military by stabilizing the outer limit of the territorial sea at twelve nautical miles, the reaffirmation of navigation and over flight in the exclusive economic zone and the high seas beyond, establishes innocent passage and provides for the laying and maintenance of submarine cable and pipelines”.⁷⁸ These provisions were reached with international consensus on the extent at which the American military may exercise its activity off their coasts in order to meet its national security requirements.⁷⁹ The United States’ armed forces rely on this greatly and the protection that it affords is of paramount importance to national security.⁸⁰ However, most critics protest this importance on the affirmation of navigational freedoms because their belief is that navigational freedoms are not at risk because there is no power capable of opposing the United States navy. These critics overlook China rising.

⁷⁷ Cmdr. James Kraska. *High Sea Ditherers*, Foreign Policy, http://www.foreignpolicy.com/story/cms.php?story_id=4703&page=1 (accessed October 16, 2009).

⁷⁸ Condoleezza Rice, Sec. of State, Testimony at Hearing Senate Foreign Relations Committee, (Jan. 18, 2005), *Administration Urges Senate Action on Law of the Sea Convention*, 99 Am.J.Int’l Law, 498-500 (2005).

⁷⁹ *Id.*

⁸⁰ *Id.*

To conclude the issue of national security, the United States has been and is presently adhering to the provisions of the Treaty that relate to innocent passage and military operations, pursuant to the executive order issued by Ronald Reagan, the 1958 Conventions and the United Nations Charter. There is nothing in the intent of the Treaty that prohibits intelligence gathering and surveillance, routine military operations and the right of a nation to defend itself. It is important to note that stricter measures to stop, search and seize vessels that the critics call for in the Treaty would be imposed on the United States as well. With that being said, it is true that the Treaty is silent with regard to much of the relevant issues that we now face with regard to terrorism. The simple truth of the matter is that the Treaty was negotiated and went into force pre-911. However, critics are overlooking a critical factor in the evolving nature of the Treaty.

In an effort to address the relevant issues that the world is now facing with regard to terrorism, the International Maritime Organization, (“the “IMO”), referred to in Article 22 of the Treaty as the “competent international organization,” has negotiated the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which entered into force on March 1, 1992.⁸¹ It made it an offense to seize a ship by force, threat or intimidation and to place a destructive device on board a ship. UNCLOS provides a legal framework through which the IMO maritime regulations and standards must be complied with.⁸² Therefore, a State party to UNCLOS must apply the IMO conventions while taking into account the legal

⁸¹ International conventions on terrorism, http://en.wikipedia.org/wiki/International_conventions_on_terrorism (accessed October 16, 2009).

⁸² Agustín Blanco-Bazán, *IMO Interface with the Law of the Sea Convention*, Jan .6-9 2000, <http://www.imo.org/InfoResource/mainframe.asp> (accessed October 16, 2009).

provisions of UNCLOS.⁸³ Conversely, nation states that are not a party to UNCLOS, but whose legislation incorporates IMO conventions cannot contravene UNCLOS principles.⁸⁴

After the 911 attacks, it was realized that more needed to be done to address the possibility of terrorism on the high seas. As a result, the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the "2005 Protocol") was established, again under the auspices of the IMO, and is consistent with UNCLOS and does not conflict.⁸⁵ The 2005 Protocol criminalized the use of a ship as a device to engage in terrorism, the transporting of terrorists and materials used to commit terrorist acts, and most importantly to the critics, introduced procedures for allowing a nation to board a ship where it was believed that a terrorist offense was about to be committed or had been committed. However, it has not gone into effect as yet, since it does not have the required number of signatories. When and if it goes into effect, it will help to resolve some of the legal deficits of the boarding provisions of UNCLOS. It would seem that the United States' efforts would be best served in exercising its global leadership through diplomacy in trying to get as many signatories to the 2005 Protocols to enable it to go into force instead of criticizing the Treaty's perceived lack of protective measures in preventing terrorism on the high seas.

Although UNCLOS has provided a legal framework that has established baselines and territorial limits, there are nations, such as China, a party to UNCLOS, who seek to reinterpret the Treaty's provisions to satisfy their own agendas. This presents a dangerous scenario for United States' military vessels that rely upon customary law to establish the navigational

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

freedoms through which it operates and thus poses the real threat to America's national security. Case in point is the USNS Impeccable incident in March 2009.

The USNS Impeccable was an unarmed, surveillance vessel manned by civilians and utilized by the United States Navy to conduct sonar surveillance of the Chinese submarine base off of Hainan Island that belonged to China.⁸⁶ What followed, pursuant to the Pentagon, was a series of harassing behavior from the Chinese warships that threatened the vessel of the Impeccable and its equipment. The Impeccable left the area without incident and formal protests were lodged by the United States after the incident. However, this has not been the only isolated incident of United States' surveillance ships with the Chinese military. The Impeccable was conducting its surveillance or "spying" outside of the twelve mile territorial limits, and was within China's exclusive economic zone which is still within the sovereignty of China. According to China, the United States violated international law because these activities are forbidden in the exclusive economic zone. However, there is nothing in the provisions of UNCLOS that prohibits this activity in the exclusive economic zone. Pursuant to Article 56 of UNCLOS, a nation has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources BUT it cannot impede the freedom of navigation, which it sought to do in this case. According to James Kraska, Commander of the United States Navy and professor of International Law at the Naval War College, China is an aggressor, trying to see how far it can get in trying to reinterpret the Treaty's provisions and the standards in

⁸⁶ Kumar, *The Impeccable Incident – A Legal Perspective*, The Lone Ranger, Mar. 2009, at <http://kumar-theloneranger.blogspot.com/2009/03/impeccable-incident-legal-perspective.html> (accessed October 18, 2009).

international law thereby restricting the freedom of the high seas.⁸⁷ Per Kraska, it is vital to American national security to keep an eye on China's increasing naval build-up which seeks to undermine United States' naval presence in the region.⁸⁸

Even with codified law, provisions can be open for interpretation and change but how much more so with customary law, that changes with time? When customary law changes, what will be the basis of the United States' guarantee of its freedom of movement on the high seas- "gunboat diplomacy"?⁸⁹ Codified law can withstand challenges to interpretation that most nations are now seeking to impose. For example, some nations are seeking to establish their security zones that expand their control 200 miles off their coastlines. In addition, in 2006, the European Commission suggested in a report that the Treaty be revised to expand coastal state jurisdiction over transiting vessels.⁹⁰ Per Kraska, this could pose a threat to the economic and military security of the United States by closing off the global commons at the whim of coastal states.⁹¹ With these new challenges, the United States has too much at stake to just walk away, especially after having fought so hard and to have scored such a diplomatic victory in UNCLOS in establishing its foremost national security interest, the freedom of navigation. Will the United States stand back and allow aggressor nations to erode away its vital security interests it negotiated in the Treaty?

⁸⁷ James Kraska and Brian Wilson, *China Wages Maritime "Lawfare"*, Foreign Policy, Mar. 11, 2009, at http://experts.foreignpolicy.com/posts/2009/03/11/china_wages_maritime_lawfare (accessed October 18, 2009).

⁸⁸ *Id.*

⁸⁹ Kraska, *supra* note 77, at.2.

⁹⁰ *Id.*

⁹¹ *Id.*

The United States stands at two crossroads with two realities. It can both ratify UNCLOS and negotiate any changes that are made and defend it against erroneous and conflicting interpretations of the provisions that it fought to put into place, or, it can choose not to ratify the Treaty and to relinquish its place as a leader to shape and to influence international law. The latter choice could render the United States powerless to fight against any changes that can negatively affect its national security interests.

“Twenty years ago, Reagan saw this Law of the Sea Treaty for what it was: a joint scheme of the Soviet Bloc, the Third World and the United Nations to seize sovereignty over the oceans, mandate transfers of American technology and get kickbacks from profits U.S. companies might earn from mining and drilling. Reagan ordered it deep-sized.”⁹² *Patrick Buchanan*

Presently, deep seabed mining for lucrative mineral deposits has become a possibility due to new and innovative technology. Contentious debate followed during the UNCLOS conventions over peaceful and equitable extraction rights of these resources. This resulted in Article 76, Part VI of the Treaty that has allowed for the extension of a nation’s continental shelf beyond the normal 200 nautical miles and up to 350 nautical miles from land for the purpose of exploiting the deep seabed minerals, provided that certain geological criterion has been met. This would certainly benefit the United States which could gain sovereign control over the largest coastal boundaries in the world. The process to extend the continental shelf beyond the 200 nautical mile limit is to file a claim with the Commission on the Limits of the Continental Shelf (the “Commission”) that is subject to a deadline of ten years after ratification has occurred. However, the sticking point with most critics against ratification is Article 82 that provides for

⁹²Buchanan, *supra* note 60, at 1.

revenue sharing with poorer or landlocked states if the minerals beyond the 200 nautical miles are exploited. Critics of UNCLOS such as political conservative, Patrick Buchanan, and Republican Senator, James Inhofe, who pursuant to his own web page boasts that under his leadership the Senate thwarted full consideration of the Treaty, also argue that ratification of the Treaty will create a redistribution of wealth based on the New World Economic Order, which will ultimately hurt American businesses.⁹³ Critics further assert that United States' businesses will have to buy licenses and pay taxes on proceeds for deep seabed resources that we can already exploit.

Among the proponents who consider the extension of the continental shelf of the United States of vital economic significance is the oil and gas industry who are satisfied with the changes brought about through the Implementing Agreement. Among the major trade associations that support ratification of UNCLOS are the American Petroleum Institute, the National Ocean Industries Association and the International Association of Drilling Contractors.⁹⁴ Also in 2001, the Outer Continental Shelf Policy Committee, an advisory body to the United States Secretary of the Interior on matters relating to our offshore oil and natural gas leasing program, adopted resolutions supporting the United States acceding to the Convention.⁹⁵ The way they see it is that the Treaty grants to the jurisdiction of the United States 4.1 million

⁹³ James M. Inhofe, *Law of the Sea Treaty*, Sept. 25, 2008, at <http://inhofe.senate.gov/public/index.cfm> (accessed November 1, 2009).

⁹⁴ Paul L. Kelly, Remarks at Global Offshore Drilling 2005 Conference “Break The Boundaries and Explore New Frontiers”, Evaluating the Impact of the Law of the Sea Treaty on Future Offshore Drilling (Apr. 19, 2005) at <http://www.oceanlaw.org/downloads/unclos/GlobOFFDrlg05.pdf> (accessed October 26, 2009).

⁹⁵ *Id.*

square miles of ocean with the possibility of extending the continental shelf, particularly in the North Atlantic, Gulf of Mexico, the Bering Sea and the Arctic Ocean.⁹⁶

With regard to the Arctic Ocean, a recent development has been the melting of the icecaps in the Arctic zone, which has opened up new territory for shipping routes and other rich deposits of oil and gas. Recent Arctic expeditions from United States' agencies, who are going forward with mapping the geographical area for claim submission in the event UNCLOS is ratified, have determined that the area of the Arctic has considerably enlarged the area from which the United States can lay claims to the oil and gas and the seabed resources. For example, in the Chukchi Sea beyond Barrow Alaska, the boundary has been pushed northward by more than 185 km.⁹⁷ Other arctic nations such as Norway, Russia, Denmark and Canada, who are parties to UNCLOS, also stand to advance their coastal boundaries and are currently exploring and mapping the Arctic in order to make their claims before the Commission in what has been dubbed, the "scramble for the Arctic" and the new "land rush".⁹⁸ California Congressman, Howard Berman, stated in a hearing before the House of Representatives concerning climate change in the Arctic, that the inability to legally file a claim before the Commission, coupled with the lack of a comprehensive Arctic policy in place to protect national interests and shipping,

⁹⁶ *Id.*

⁹⁷ Richard A. Kerr, *Law of the Sea: A final Push to Divvy Up the Sea by all the Rules*, Science, June 19, 2009: at <http://www.sciencemag.org/cgi/content/full/324/5934/1500>-(accessed October 28, 2009).

⁹⁸Robert J. Miller, *Arctic Ice Melts Create New Land Rush*, AlterNet, May 7, 2007 at <http://www.alternet.org/environment/51418>, (accessed October 28, 2009).

has put the United States far behind in this race for the Arctic.⁹⁹ The Arctic region contains over 22 percent of the world's undiscovered resources, with the potential for 90 billion barrels of oil.¹⁰⁰ According to Alaska Senator, Lisa Murkowski, "Our northern neighbors, Canada and Russia, are continuing to move forward with their claims and development of their offshore energy resources and shipping routes. If the United States is to be a participant and a leader in this region, it is time to step up to the plate and engage."¹⁰¹

The oil and gas industry which will have the most at stake with regard to production of the deep seabed resources clearly see the revenue sharing requirement of the Treaty as a modest trade-off compared to the significant resource potential that can be harvested. Although Article 82 which provides for royalties of 1% beginning in the sixth year of production with 1% every year thereafter until a cap of 7% is reached, the industry still believes that this should not pose any additional costs.¹⁰² According to the industry, it can build the royalties requirement into its cost model and absorb it into its corporate structure.¹⁰³ Yet, however lucrative the prospect of mining for energy reserves may be, the industry is hesitant to do so without obtaining the proper "title" that can only be obtained through the filing of a claim through the Commission. This in essence would give the industry internationally recognized legal title to the seabed reserves

⁹⁹ *Climate Change and the Arctic: New Frontiers of National Security*: Hearing before the Comm. on Foreign Affairs, House of Representatives (2009) (statement of H.R. Howard Berman, at (<http://foreignaffairs.house.gov/111/48332.pdf>) p. 3 (accessed October 28, 2009).

¹⁰⁰ *Id.* p. 2.

¹⁰¹ Senator Lisa Murkowski, *America's Arctic Responsibility*, United Nations Law of the Sea Treaty, January 10, 2009, <http://unlawofthesea.wordpress.com/2009/01/10/americas-artic-responsibility-by-senator-lisa-murkowski-r-ak/> (accessed October 28, 2009).

¹⁰² Kelly, *supra* note 93, at 5.

¹⁰³ *Id.*

which is vital for obtaining capital financing through foreign investing that is necessary for the industry to proceed with extraction. Proponents argue that not having a universally recognized claim could hurt investment in United States firms that obtain their development capital from foreign investments. As such, this is something that United States firms are just not willing to go it alone on without some form of legally recognized property rights. According to Paul Kelly, Senior Vice President for Rowan Companies, Inc., a company which provides contract oil well drilling services and rigs, enhancing a stable supply of oil is not only important for our economy which is heavily dependent upon foreign oil sources, but is equally important for the global economy as well as global stability.¹⁰⁴ Per Kelly, with the United States importing \$500 billion annually in oil, it is vital that the oil industry develop new and innovative frontiers in offshore oil exploration.¹⁰⁵

According to a recent economic survey of global ocean markets done in the United Kingdom, offshore oil and natural gas is now the world's biggest marine industry with oil production valued at more than \$300 billion per annum.¹⁰⁶ The second largest marine industry is submarine cables which generates \$86 billion in revenues and makes the existence of the worldwide web and internet a reality.¹⁰⁷ Pursuant to former Secretary of State Condoleezza Rice, this Treaty advances United States interests by establishing an international consensus on the extent of United States jurisdiction and provides for the laying and maintenance of submarine

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 2.

¹⁰⁶ *Id.* (quoting John Westwood, Barney Parsons and Will Rowley, Douglas Westwood Associates, Canterbury, United Kingdom, *Oceanography*, vol. 14, no. 3/2001).

¹⁰⁷ *Id.*

cables and pipelines.¹⁰⁸ The United States obtains about 28% of its natural gas and oil production from the outer continental shelf and is projected to increase with the advent of oil discoveries in the deep waters of the Gulf of Mexico.¹⁰⁹ Per Republican Senator Richard Lugar, “to oppose the treaty on economic grounds requires opponents to say that the oil, natural gas, shipping, fishing, boat manufacturing, exporting, and telecommunications industries do not understand their own bottom lines.”¹¹⁰

In summation, it has remained a time honored principle under customary law that no nation has sovereign rights over the high seas. Conversely, critics to the Treaty argue that such freedom entails the right of any nation to claim the rich deposits of the high sea for itself that has the ability to go and extract them. However, the modern view, as espoused in the 1958 Conventions and subsequent conventions, has moved away from the principle of property rights acquired by discovery and conquest, which can lead to armed conflict, toward a common heritage of mankind philosophy that centers on a shared and equitable distribution of the earth’s resources. Dwight D. Eisenhower in his 1958 proclamation of May 1st as “Law Day” summed it up when he stated “In a very real sense, the world no longer has a choice between force and law. If civilization is to survive it must choose the rule of law.”¹¹¹ In this vein, the intent of the third convention in establishing Article 76 and 82 of the Treaty was to resolve conflicting claims, disputes and measuring techniques that arose when nations started scrambling to assert claims

¹⁰⁸ Rice, *supra* note 78, at 498-500.

¹⁰⁹ *Id.*

¹¹⁰ Hearing on Law of the Sea, (Sept. 26, 2007) (statement of Sen Richard G. Lugar) at <http://lugar.senate.gov/press/record> (accessed October 31, 2009).

¹¹¹ *Sovereignty, Security and Sustainability, The Law of the Sea Convention*, <http://www.oceanlaw.org> (quoting Dwight D. Eisenhower in his 1958 proclamation of May 1st as “Law Day” (accessed October 25, 2009).

over their continental shelf. This arose primarily with the advent of the Truman Proclamation and new technological discoveries on the seabed. The convention's goals were to strike a balance between those states whose shelf extended beyond 200 nautical miles and those states that were geographically disadvantaged with no continental shelves at all.¹¹² With the "common heritage of mankind principle" in mind as the overriding philosophy of the Convention, the balance was the sharing of the revenue derived from the exploitation of these deep sea minerals to developing countries that were geographically or technologically disadvantaged.

The key to understanding these provisions within the Treaty lies within the negotiation process and the ensuing controversy over who could lay claim to the mineral rights beyond the 200 mile limit. It is important to note that during the discussions of the third convention, the United States under the Nixon and Ford administrations, negotiated for and consented to the provisions that are currently at the root of the contentious debate over ratification. For example, in 1975, the United States negotiated for an international regime that could create a stable environment for protecting the investments of the mining industry that would develop the deep seabed, essentially the ISA. Was it just bad negotiating tactics on the part of the United States, a move to create a stable environment for American businesses, or an indication that the political tide of the world was changing? Certainly during this time, bilateral treaty making was giving rise to multilateral negotiations due to the fact that more states were taking part in international organizations with the advent of decolonization.

With these dynamics, essentially, the United States' hands were tied by a group of developing Third World nations, known as the Group of 77. The Group of 77 basically took a

¹¹² The United Nations Convention on the Law of the Sea, Oceans and Law of the Sea, http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Continental%20Shelf (accessed November 1, 2009).

defensive position to protect its piece of the pie of the mineral resources of the deep seabed beyond the 200 mile limit with what it perceived as a possible takeover by the more developed countries, the United States in particular. The Convention became seriously dead-locked as a result. In exchange for achieving its main security objective, navigation and free transit rights through international straits, the United States largely under pressure from The Group of 77, reached a compromise. The compromise was a reasonable limit for the outer edge of the continental shelf and revenue sharing provisions of the value of the petroleum and gas production with the international community.¹¹³ Known as the “parallel system” to United States negotiators it represented a trade-off in achieving the important security goals that was the objective of the United States in initiating the Convention in the first place. This parallel system created by former Secretary of State, Henry Kissinger was seen by the United States as a diplomatic victory. Considerably modified later under the Implementing Agreement, it called for a revenue sharing system for the poorer nations, technology transfers to the developing nations, prime mining sites reserved exclusively for developing nations, and the creation of the Enterprise, the operating arm of the seabed authority.¹¹⁴ The United States also wanted the institution of an international authority to oversee and manage the deep seabed resources that could create a stable environment for investment.¹¹⁵

Critics’ arguments of a Third World conspiracy and a “New World Economic Order” become considerably diminished when seen in the context of historical truths relating to the role that the United States played in the negotiations of the Convention. Suspicions relating to the

¹¹³ James C.F. Wang, Handbook on Ocean Politics and Law, (1993) at <http://books.google.com/books?id> (accessed November 1, 2009).

¹¹⁴ *Id.* at 468-9.

¹¹⁵ *Id.*

Treaty's goals and aims also become diminished when one considers that the provisions of the Treaty were the brain child of former United States' administrations and diplomats who gave careful consideration to Third World demands while securing their own vital national interests. The fuel spread by critics that feed the fire of conspiracy should by necessity fade with the focus shifting to an inward reexamination of national conscience and the United States' place in the world as shaped by its former leaders.

Meanwhile, the current realities are that a codified law that the United States helped to design is now in place to govern all the uses of the sea that has established certainty in international law unlike customary law. However, like all other treaties, it is a "club one must join in order to fully share in its benefits."¹¹⁶ Since the United States has not ratified the Treaty, it is precluded from submitting any claims for review before the Commission. As of October 30, 2009, there have been fifty-one nations that have submitted claims to the Commission and twelve countries whose exclusive rights to seabed mineral deposits have been recognized by the ISA.¹¹⁷ The Commission is quickly being recognized as customary practice for the recognition of claims to the extended shelf. As the Commission becomes inundated with recent claims for the extended shelf and the Arctic, territorial disputes between the claimants have emerged as claims are overlapping. Of the fifty-one applicants, only eight have been finalized which translates that those filing their claims late, like the United States (if ratification takes place) may

¹¹⁶ The United Nations Convention on the Law of the Sea , *supra* note 111, at 1.

¹¹⁷ *Id.*

have to wait decades for finalization of their claims.¹¹⁸ This places United States' economic interests in limbo and jeopardizes its competitiveness.

In March, Norway became the first nation to be granted territory in the Arctic through the Commission.¹¹⁹ The United States is clearly missing an opportunity not only to protect its economic and sovereign interests through its inability file a claim but to also oversee the competing claims especially for the Arctic that are coming into the Commission. According to Senator John McCain, Republican of Arizona, "this paralysis leaves the United States on the sidelines while others carve up an ocean."¹²⁰ For example, four years after Russia ratified the Treaty, it has laid claim to nearly half of the Arctic.¹²¹ It is ironic that the United States has unwittingly chosen through its elected leaders to allow other nations to gain, to its detriment, from the provisions it designed in order to advance its own national and economic security interests. Per Paul Kelly, "It seems unconscionable that the U.S. Senate has yet to act to allow the United States to file its claims in this important region."¹²²

¹¹⁸ Nathaniel Gronewold, *Oceans: Seabed Claims Mount, Swamping U.N. Commission*, E&E Publishing, LLC, May 14, 2009, at <http://www.eenews.net/public/Greenwire/2009/05/14/3> (accessed November 1, 2009).

¹¹⁹ *Id.*

¹²⁰ Clifford Krauss et al., *As Polar Ice Turns to Water, Dreams of Treasure Abound*, N.Y. Times, Oct. 10, 2005, at http://www.nytimes.com/2005/10/10/science/10arctic.html?_r=1&pagewanted=1 (accessed November 1, 2009).

¹²¹ *Id.*

¹²² Kelly, *supra* note 93, at 5.

“How will LOST assist in “suppressing piracy”? It won’t. In fact, it will cripple any effective U.S. action by binding us down with “international law” — as defined and interpreted by anti-American forces in the UN and their allies in our media and our government.”

¹²³ *William Jasper, writing for the New American*

Piracy is undoubtedly becoming a recurring, global problem that threatens safety on the high seas and jeopardizes the efficient and cost-effective means of global shipping routes and commerce. It is vital to secure and to stabilize the seas because 90% of the world’s trade is conducted by sea.¹²⁴ The recent incidence of the Maersk Alabama underscores the volatility of some of the parts of the world’s oceans particularly around the horn of Africa, the Malacca Straits (between Malaysia and the Indonesian island of Sumatra), Nigeria, Bangladesh, Iraq and the northeastern coast of South America.¹²⁵

Critics of UNCLOS rejecting a multinational solution in combating the rising tide of piracy on the high seas prefer instead to hearken back to the days of swashbuckling heroes such as the fictional Captain Horatio Hornblower and Captain William Bainbridge when unilateral action alone was acceptable and sufficient to fend off such fiends as the Barbary pirates. They prefer to see the United States unfettered by diplomacy and rules and regulations of a treaty and allowed to defend its interests with full guns blazing when a threat is perceived by high sea criminals. Cited in their argument against ratifying UNCLOS is Article 111 of the Treaty which

¹²³ William F. Jasper, *Somali Pirates: An excuse to ratify LOST?* *New American*, Apr. 9, 2009, at <http://www.thenewamerican.com/index.php/world-mainmenu-26/africa-mainmenu-27/985> (accessed November 4, 2009).

¹²⁴ Wendell Minnick, *More Coordination Needed for Anti-Piracy Effort, Teo Tells IMDEX*, *Defense News*, May 12, 2009, at <http://www.defensenews.com/story.php>. (accessed November 4, 2009).

¹²⁵ Charlotte Sector, *Danger Adrift: Modern-Day Pirates Threaten More Than the High Seas*, *ABC News*, Nov. 14, 2005, at <http://abcnews.go.com/International/story?id=1300344>.

deals with hot pursuit. They argue that the provisions state that as soon as the pursued ship enters territorial waters of its home state or a third state-the pirates are home free and hot pursuit must cease. In this regard, they argue, UNCLOS will not help solve the rising problem of piracy because it provides no legal basis that allows for a foreign vessel to pursue pirates once they enter the territorial waters of another country.

Also, critics point out that the definition of piracy under UNCLOS is problematic. For instance, under Article 101 of UNCLOS it defines piracy as "all illegal acts of violence or detention ... committed for private ends by the crew or passengers of a private ship" which takes place only "on the high seas" or "outside the jurisdiction of any state," which excludes the territorial waters of sovereign states.¹²⁶ This definition, critics argue, does little to combat the new angle that piracy is now morphing into, where acts of piracy are increasingly taking place in the territorial waters of states such as Somalia. Thus, UNCLOS gives a nation no grounds to intervene in order to combat terrorism in territorial waters which renders it useless in combating piracy as well as its perilous offshoot, terrorism. So why ratify it?

Proponents of UNCLOS such as Captain Patrick Neher, director of the International and Operational Law for the Office of the Judge Advocate General of the Navy and James Caponiti, the acting administrator of the Maritime Administrator believes that nonratification of UNCLOS by the United States undercuts its ability to effectively negotiate security initiatives to deal with the problem of piracy left unaddressed by UNCLOS. According to these proponents, it is the perception created in the international community that the United States stands outside the rule of law and thus cannot be trusted when it comes to the burning paradox in negotiating these security initiatives that of keeping intact a nation's sovereignty while at the same time combating

¹²⁶ Arnd Bernaerts, Bernaerts' Guide to the 1982 United Nations Convention on the Law of the Sea, (2006).

piracy in and near their territorial waters. With most of these nations that are plagued with piracy in or near their shores, such as Indonesia and Somalia the freedom that they have won from colonization is still fresh in their national psyche and they are fierce about maintaining it. Therefore, they are a little skittish and suspicious when it comes to giving up any of their sovereignty to maritime powers seeking to crush piracy, especially to a superpower such as the United States. The way that they see it is that the reluctance of the United States to ratify UNCLOS is tantamount to the United States wanting to have the option of acting contrary to the sovereign rights guaranteed by other states pursuant to UNCLOS. According to Admiral Thad Allen, Commandant of the Coast Guard, in a statement made in May 17, 2007 stated, “Becoming a party to the 1982 United Convention on the Law of the Sea would greatly enhance our global position in maritime affairs.”¹²⁷ With regard to engaging other nations in multilateral maritime domain and security initiatives, John Oliver, senior ocean policy advisor in the Office of Policy Integration at the U.S. Coast Guard commented, “We’ve often met with the response, Why should we engage the United States if the United States is unwilling to engage with the rest of the world community in the Law of the Sea Convention. If we were one of the key players [in UNCLOS] we would be very influential”¹²⁸

In the first quarter of 2009, the number of pirate attacks doubled from the same period in 2008. The recent rise was due mostly to an increase in activity by pirates from Somalia, according to a report issued by the International Chamber of Commerce’s International Maritime

¹²⁷ Daisy R. Khalifa, *Odd Man Out Will U.S. Finally accede to the U.N. Convention on the Law of the Sea?* Seapower, Apr. 2009 at 14 <http://www.seapower-digital.com/seapower/200904/?pg=16#pg16> (accessed November 8, 2009).

¹²⁸ *Id.* at 14.

Bureau (IMB).¹²⁹ Per the IMB, “worldwide a total of 34 vessels were boarded, 29 vessels were fired upon, and nine vessels hijacked.”¹³⁰ With the loopholes created by UNCLOS and the lucrative nature of the ransoms of up to \$55 million that the pirates are receiving, piracy will persist as a continuing problem which can and will have a major impact on the environment, navigation rights and the costs of goods that reach consumers.

At the time of the conventions, the consensus was that piracy was no longer a problem in the modern era because it had been eradicated in the 19th century by the superpowers. Thus, UNCLOS’s piracy provisions in Articles 100-111 were taken, without amendment, from the legal framework of the 1958 conventions.¹³¹ The prevailing assumption of the 1958 conventions was that piracy was an old problem that had pretty much disappeared and what piracy may have existed, the suppression of which took a back stage to the sovereign rights of states.¹³² Also, during the third convention, the territorial waters of a country were expanded to 12 nautical miles thereby reducing the high seas which further exasperate the problem. As a result, modern acts of piracy that is committed in the territorial waters of a country and not the high seas fall outside the jurisdiction of UNCLOS and is thus not defined as piracy but are considered sea robbery under international law. This is especially becoming problematic in Somalia where this sort of piracy is a major problem and where it is not addressed in UNCLOS. Illegal acts that are committed for

¹²⁹ Captain Pottengal Mukundan, *Piracy attacks almost doubled in 2009 first quarter*, (2009), ICC Commercial Crime Services, International Chamber of Commerce, http://www.icc-ccs.org/index.php?option=com_ (accessed November 7, 2009).

¹³⁰ *Id.*

¹³¹ Peter Lehr, *Violence at Sea, Piracy in the Age of Global Terrorism*, (2007) p. 158 <http://books.google.com/books?id=Oc500DZw4hoC&pg=PA155&lpg=PA155&dq=unclos+and+piracy&source> (accessed November 8, 2009).

¹³² *Id.*

political reasons and not private ones are also outside the jurisdiction of UNCLOS. The problem that is arising with the modern form of piracy is that when piracy or “sea robbery” is committed within the territorial waters of a nation, per UNCLOS it must be dealt with in accordance with the domestic laws of that nation. In countries like Somalia where piracy is occurring frequently there is no domestic law, only a corrupt, lawless, transitional regime, essentially what is termed “a failed state.”

Fueling these piratical attacks in Somalia is the Al-Shabaab insurgency movement labeled a terrorist organization by the U.S. Department of State and linked to Al-Qaeda.¹³³ Al-Shabeb has been designated by Osama bin Laden as the southwestern first line of defense for the Islamic world.¹³⁴ The movement arms pirates in return for some of the ransom money obtained by the pirates. The United States fears a potential attack in this region similar to the USS Cole incident. In the Gulf of Aden, for example, where international shipping must pass through a very narrow strait, Somali pirates can attack a ship and then quickly return to their territorial waters. What results, is a loophole in the international legal framework that provides a safe haven for the pirates.

However, the international community while working within the current legal framework of UNCLOS has not stood idly by. In 1985, when the Achille Lauro was hijacked, the IMO established the Rome Convention that established a legal basis for prosecuting maritime violence

¹³³ Michelle Nakamura, Lieutenant Commander, U.S. Navy, *Piracy Off The Horn of Africa: What is the Most Effective Method of Repression?* May 4, 2009. <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA503032&Location=U2&doc=GetTRDoc.pdf> (accessed November 8, 2009).

¹³⁴ *Id. at 12.*

that fell outside the legal framework of UNCLOS.¹³⁵ Also, The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) was developed by the IMO to ensure action against persons committing unlawful acts against ships...including the seizure of ships by force; acts of violence against persons on board ships. To deal with Somali piracy in particular, in 2008, the United Nations, under Article VII of its charter passed Resolution 1816 authorizing the use of force within Somalia's territorial waters in order to apprehend pirates and to fight against piracy with the consent of the Somalia government.¹³⁶ Resolution 1851, also has broadened the scope of Article 111 of UNCLOS, and has expanded hot pursuit in Somalia to allow for pirates to be chased from the high seas and even onto dry land.¹³⁷

These resolutions may seem like the answer to the world's growing lawlessness problem, but however well intentioned they may be they are only temporary because they are only valid for a six to twelve month period with one due to expire in December 2009. Another flip side to these resolutions is that other nations whose territorial waters that have been plagued with piracy fear that an international precedent will be set that will result in an erosion of their national sovereignty. Under UNCLOS Article 105, pirates are to be prosecuted according to the domestic law of the country that seized them not in an international court of justice.¹³⁸ Another legal ambiguity is that once they are captured what nation has the right to prosecute them? Are they protected under a nation's criminal bill of rights or the humanitarian law of the Geneva

¹³⁵ *Id.*

¹³⁶ Eugene Kontorovich, *International Legal Responses to Piracy off the Coast of Somalia*, Sept. 2009, The American Society of International Law, <http://www.asil.org/insights090206.cfm>, (accessed November 8, 2009).

¹³⁷ *Id.*

¹³⁸ *Id.*

Conventions?¹³⁹ The ships that may be attacked contain inherent venue problems in and of themselves because the ship may be registered in one country, while owned and operated by a crew in another country while carrying cargo from multiple countries. Consequently, even though these resolutions are in place in order to fight piracy, nations are reluctant to seize the pirates because of the legal ambiguities of where to prosecute them and what their classification would be. What results, are the pirates that are seized are being released to commit the same crimes again, and the vicious cycle continues.

Clearly, what are needed are new laws to be drafted that will effectively counteract and put an end to piracy especially off the Somalia coast where it is regularly occurring. The United Nations' resolutions need to be expanded and the time limits removed. Also, the existing framework of UNCLOS needs to be revised in order to address these modern forms of piracy. According to its provisions, UNCLOS is eligible for a review conference and possible amendment ten years after its entry into force which came about in 1994. Therefore, as of November 2004, members of UNCLOS have the right to modify the Treaty.¹⁴⁰ Unless the United States ratifies the Treaty, other nations can make changes to the Treaty without the input of the United States. Expanding and modifying the existing maritime legal framework is not the only solution to the problem of piracy especially in the waters of Somalia. According to Senator Carl Levin, Democrat of Michigan, who chaired the Senate panel hearing on piracy in Washington in May of 2009, "Piracy, although generally considered a scourge of the world's oceans, has its origins on land and has usually been defeated on land as a result of political and

¹³⁹ *Id.*

¹⁴⁰ Keyuan Zou, *Seeking Effectiveness for the Crackdown of Piracy at Sea*, All Business, 2005 All Business, <http://www.allbusiness.com/government/3493423-1.html> (accessed November 8, 2009).

economic changes that have evolved over time. Ultimately, the solution resides ashore, not just through action on the open seas.”¹⁴¹ Land based initiatives as well as legal modifications to the existing framework of UNCLOS are necessary to effectively combat piracy.

By refusing to ratify and to become a party to UNCLOS the United States undercuts its own maritime and security initiatives and compromises its ability to effectively spear head negotiations that can lead to partnerships with other nations to help combat the global problem of piracy and to protect its national security interests that it fought so hard to achieve in the initial UNCLOS negotiations. In order to build trust that will make it easier to reach agreements in the future cause against piracy, the United States needs to join UNCLOS and show the world that it is a team player and that it has a respect for the rule of law. Meanwhile, as UNCLOS languishes in the Senate poised for discussion and ratification, a Saudi supertanker carrying two million barrels of oil, representing a quarter of Saudi Arabia’s oil production was hijacked in November of 2008 by Somali pirates off the coast of Kenya.¹⁴² In January of 2009, Aramco, the owner of the vessel hijacked, paid the Somali pirates three million dollars in ransom money for its release, in lieu of the twenty-five million originally requested by the pirates.¹⁴³ The oil was bound for delivery to the United States.

¹⁴¹ Gordon Lubold, *With Piracy Odds in their favor, Ships Shun Armed Guards*, The Combat Operator, May 5, 2007 at <http://combatoperator.com/blog/2009/05/07/with-piracy-odds-in-their-favor-ships-shun-armed-guards/> (accessed November 8, 2009).

¹⁴² Xan Rice, *Hijacked Saudi Oil Tanker Released After Ransom Dropped by Parachute*, Guardian.Co.UK, 2009 at <http://www.guardian.co.uk/world/2009/jan/09/sirius-star-released-somali-pirates-ransom> (accessed November 8, 2009).

¹⁴³ *Id.*

“...a great leap forward into global socialism.” *Patrick Buchanan*¹⁴⁴

Conclusion

Janus, in ancient Roman mythology was the god of gates, doors, doorways, beginnings and endings. He is usually depicted as having two faces opposite each other. One face looks to the future and the other to the past.¹⁴⁵ Some sources claim that Janus was characterized in such a peculiar fashion due to the notion that doors and gates look in two directions.¹⁴⁶ Therefore, the god could look both backward and forward at the same time. The way the legend of Janus goes, is that the god Jupiter sought to punish Janus for the betrayal of his half-brother, Saturn.¹⁴⁷ Janus offered Saturn sanctuary during the war of the gods but eventually handed him over to the gods in exchange for mercy.¹⁴⁸ For his treachery, Jupiter punished Janus by making him two-faced without the range of motion and made him the gatekeeper of heaven’s gate, endlessly presiding over the moment at which one year ends and a new one begins.¹⁴⁹ Thus, Janus was confined to a life of immortality without the freedom to enjoy it.¹⁵⁰

The United States conducts its foreign policy in an analogous way to the two-faced Roman god Janus. Opposing ideological factions within the United States look simultaneously

¹⁴⁴ Buchanan, *supra* note 60, at 1.

¹⁴⁵ Janus, <http://en.wikipedia.org/wiki/Janus> (accessed October 14, 2009).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Janus, Probert Encyclopedia, <http://www.probertencyclopaedia.com/cgi-bin/res.pl?keyword=Janus&offset>, (accessed November 8, 2009).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

with two faces onto the global arena. One face towards cooperating globally with other nations for the sake of peace and the common good, such as the creation of the United Nations, and another face toward the past when America did not have to consider how its actions might affect the world and could therefore comfortably retreat and isolate itself from undesirable foreign relations and entanglements. Clearly, the idea of isolationism is not only a recurring political philosophy in the way that the United States conducts its internal and external politics today, but is also one of the motivating factors behind opponent's antagonism toward UNCLOS. The merits of their arguments are without any firm basis in fact which can thus only be explained as an irrational fear of anything foreign and as a hatred of the United Nations and in particular anything remotely connected to it. The arguments against ratification that may have been true at one time are being raised again today and are simply irrelevant because they were "fixed" by the Implementing Agreement.

Joining the Convention would not compromise American sovereignty; it would enhance it by expanding United States' territory over vast maritime territory and the natural resources off its coast. The United States would not be forced into dispute resolution before a tribunal, but instead would have the flexibility in choosing arbitration, the preferred method for the United States, who would also be allowed to exclude sensitive subject matter, such as military intelligence. The Treaty expressly excludes from dispute tribunals those disputes that involve military activities. Furthermore, pursuant to Article 302 no state party to UNCLOS is required to provide any information contrary to its national security interests.¹⁵¹ So, there is no second guessing of the United States Navy. The ISA only has jurisdiction over the mining of the seabed resources on the high seas and does not apply to any areas in which the United States has

¹⁵¹ Bernaert, *supra* note 125, at 256.

sovereignty. The ISA implements rules for deep seabed mining and was created by the United States to help safeguard and protect American business ventures and investments. Also, there is no direct taxation on individuals or corporations, only royalty fees that are paid by United States companies that begin in the sixth year of production beyond the 200 nautical miles. Without the United States becoming a party to the Treaty, American oil and gas companies will not be able to engage in oil and gas extraction beyond the 200 nautical miles, nor would they be willing to do so. It is vital to its own economic prosperity and security that American businesses have the opportunity to pursue alternative fuel resources which could mean weaning America from its dependence upon foreign oil and a better leverage on the war on terror. The ramifications of this isolationist ideology run afoul of its goals of protecting America when faced with realities such as these.

Far from undermining United States' capability of waging a war against terror, the Treaty provides a stable framework for assuring the American military mobility by sea and air to get to the fight without hindrance and without being contingent upon other nations' approval to do so. In becoming a party to the Treaty, it will strengthen security initiatives such as the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2005 Protocols by attracting more nations to sign onto these agreements in order for them to go into effect. It will also strengthen United Nations' resolutions against piracy by adding credibility to America's own security goals and initiatives thereby reducing other nation's fears and suspicions concerning American motives. As far as intelligence gathering and submarines, there is nothing in the Treaty that prohibits this. Joining UNCLOS would not adversely affect the intelligence gathering because the United States currently follows these provisions in the Treaty with regard to this, and it has not compromised American intelligence activities in anyway.

The 21st century is a global world with nations interconnected by new technological advances, communications and trade. Pandora's Box has been opened and it is impossible to put the genie back into the bottle. It is no longer feasible or wise for any nation to be isolated free of any kind of global connections or agreements. Global relations call for global solutions, and while the legal framework of UNCLOS may fall short of addressing all of the ocean's problems, still it is a starting point of international cooperation and consensus from which prior administrations both Democrat and Republican since Lyndon B. Johnson, have negotiated tirelessly. Because the United States has not ratified the Treaty, it currently cannot participate in ongoing revisions to the Treaty in order to protect the key provisions that it originally negotiated or in key commissions like the one that will be deciding commercial claims to the extensive outer continental shelf. As of now, the United States can't even make a claim to the seabed resources on its extended continental shelf or in the Arctic. It is unconscionable that a Treaty, in which most of the nations of the world have ratified and are today conducting their business pursuant to, has sit in the Senate for twenty-seven years awaiting debate, after two foreign relations committees have voted for ratification, and four bipartisan United States' Presidents have endorsed it. To persist in the indulgence of isolationist ideologies as the United States has done, is doing a disservice to the nation and threatens its economic and military survival. For better or for worse, like it or not, this is the age of globalization and the United States should and must learn to be a team player. Today, no nation can go it alone. This is the realty of the political dynamics of the world in which we live. In ratifying the Treaty, the United States will reinforce its global leadership role and show that it is committed to global partnerships which are vital in securing American security interests and repairing its fractured global image.

Under Reagan, the United States projected to the world that it would ratify the Treaty if our position with regard to free market principles concerning the ISA and other seabed issues were made a part of the Treaty through the Implementing Agreement. It was done, but then the United States backed out of ratifying the Treaty and retreated from the leadership role it had assumed during the UNCLOS negotiations and after WWII through its creation of the United Nations. What will the punishment be for the United States, as in the case of Janus, for the betrayal of the cause that it had championed in helping to codify customary maritime law for the benefit of its own national interests and that of the international community? What will be its punishment for the distrust that has arisen as a result of the two faces, global leadership and isolationism that it has presented to the world?

If isolationism persists as a valid argument against the ratification of any multilateral treaty with no thought given as to its merits, as in the case of UNCLOS, the United States' punishment would be self-executing through the repercussions that would ensue. Unless the United States embraces global leadership and ratifies UNCLOS, the United States runs the risk of forever becoming locked into the two faces of Janus without the flexibility of departing from crippling ideologies in order to do what is right for the country. The ultimate consequence would be the inability to have the freedom to enjoy the benefits that global partnership can bring and the inevitable demise of its status as the leader of the free world and as a superpower.