

Time to Ratify the Law of the Sea

By Don Kraus | June 6, 2007

From space, the Earth looks like a fragile drop of blue, green, brown, and white floating in a sea of black. National borders are not visible. But the vast oceans and seas are. What from space appears to be humanity's common heritage, however, is the subject of considerable dispute.

During the Nixon administration negotiations began to create a common set of rules for how nations use our oceans. Now, almost 40 years later, the United States is on the verge of joining the 155 nations that have ratified the United Nations Law of the Sea Convention (LOS). This treaty defines maritime zones, protects the environment, preserves freedom of navigation, and establishes clear guidelines for businesses that depend on the sea for resources. Until the United States ratifies the treaty its rights at sea will lack international recognition.

An incredibly diverse group of organizations and trade associations—including environmental, oil industry, peace, and veterans groups—have come together to put this important piece of old business back on the agenda. The reasons these odd bedfellows back the treaty are as varied as their missions. But together they elicited support from the White House and Senate leadership and have opened a small window of opportunity for LOS ratification.

The timing is critical. According to the bipartisan Joint Ocean Commission Initiative, oceans and coasts are severely threatened. In its 2006 report card on U.S. ocean policy, the commission gave the U.S. a D- in "International Leadership" (up from an F in 2005). The commission cited accession to the LOS convention as the key step the United States must take to improve its score. A February letter from major environmental organizations to Senate leaders urged quick ratification and cited the convention's

"basic obligation for all states to ... protect and preserve the marine environment and conserve marine living species" as a reason for their support.

Ratification is not a sure thing even though the Bush administration has urged support. If the Senate doesn't act on ratification before the summer recess, it may miss this golden opportunity to address the increasing fragility of the oceans.

Why We Need the Law

The Law of the Sea has been described as the most comprehensive and progressive protection for the oceans of any modern international accord. It essentially protects the economic, environmental, and national security concerns of coastal states, as well as establishing international cooperative mechanisms for resolving disputes on these issues. The convention also safeguards imperiled marine habitats by strengthening state sovereignty over the enforcement of environmental regulations up to 200 miles offshore (called the Exclusive Economic Zone—EEZ). These internationally accepted regulations empower states to stop harmful pollution and ocean dumping caused by previously unregulated ships. The convention also contains special measures to save endangered whales, salmon, and other marine mammals. It helps the fisheries of coastal states by allowing them to set limits within their EEZ. It also protects valuable migratory fish stocks such as tuna and billfish on the high seas, beyond the 200-mile limit.



In addition to protection of the marine environment, the LOS promotes the maintenance of international peace and security by replacing a plethora of conflicting claims among coastal states with a 12-mile territorial limit and the aforementioned 200-mile EEZ. These regulations set a definitive limit on the oceanic area over which a nation may claim jurisdiction. However, the convention also protects the freedom of navigation on the high seas as well as the right of innocent passage, including non-wartime activities of military ships.

The U.S. oil and natural gas industries favor ratification, as it will provide access opportunities to explore vast acreage beyond 200 miles off the coast, where evolving technologies now make oil and natural gas recoverable. In so doing, the United States could expand its areas for mineral exploration and production by more than 291,383 square miles.

Nations can even claim mineral rights to the end of the continental shelf up to 350 nautical miles (and further in some special circumstances). This favors the United States as one of the few nations with broad continental margins, particularly in the North Atlantic, Gulf of Mexico, Bering Sea, and Arctic Ocean. However, countries must ratify the treaty for their claims to be internationally recognized. Not surprisingly, then, the U.S. oil and natural gas industries favor ratification, as it will provide access opportunities to explore vast acreage beyond 200 miles off the coast, where evolving technologies now make oil and natural gas recoverable. In so doing, the United States

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Beyond this zone the LOS has established the International Seabed Authority, an autonomous inter-governmental body based in Kingston, Jamaica, which was created to organize and control all mineral-related activities in the international seabed area beyond the limits of national jurisdiction.

When nations disagree on boundaries, mineral claims, or other aspect of the convention, the LOS contains a unique dispute resolution mechanism that obligates nations to peacefully settle their difference through one of four methods: the International Tribunal for the Law of the Sea, adjudication by the International Court of Justice, binding international arbitration procedures, or special arbitration tribunals with expertise in specific types of disputes. Binding arbitration, the preferred U.S. approach, is the default mechanism if parties don't agree to another. All of these procedures involve binding third-party settlement, except for sensitive cases involving national sovereignty. In such circumstances, the parties are obliged to submit their dispute to a conciliation commission, but they will not be bound by the commission's decision.

There is no overt role for NGO participation in the dispute resolution process, as there is in more recently negotiated treaties and agreements (such as NAFTA). However, environmental organizations see the various intergovernmental bodies established by the convention as forums where they can focus attention on the obligation of governments to "protect and preserve the marine environment" that the treaty establishes.

Negotiations to create the Law of the Sea began during the Nixon administration but didn't finish until the Reagan administration. President Reagan supported the vast majority of the treaty's stipulations

and even issued an executive order for the United States to abide by most of its rules. But ultimately, the United States was one of only four nations that voted against adoption of the treaty. The Reagan White House could not accept the portion of the treaty that established the International Seabed Authority (ISA). Reagan felt that the decision-making process of the ISA Council and Assembly would not give the United States or other western industrialized countries influence commensurate with their interests. The administration was also concerned that a provision on a Review Conference would allow convention amendments to enter into force without U.S. approval and that the convention required the mandatory transfer of private technology. The administration also feared that some provisions would deter rather than promote future development of deep seabed mineral resources by incorporating economic principles inconsistent with free market philosophy, which included the possibility that the ISA would ultimately transfer wealth to developing nations.

During the administration of George H.W. Bush, the United States negotiated an annex to the treaty that addressed all of these concerns. The United States finalized and signed the treaty during the Clinton administration. However, Senator Jesse Helms (R-NC), then chair of the Senate Foreign Relations Committee, strongly objected to the treaty (along with most other multilateral efforts) and refused to have it come before his committee. The treaty's critics continue to refer to Reagan's objections to the original and unmodified convention as reasons not to ratify.

An Urgent Situation

Although the current Bush administration supports the convention, only in 2004 under Richard Lugar's (R-IN) chairmanship did the Senate Foreign Relations Committee unanimously approve the Law of the Sea Convention. However, the White House

was only willing to spend minimal political capital, and Senate leadership bowed to the pressure of a small group of far-right senators and never brought the treaty to the floor for a full vote.

At a moment when a host of key multilateral arms control, human rights, and environmental treaties await Senate action, this momentum could be crucial in regaining the respect of nations who want the United States to positively engage in an interconnected and interdependent world.

Finally, on May 15, 2007, President Bush publicly urged the Senate to “to act favorably on U.S. accession to the United Nations Convention on the Law of the Sea during this session of Congress.” He said that joining “will serve the national security interests of the United States, including the maritime mobility of our armed forces worldwide. It will secure U.S. sovereign rights over extensive marine areas, including the valuable natural resources they contain. Accession will promote U.S. interests in the environmental health of the oceans. And it will give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted.” His support, along with that of the Pentagon and State Department, as well as the Navy and Coast Guard, has created the political space to secure the support of 75 to 85 senators—far more than the 67 needed for accession.

Now the ball is in Senate Foreign Relations Committee Chairman Joe Biden's (D-DE) court. Biden is planning hearings this summer. However,

some Senate staffers are concerned that if a final vote is not held on the treaty before the Senate goes into recess at the beginning of August, the window of opportunity will close because of the partisan pressures of the accelerated 2008 election cycle.

Biden and Senate Majority Leader Harry Reid should take this issue very seriously. Their leadership is needed—and would be appreciated by diverse communities and industries. More importantly, approval of LOS would demonstrate that treaty ratification is not an impossible task in the U.S. Senate. At a moment

when a host of key multilateral arms control, human rights, and environmental treaties await Senate action, this momentum could be crucial in regaining the respect of nations who want the United States to positively engage in an interconnected and interdependent world.

It's time for the United States to finally join the rest of the world in ratifying the Law of the Sea.

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