

# A TREATY ON THIN ICE: DEBUNKING THE ARGUMENTS AGAINST U.S. RATIFICATION OF THE U.N. CONVENTION ON THE LAW OF THE SEA IN A TIME OF GLOBAL CLIMATE CRISIS

## I. INTRODUCTION

On December 10, 1982, the final text of the United Nations Convention on the Law of the Sea (“UNCLOS”) was presented for signature in Montego Bay, Jamaica and was signed that day by over 115 countries.<sup>1</sup> The United States, however, was not included among these countries, despite its leading role in the negotiation and drafting of UNCLOS under the administration of President Richard Nixon.<sup>2</sup> At the time of the treaty’s presentation, the incumbent Reagan administration objected to the provisions of Part XI of the treaty, which primarily concerned deep seabed rights,<sup>3</sup> and President Reagan thus declined to sign the text.<sup>4</sup> More than twenty-five years later, the United States has yet to accede to UNCLOS—

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1. John A. Duff, *The United States and the Law of the Sea Convention: Sliding Back from Accession and Ratification*, 11 OCEAN & COASTAL L.J. 1, 6 (2005/2006).

2. *Id.* at 5–6. In 1969, President Nixon’s administration reviewed U.S. policy on the use of the oceans in response to the Stratton Commission Report. *Id.*; see generally J. A. Stratton, *Report of Commission on Marine Science, Engineering and Resources: Our Nation and the Sea*, H.R. DOC. NO. 91-42 (1969) [hereinafter *Stratton Report*]. The result was Nixon’s recommendation that “all nations adopt as soon as possible a treaty under which they renounced all national claims to the natural resources of the seabed beyond the point where the high seas reach a depth of 200 meters and agree to regard these resources as the common heritage of mankind.” Duff, *supra* note 1, at 5–6.

3. Article 137 in Part XI of UNCLOS states:

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.

2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and these rules, regulations and procedures of the Authority.

3. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

United Nations Convention on the Law of the Sea [UNCLOS] art. 137, Dec. 10, 1982, 1833 U.N.T.S. 397.

4. Statement on United States Actions Concerning the Conference on the Law of the Sea, 2 PUB. PAPERS 911 (July 9, 1982) [hereinafter *Statement of the President*].

despite significant changes in the text and substance of Part XI,<sup>5</sup> the passing of three presidential administrations, widespread bipartisan support of the treaty,<sup>6</sup> and the emergence of a global climate crisis and an escalating battle over Arctic sovereignty.<sup>7</sup>

This Note will trace the political history of the United States' non-ratification of UNCLOS, from the Nixon administration's support to the Reagan administration's refusal to accede, followed by the treaty's consequent languishing in the Senate for nearly twenty-five years. It will also debunk the major arguments raised by opponents of U.S. ratification, namely national sovereignty, security, environmental policy, and commercial interests. It will also examine the ramifications of the United States' status as a non-signatory country, in light of the warming polar ice cap and dispute over sub-surface mineral rights beneath the North Pole.<sup>8</sup>

## II. HISTORY OF UNCLOS

### A. *The Treaty Develops in the United Nations*

Prompted by the end of World War II, the United Nations codified new international law, including that of the law of the sea.<sup>9</sup> Four treaties emerged from the United Nations Conference on the Law of the Sea ("UNCLOS I"): the Convention on the High Seas in 1958,<sup>10</sup> the Convention on the Territorial Sea and the Contiguous Zone in 1958,<sup>11</sup> the

5. G.A. Res. 48/263, U.N. Doc. A/RES/48/263 (Aug. 17, 1994).

[C]hanges set forth in the 1994 Agreement overcome each one of the objections of the United States to Part XI of the Convention and meet our goal of guaranteed access by the U.S. industry to deep seabed minerals on the basis of reasonable terms and conditions.

*U.N. Convention on the Law of the Sea (T. Doc. 103-39): Hearing Before the S. Comm. on Foreign Relations*, 108th Cong. 7-8 (2003) (testimony of William H. Taft IV, Legal Advisor, U.S. Dept. of State), available at [http://foreign.state.gov/testimony/2003/Taft Testimony031021.pdf](http://foreign.state.gov/testimony/2003/Taft%20Testimony031021.pdf).

6. See Eminent Persons Letter in Support of the Law of the Sea Convention to Senators Harry Reid and Mitch McConnell (Sept. 24, 2007), <http://www.oceanlaw.org/index.php?module=News&func=display&sid=50>. A letter signed by over one hundred eminent persons, including former Secretaries of State James A. Baker III, Madeline Albright, and Colin Powell, urged President George W. Bush, Secretary of State Condoleezza Rice, and Senate leaders to "move expeditiously to consider and approve U.S. accession to the United Nations Convention on the Law of the Sea." *Id.* Further, the letter reinforced the "overwhelming bipartisan support from a broad and diverse range of interests that have carefully considered the issues from a variety of perspectives," and that "[i]t is clear that accession will protect and enhance our country's sovereign military, economic, and environmental interests." *Id.*

7. See *Drawing Lines in Melting Ice*, *ECONOMIST*, Aug. 18, 2007, at 51.

8. *Id.*

9. Duff, *supra* note 1, at 4.

10. United Nations Convention on the High Seas, Apr. 29, 1958, 450 U.N.T.S. 82.

11. United Nations Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958,

Convention on the Continental Shelf in 1958,<sup>12</sup> and the Convention on Fishing and Conservation of the Living Resources of the High Seas in 1958.<sup>13</sup> The combination of the four distinct sources of the law of the sea and the resultant stratification in interpretation and enforcement thereof proved unworkable in practice.<sup>14</sup> Provisions remained ambiguous on many issues, including compulsory dispute resolution processes, “in spite of the fact that the use of ocean space and exploitation of ocean resources was expanding rapidly and concomitantly, increas[ing] the likelihood of conflict.”<sup>15</sup> Efforts to resolve these ambiguities at the second United Nations Conference on the Law of the Sea failed.<sup>16</sup> In a speech before the National General Assembly in 1967, Ambassador Arvid Pardo of Malta called attention to the untapped wealth of the ocean seabed.<sup>17</sup> He proposed an equitable approach to these resources by which, as John Adams once said, “the oceans and [their] treasures [were] the property of all men” and resources retrieved therefrom should be shared “in a fair and distributive manner.”<sup>18</sup>

Following the 1958 U.N. Convention on the Continental Shelf, U.S. Senator Claiborne Pell advanced the idea of codifying a new system for governing the resources of the world’s oceans.<sup>19</sup> As a result, the Nixon administration undertook a review of U.S. policy on the use of the oceans. President Nixon echoed Ambassador Pardo’s sentiments by proposing a multi-national treaty to define the deep seabed as the “common heritage of mankind.”<sup>20</sup> In 1970, in order to address these appeals for a structured law of the sea, the United Nations called for a negotiation conference and for the formation of a Seabed Committee.<sup>21</sup>

The third United Nations Conference on the Law of the Sea (“UNCLOS III”) began in 1973.<sup>22</sup> Though the United States had been a strong international advocate of the conference under President Nixon, the U.S. stance changed when President Reagan took power. The new

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516 U.N.T.S. 206.

12. United Nations Convention on the Continental Shelf, Apr. 29, 1958, 499 U.N.T.S. 312.

13. United Nations Convention on Fishing and Conservation of the Living Resources of the High Seas, Apr. 29, 1958, 559 U.N.T.S. 286.

14. See Duff, *supra* note 1, at 4.

15. *Id.*

16. *Id.*

17. Duff, *supra* note 1, at 4–5 (citing U.N. GAOR, 22d Sess., 1st Comm., 1515th mtg., U.N. Doc. A/C.1/PV.1515 (Nov. 1, 1967)).

18. *Id.* at 5 (citation omitted).

19. *Id.* See generally Stratton Report, *supra* note 2.

20. Duff, *supra* note 1, at 5–6.

21. *Id.* at 5.

22. *Id.*

administration raised concerns during the end stages of the diplomatic negotiations about the deep seabed provisions of the treaty, primarily concerning “unacceptable elements” of the procedural apparatus that would govern deep seabed mining activities and resulting commercial and economic profits.<sup>23</sup> As early as 1976, President Reagan appointed Secretary of Defense Donald Rumsfeld to serve as the Special Presidential Envoy on the Law of the Sea Treaty.<sup>24</sup> Rumsfeld’s duty was, in essence, to urge U.S. allies not to ratify the treaty, thus forming a large enough group of non-ratifying countries to keep the treaty from going into force without revision of Part XI.<sup>25</sup> Despite this effort, some industrialized nations were still willing to sign.<sup>26</sup> After the 1982 conference in Montego Bay, the United States began to formally lobby for modification of the language of Part XI of the treaty.<sup>27</sup>

In 1990, prompted by these American lobbying efforts, and at the suggestion of U.N. Secretary General Javier Perez de Cuellar, the U.N. reviewed Part XI of UNCLOS to determine whether revision of the terms on the deep seabed area could be amended to encourage universal participation in the treaty.<sup>28</sup> In 1994, after four years of coordinated revision efforts, the U.N. presented an Implementation Agreement (“Agreement”).<sup>29</sup> This Agreement revised Part XI in light of the breakup of the Soviet Union and “political and economic changes, including in particular a growing reliance on market principles. . . .”<sup>30</sup> Forty-one countries, including the United States (under the Clinton administration),

23. Statement of the President, *supra* note 4.

24. *U.N. Convention on the Law of the Sea (T. Doc. 103–39): Hearing Before the S. Comm. on Foreign Relations*, 108th Cong. 5 (2003) (testimony of John Norton Moore, Professor of Law, University of Virginia, School of Law), available at <http://foreign.senate.gov/testimony/2003/MooreTestimony031014.pdf>.

25. *Id.*

26. Duff, *supra* note 1, at 8.

27. “The U.S., recognizing that the Convention would eventually gain the sixty ratifications necessary to bring it into force, and eager to benefit from some of the Convention’s provisions, began a two-pronged effort to: 1) modify those provisions it deemed objectionable, and 2) employ those provisions it deemed beneficial.” *Id.*

28. The Secretary-General, *Consultations of the Secretary-General on the Outstanding Issues Relating to the Deep Seabed Mining Provisions of the United Nations Convention on the Law of the Sea*, ¶ 1, delivered to the General Assembly, U.N. Doc. A/48/950 (June 9, 1994). Secretary-General Perez de Cuellar, in calling for negotiation and revision of the contested provision, “pointed out that though he would continue to encourage all States which had not done so to ratify or accede to the Convention, it had to be acknowledged that there were problems with some aspects of the deep seabed mining provisions of the Convention.” *Id.*

29. *Id.* ¶¶ 15–25.

30. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, July 28, 1994, 1836 U.N.T.S. 41.

signed the Agreement on July 28, 1994.<sup>31</sup> Under the negotiated terms of the Agreement, the United States was allowed for a limited time to participate in organizing and implementing institutions within the International Seabed Authority.<sup>32</sup> This deadline provision for U.S. participation set the clock ticking for ratification, and in 1994, President Clinton signed both the treaty and the Agreement and sent them to the Senate Foreign Relations Committee for advice and consent.<sup>33</sup>

*B. UNCLOS in the U.S. Senate*

Senator Claiborne Pell was the Chairman of the Senate Foreign Relations Committee in 1994, and his history of support of UNCLOS was well known.<sup>34</sup> He reaffirmed his commitment to the Convention by making it “one of [his] highest priorities . . . in the 104th Congress” when the treaty was sent to the Foreign Relations Committee for hearings.<sup>35</sup> Within a month of this statement, however, national midterm elections shifted control of the Senate from Democrats to Republicans, and Pell was replaced as Chairman of the Foreign Relations Committee by Jesse Helms.<sup>36</sup> Senator Helms used his power as Chairman to keep UNCLOS off the hearings calendar, delaying any progress toward Senate consent to ratification.<sup>37</sup>

During Senator Helms’ tenure as Chairman from 1994 to 2003, no hearings or votes were taken on UNCLOS,<sup>38</sup> and the period of limited U.S. participation lapsed, leading to some uncertainty as to the applicable law of the sea in U.S. disputes and policymaking.<sup>39</sup> In 2003, the new Chair, Senator Richard Lugar, voiced support of the treaty and scheduled the first hearings on UNCLOS in nearly ten years.<sup>40</sup> In the aftermath of September

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31. *Id.*

32. *Id.*

33. Michael A. Becker, *International Legal Developments in Review: 2007: Public International Law*, 42 INT’L L. 797, 798 (2008).

34. Duff, *supra* note 1, at 9.

35. 140 CONG. REC. S144 (1994) (statement of Sen. Pell).

36. Duff, *supra* note 1, at 10.

37. Becker, *supra* note 33, at 798. See also David B. Sandalow, *Law of the Sea Convention: Should the U.S. Join?* (Brookings Inst., Brookings Policy Brief Series No. 136, 2004), available at [http://www.brookings.edu/papers/2004/08energy\\_sandalow.aspx](http://www.brookings.edu/papers/2004/08energy_sandalow.aspx).

38. *Id.*

39. Duff, *supra* note 1, at 10–11. Professor Duff notes that at this point, the United States, while no longer within the time frame for limited participation in the treaty, adopted certain beneficial principles of UNCLOS under the auspices of “reflect[ing] . . . customary international law” rather than as a party to the treaty. *Id.* at 10.

40. *Id.* at 17.

11, 2001, Lugar called attention to the need for a comprehensive multilateral approach to addressing ocean-based national security threats.<sup>41</sup> He noted, “More than 140 nations are party to the Law of the Sea Convention, including all other permanent members of the UN Security Council and all but two other NATO members.”<sup>42</sup> During the hearings, the Committee heard testimony from scholars, representatives of non-governmental organizations, security and military experts, and Cabinet members.<sup>43</sup> On February 25, 2004, the Committee reported UNCLOS and the Agreement to the full Senate for consideration.<sup>44</sup>

Opponents of UNCLOS were able to stall Senate progress by calling for additional hearings by Senate committees before a full Senate vote.<sup>45</sup> Despite recommendation for accession by the U.S. Commission on Ocean Policy,<sup>46</sup> opponents successfully blocked a full vote during the 104th Congress, effectively nullifying that term’s hearings by the Foreign Relations Committee.

Following the failure of UNCLOS in the 104th Congress, progress on U.S. ratification slowed until a dispute over seabed rights in the Arctic emerged. Though the United States had an interest in laying claim to these rights given Alaska’s proximity to the region, as a non-member UNCLOS country, the United States had no seat at the negotiating table. On May 15, 2007, President George W. Bush issued a statement, which in strong terms urged the Senate to act quickly to ratify UNCLOS.<sup>47</sup> He outlined the benefits to U.S. accession: the national security interest, including maritime mobility of U.S. troops internationally; the interest in securing

41. See Lugar Statement, *infra* note 42.

42. *U.N. Convention on the Law of the Sea (T. Doc. 103-39): Hearing Before S. Comm. on Foreign Relations*, 108th Cong. 1 (2003) (opening statement by Senator Richard Lugar) [hereinafter Lugar Statement], available at <http://foreign.senate.gov/testimony/2003/LugarTestimony031014.pdf>.

43. See generally *U.N. Convention on the Law of the Sea (T. Doc. 103-39): Hearing Before the S. Comm. on Foreign Relations*, 108th Cong. (Oct. 21, 2003).

44. 150 CONG. REC. D113 (daily ed. Feb. 25, 2004).

45. 150 CONG. REC. S4058 (Apr. 8, 2004) (authorizing Senate Armed Services Committee to meet and receive testimony on the implications of UNCLOS); 150 CONG. REC. D264 (daily ed. Mar. 22, 2004) (hearing of Senate Committee on Environmental and Public Works to examine implementing UNCLOS).

46.

If the United States is to ensure that its interests as a maritime power and coastal state are protected, it must participate in [the Convention process]. The best way to do that is to become a party to the Convention, and thereby gain the right to place U.S. representatives on its decision-making bodies.

U.S. COMM’N OCEAN POLICY, FINAL REPORT: AN OCEAN BLUEPRINT FOR THE 21ST CENTURY 445 (2004), [http://oceancommission.gov/documents/full\\_color\\_rpt/ooo\\_ocean\\_fullreport.pdf](http://oceancommission.gov/documents/full_color_rpt/ooo_ocean_fullreport.pdf).

47. Statement on the Advancement of United States Maritime Interests, 43 WEEKLY COMP. PRES. DOC. 635 (May 15, 2007).

sovereign rights over areas of the world's oceans and the natural resources contained therein; the interest in the environmental health of the world's oceans; and the interest in having a "seat at the table" when vital U.S. rights were debated and interpreted.<sup>48</sup>

Following this statement, then-Foreign Relations Committee Chairman Senator Joseph Biden named UNCLOS as the Committee's lead agenda item.<sup>49</sup> On October 31, the Committee voted favorably on UNCLOS (17–4) and referred it to the full Senate floor for a vote.<sup>50</sup>

### III. ARGUMENT FOR RATIFICATION

Despite widespread bipartisan support for ratification of UNCLOS and appeals by several presidents, opponents have been able to forestall U.S. ratification for nearly twenty-five years. Opponents of UNCLOS generally raise four broad areas of concern to U.S. accession to what they call the Law of the Sea Treaty, or "LOST."

#### A. *UNCLOS as a Threat to U.S. Sovereignty*

Opponents of UNCLOS see the treaty as a threat to the sovereignty of the United States.<sup>51</sup> Chief among the concerns is the perceived lack of power the United States would wield on the International Seabed Authority ("ISA"),<sup>52</sup> the body created by the treaty to resolve disputes on seabed claims.<sup>53</sup> Other critics claim that membership in the ISA would undermine U.S. courts.<sup>54</sup> Opponents fear that members of the ISA would

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48. *Id.*

49. *U.N. Convention on the Law of the Sea: Hearing Before S. Comm. on Foreign Relations*, 110th Cong. (Oct. 31, 2007) (listing Committee's agenda items), <http://foreign.senate.gov/hearings/2007/hr071031a.html>.

50. Jim Abrams, *Senate Panel Approves 'Law of the Sea' Treaty*, ASSOCIATED PRESS FIN. WIRE, Oct. 31, 2007 (Lexis).

51. For instance, following the Foreign Relations Committee's favorable vote on the treaty in 2007, prominent Republican Senator Trent Lott voiced his opposition to the treaty, saying, "I am absolutely convinced it undermines U.S. sovereignty." *Id.*

52. Baker Spring et al., *The Top Five Reasons Why Conservatives Should Oppose the U.N. Convention on the Law of the Sea*, WEBMEMO, (Heritage Found., Washington, D.C.), Sept. 25, 2007, <http://www.heritage.org/Research/InternationalOrganizations/wm1638.cfm>.

53. Sandalow, *supra* note 37.

54. "The Authority's powers would supersede the sovereign powers of the nations that are party to the treaty. In short, it would be the boss. If [the United States] disagreed with its ruling, tough." Rebecca Hagelin, *Sovereignty at Stake: Losing Under a "Lost" Treaty*, HERITAGE FOUND., May 18, 2007, <http://www.heritage.org/Press/commentary/ed051807a.cfm>.

U.S. sovereignty would be further undermined by "the increasing practice of U.S. courts to allow 'universal jurisprudence' to trump American constitutional rights and laws." William P. Clark &

adopt policies that favor smaller nations<sup>55</sup> at the expense of the United States, “as regularly occurs in similar U.N. bodies, such as the General Assembly.”<sup>56</sup> A general distrust of the United Nations also emerges in these arguments—some speculate that the ISA would be vulnerable to the corruption and excesses that arguably plague the U.N.<sup>57</sup>

Many of these arguments have been put into perspective, however, by the actual history and operation of UNCLOS. Instead of posing a threat to national sovereignty, U.S. ratification of UNCLOS would actually enlarge U.S. power by providing a permanent seat on the ISA,<sup>58</sup> and would be “the greatest expansion of U.S. resource jurisdiction in the history of the nation.”<sup>59</sup> A permanent seat on the ISA would give the United States a strategic advantage, namely a “greater ability to defeat amendments that are not in the U.S. interest, by blocking consensus or voting against such amendments.”<sup>60</sup>

Concerns about abuse of power by the ISA are similarly unfounded, as the ISA operates independently from the U.N.<sup>61</sup> and is comparable to other specialized U.N. organizations, many of which the U.S. already endorses. Further, the navigational protections for American ships on the high seas

Edwin Meese III, *Reagan and the Law of the Sea*, HERITAGE FOUND., Oct. 9, 2007, <http://author.heritage.org/Press/commentary/ed100907d.cfm>.

55. William P. Clark & Edwin Meese III, Editorial, *Another U.N. Power Grab*, WALL ST. J., Oct. 8, 2007, <http://www.opinionjournal.com/editorial/feature.html?id=110010705> (citing President Reagan’s “Ocean Mining” radio address of October 10, 1978). Clark and Meese point to President Reagan’s concerns on this front as an issue that still plagues the treaty, despite significant revisions. Reagan thought that “[n]o one has ruled out the idea of a [Law of the Sea] treaty—one which makes sense—but after long years of fruitless negotiating, it became apparent that the underdeveloped nations who now control the General Assembly were looking for a free ride at our expense—again.” *Id.*

56. Spring et al., *supra* note 52, at 1.

57. Hagelin, *supra* note 54.

Remember the Oil-for-Food scandal? The Iraqi government . . . “oversaw a system of bribes and kickbacks involving billions of dollars and 2,000 companies in nearly 70 countries while the U.N. failed to act.” And we want to create an International Seabed Authority with the power to assess fees and charges on commercial activities?”

*Id.* “This authority would basically be an aquatic United Nations of the sea . . . Except, instead of issuing toothless condemnations of the U.S., this authority would have the actual power to thwart American interests.” Edwin Feulner, *They Just Don’t Get LOST*, HERITAGE FOUND., Oct. 16, 2007, <http://www.heritage.org/Press/Commentary/ed101607f.cfm>.

58. Article 156 of UNCLOS provides that “[a]ll State Parties are *ipso facto* members of the Authority.” UNCLOS art. 156, ¶ 2, 1833 U.N.T.S. 457.

59. John Norton Moore, Director, Ctr. for Nat’l Sec. Law, Univ. of Va. School of Law, *Strange Bedfellows: The Law of the Sea and its Stakeholders*, Address at the Council on Foreign Relations (Mar. 20, 2008) (transcript available at [http://www.cfr.org/publication/15813/strange\\_bedfellows.html](http://www.cfr.org/publication/15813/strange_bedfellows.html)).

60. Sandalow, *supra* note 37.

61. See UNCLOS arts. 156-183, 1833 U.N.T.S. 457-74 (outlining the structure, composition, and legal status of the Authority).



would enhance, not diminish, U.S. sovereignty.<sup>62</sup> Some UNCLOS proponents also argue that claims to U.S. sovereignty are overstated in the context of a shared resource like the world's oceans.<sup>63</sup> Finally, due to the inevitability of international reliance on UNCLOS to form international maritime law and regulate maritime disputes, the United States will suffer a huge loss of power if it fails to accede to the treaty.<sup>64</sup>

### *B. UNCLOS as a Threat to U.S. Commercial Interests*

Opponents of UNCLOS claim that accession will also harm U.S. commercial interests in the world's oceans. The provisions on seabed mining, in particular, are seen as an attempt at international wealth redistribution.<sup>65</sup> Additionally, there is a fear that the ISA would have the power to enforce an international tax on resources extracted from the seabed.<sup>66</sup>

Although these commercial concerns resonate with many economic conservatives, they are among the easiest to debunk, primarily by examining the economic consequences the United States will face if it does not accede. Claims to mineral rights in the Arctic are governed by UNCLOS provisions on an extended continental shelf, and the United

62. Moore, *supra* note 59.

63.

[T]here is no unilateral option with regard to ocean policy. The high seas are not governed by the national sovereignty of the United States or any other country. If we are to establish order, predictability, and responsibility over the oceans—an outcome that is very much in the interest of the United States—we have to engage with other countries.

Richard Lugar, U.S. Senator, The Law of the Sea Convention: The Case for Senate Action, Address at the Brookings Institute (May 4, 2004) (transcript available at [http://www.brookings.edu/speeches/2004/0504energy\\_lugar.aspx?p=1](http://www.brookings.edu/speeches/2004/0504energy_lugar.aspx?p=1)).

64.

[T]he Law of the Sea will continue to form the basis of maritime law *regardless of whether the U.S. is a party*. International decisions related to national claims on continental shelves beyond 200 miles from our shore, resource exploitation in the open ocean, navigation rights, and other matters *will be made in the context of the treaty whether we join or not*. . . [T]he United States cannot insulate itself from the Convention merely by declining to ratify.

*Id.* (second emphasis added).

65. Clark & Meese, *supra* note 54. Ambassador James Malone, who was selected by President Reagan as the U.S. negotiator on the treaty, disapproved of the treaty largely for economic reasons:

The Treaty's provisions were intentionally designed to promote a new world order . . . that seeks ultimately the redistribution of the world's wealth through a complex system of manipulative central economic planning and bureaucratic coercion. . . . predicated on a distorted interpretation of the noble concept of the Earth's vast oceans as the "common heritage of mankind."

*Id.*

66. An attempt to levy such a tax would be seen by some as the ISA "profit[ing] from [Americans'] hard work." Hagelin, *supra* note 54.

States may lose these claims without representation on the ISA or State Party status.<sup>67</sup> Additionally, many economic concerns ring hollow in the face of favorable opinions of the treaty by U.S. industries affected by such regulations.<sup>68</sup> For example, the oil and gas industries have agreed to pay any tax levied on deep seabed extractions.<sup>69</sup>

### C. UNCLOS as an Environmental Agenda

Fundamental differences on environmental policy have also been raised as objections to UNCLOS. Opponents see UNCLOS as a “back door” for environmental activists to circumvent the U.S. Congress on international environmental law.<sup>70</sup> Alternatively, accession might encourage foreign governments to bring action against the United States for environmental transgressions under the treaty’s mandatory dispute resolution protocol.<sup>71</sup>

Use of the outlined dispute resolution process against the United States seems unlikely, though, since the United States already complies with or exceeds the environmental standards set out in UNCLOS.<sup>72</sup> Further, provisions meant to protect the sustainability of the world’s oceans are of global concern<sup>73</sup> and benefit U.S. ocean-based industries.<sup>74</sup> Even while it

67. UNCLOS contains provisions for member countries to petition to enlarge their ocean economic zone beyond the 200-mile stated limit if it can prove that the desired seabed territory (and thus, the minerals it contains) are a geological extension of the country’s continental shelf. UNCLOS art. 76, ¶¶ 7–10, 1833 U.N.T.S. 429. “At stake are as much as 25 percent of the world’s undiscovered oil and gas resources as well as access to new caches of minerals and untouched fish stocks.” Toni Johnson, Council on Foreign Relations, Thawing Arctic’s Resource Race, [http://www.cfr.org/publication/13978/thawing\\_arctics\\_resource\\_race.html](http://www.cfr.org/publication/13978/thawing_arctics_resource_race.html) (last visited Feb. 13, 2009).

By failing to accede to UNCLOS and submit to the authority of ISA, the United States might also risk existing resource claims, including “all four of our [Arctic] mine sites . . . with the aggregate value of about 1 trillion (dollars) in copper [sic], nickel, cobalt and manganese.” Moore, *supra* note 59.

68. “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.” Lugar, *supra* note 63.

69. Sandalow, *supra* note 37. In hearings before the Senate Foreign Relations Committee in October 2003, a representative for the American Petroleum Institute testified that the treaty as a whole, including the revenue sharing provisions, benefited U.S. resource industry interests and called for “ratification . . . at the earliest date possible.” *U.N. Convention on the Law of the Sea (T. Doc. 103–39): Hearing Before S. Comm. on Foreign Relations, 108th Cong. 7 (2003)* (Statement of Paul L. Kelly, Senior Vice President, Rowan Companies, Inc.), <http://foreign.senate.gov/testimony/2003/KellyTestimony031021.pdf>.

70. Spring et al., *supra* note 52, at 1.

71. “American opponents of the Kyoto Protocol should be under no illusion: U.S. accession to this convention risks embroiling the U.S. in a plethora of legal actions, even if the Senate does not ratify Kyoto.” *Id.* at 2.

72. Sandalow, *supra* note 37.

73. In the United Nations Millennium Report, Secretary General Kofi Annan wrote, “The complete collapse of many once-valuable fisheries provides compelling evidence that a more sustainable and equitable ocean governance regime is needed. The importance of conservation is

complies with the substance of the environmental provisions, the United States may be seen as a block to global environmental action until it actually ratifies UNCLOS.<sup>75</sup>

#### *D. UNCLOS as a Threat to National Security*

The most controversial arguments by opponents of UNCLOS have been related to national security.<sup>76</sup> Article 19 of UNCLOS is of greatest concern to opponents who claim the provision would prohibit the United States from collecting intelligence in territorial waters.<sup>77</sup> Similarly, they criticize article 20, which they fear will require U.S. submarines to travel on the surface and display their nation's flag.<sup>78</sup> This would disable stealth travel in enemy waters and the exercise of secret maneuvers.<sup>79</sup> Further, the navigation rights that would be gained by the U.S. Navy and commercial vessels would be unnecessary, since the United States is already entitled to these rights under customary international law.<sup>80</sup>

Though national security remains a top U.S. priority, opponents of UNCLOS have overstated the degree to which the treaty would endanger that security. First, major concerns appear to stem from a misreading of

increasingly recognized, but it can flourish only if governments and the fishing industry work cooperatively to support it." The Secretary-General, *We the Peoples: The Role of the United Nations in the Twenty-first Century*, ¶ 296, delivered to the General Assembly, U.N. Doc. A/54/2000 (Mar. 27, 2000).

74. For example, the U.S. fishing industry benefits from the environmental portions of the treaty in the long-term, namely through provisions setting limits on high seas fishing and encouraging negotiation of regional agreements to manage fisheries. Sandalow, *supra* note 37.

75. A RAND Institute study found that "the failure to negotiate and implement effective solutions to global problems stems from an inability of nations to agree on the nature of a problem or the appropriate cure," and cited U.S. non-ratification of both UNCLOS and the Kyoto Protocol as examples. RAND Institute, *Finding Global Environmental Solutions*, <http://www.rand.org/scitech/stpi/ourfuture/Newworld/section7.html> (last visited Feb. 13, 2009).

76.

[C]ritics [of the Convention] predict near-apocalyptic doom for the United States if it accedes to the Law of the Sea Convention. In particular, they argue that the Law of the Sea . . . Convention will cripple the U.S. Navy's ability to perform maritime missions necessary for national security, including collecting intelligence, conducting submerged transits with submarines, and preventing actions by terrorists.

William L. Schachte Jr., *The Unvarnished Truth: The Debate on the Law of the Sea Convention*, NAVAL WAR COLLEGE REV., Spr. 2008, at 119.

77. Spring et al., *supra* note 52, at 2.

78. *Id.*

79. *Id.*

80. "[T]he U.S. is not a signatory to the convention today and yet has freedom of the seas because current participants are required to grant the U.S. navigation rights afforded by customary international practice." *Id.*

articles 19 and 20.<sup>81</sup> Additionally, the provisions at issue were negotiated with the input and consent of the U.S. intelligence community (including the National Security Council) and were approved by the Central Intelligence Agency and the Department of Defense.<sup>82</sup> In fact, some of the strongest supporters of the treaty come from the intelligence community and the highest ranks of the U.S. military.<sup>83</sup>

As for the reliance upon customary international law to ensure permission for navigation by U.S. vessels, some commentators see this as a risky and costly alternative to ratification.<sup>84</sup>

#### IV. UNCLOS AND THE EVOLVING GLOBAL CLIMATE CRISIS

##### A. *The Polar Icecap Heats Up*

In December of 2008, NASA's Goddard Institute for Space Studies, the World Meteorological Organization, the National Oceanic and Atmospheric Administration, and Britain's Hadley Center released year-end meteorological reports for 2008.<sup>85</sup> According to their findings, the Arctic region was far warmer in 2008 than in recent years.<sup>86</sup> In fact, 2008 was recorded as the tenth warmest meteorological year since 1850.<sup>87</sup>

As early as June of 2008, climate experts warned that there would be a drastic reduction in the amount of global polar ice<sup>88</sup> as a result of warmer summers.<sup>89</sup> This drastic change in the Arctic seascape is theoretically a

81. Treaty proponents point out that articles 19 and 20 do not impose restrictions on U.S. ocean activity, but simply establish the conditions for invoking the "right of innocent passage." Sandalow, *supra* note 37. Thus, in a situation involving U.S. Navy submarines on a secret maneuver, articles 19 and 20 *would not apply*, since it is highly unlikely that such a situation would give rise to a claim of "innocent passage."

82. Moore, *supra* note 59.

83. *Id.*

84. "Customary law is by nature subject to varying interpretations and change over time. Operational assertions—sending military ship and aircraft into contested areas—involve risk to naval personnel as well as political costs." Sandalow, *supra* note 37. In fact, U.S. reliance upon international custom for navigation has already faces at least one challenge; Iran denies U.S. passage through the Strait of Tehran because it has not yet ratified UNCLOS. Moore, *supra* note 59.

85. Posting of Andrew C. Revkin to *dotearth.blog.nytimes*, <http://dotearth.blogs.nytimes.com/2008/12/16/a-cooler-year-on-a-warming-planet/?ref=science> (Dec. 16, 2008, 11:00 EST).

86. *Id.*

87. *Id.* Peter Stott of the Climatic Research Unit of the University of East Anglia noted, "As a result of climate change, what would once have been an exceptionally unusual year has now become quite normal." *Id.*

88. Steve Connor, *Scientists Warn That This Summer There May Be No Ice at North Pole*, INDEPENDENT (London), June 27, 2008, at 1.

89. Whether these warmer summers are the result of natural climactic changes or human action is still hotly debated. Professor Rune Graverson of Stockholm University stresses that the link between

result of polar amplification,<sup>90</sup> a process where the greenhouse gases warming the Earth's atmosphere have an exponential effect upon the globe's Arctic region.<sup>91</sup>

One result of less ice in the Arctic is the opening of navigable waterways for surface passage to the North Pole.<sup>92</sup> The exposure of these routes has allowed access to the mineral-rich seabed, which was previously covered by thick sheets of ice and unreachable by anything but submarines.<sup>93</sup> By September of 2008, enough polar ice melted so as to form navigable sea passage along the entire Arctic coast of Russia.<sup>94</sup>

### B. *The Race for Arctic Mineral Rights*

The receding polar ice cap has ignited the international dispute over the mineral rights of the North Pole.<sup>95</sup> The competition arises from the fact that the Arctic is “the only place where a number of countries encircle an

the warming Arctic region and human emissions is still uncertain: “Many models suggest an increase in energy transport when more greenhouse gases are introduced into them. . . . Changes in the circulation in the atmosphere might have had a much larger effect than previously thought, but these changes may also have been induced by greenhouse gases.” Richard A. Lovett, *Arctic Warming Faster above Ground Level, Study Finds*, NAT'L GEOGRAPHIC NEWS, Jan. 2, 2008, [http://www.news.nationalgeographic.com/news/2008/01/080102-arctic-warming\\_2.html](http://www.news.nationalgeographic.com/news/2008/01/080102-arctic-warming_2.html).

90. *Shifting Heat Layers Above Arctic to Blame for Ice Crisis: Study*, AGENCE FRANCE PRESSE, Jan. 2, 2008, available at <http://afp.google.com/article/ALeqM5hWas1ATOsqUcRqZ021v5ubeO3IA>.

91. Research on polar amplification revealed:

When the Sun's rays hit snow or ice, most of that solar energy bounces back into space—but as those melting surfaces give way to dark-blue sea, the heat is absorbed instead.

The self-reinforcing process, called a feedback, is an established factor in accelerating warming in snow and ice.

*Id.*

92. Posting of Andrew C. Revkin to [dotearth.blogs.nytimes.com](http://dotearth.blogs.nytimes.com/2008/09/06/confirmation-of-open-water-circling-north-pole/), <http://dotearth.blogs.nytimes.com/2008/09/06/confirmation-of-open-water-circling-north-pole/> (Sept. 6, 2008, 12:42 EST). A representative from the National Ice Center states that “[t]his is the first recorded occurrence of the Northwest Passage and the Northern Sea Route both being open at the same time.” *Id.*

93. *Id.*; Connor, *supra* note 88.

94. Revkin, *supra* note 92. Scientists warn, though, that only the heaviest, most ice-resistant ships will be able to navigate these channels. *Id.*

95. *Id.*

Despite the climate uncertainty, oil and gas exploration of the Arctic does not rely solely on the Arctic ice cap melting. In fact, a panel of experts convened by the United States Arctic Research Commission determined that “the exploration, development, production and transportation of petroleum in the Arctic will expand with or without climate change as prices continue to rise due to the decreasing rate of discovery of reserves elsewhere. Climate warming and reduction in ice cover will facilitate and perhaps accelerate the process.”

Coston, *infra* note 98, at 152–53 (quoting U.S. ARCTIC RESEARCH COMM'N, SPECIAL PUBL'N NO. 02-1, THE ARCTIC OCEAN AND CLIMATE CHANGE: A SCENARIO FOR THE U.S. NAVY 6 (2002), [http://www.arctic.gov/publications/arctic\\_and\\_climate\\_change.pdf](http://www.arctic.gov/publications/arctic_and_climate_change.pdf)).

enclosed ocean,<sup>96</sup> which gives numerous countries a valid claim for the same territory.<sup>97</sup>

In 2001, in accordance with provisions of UNCLOS,<sup>98</sup> the Russian Federation petitioned the U.N. Commission on the Limits of the Continental Shelf (“CLCS”) to enlarge the existing limits of the Russian Arctic Zone, based on the Lomonosov Ridge as an extension of Russian territory.<sup>99</sup> The ridge, which spans 1,240 kilometers,<sup>100</sup> runs from the Russian Siberian Islands through the central part of the Arctic Ocean to the Canadian Arctic Islands.<sup>101</sup> If included as an extension of the Eurasian continent by the CLCS, Russia would have valid claim to an additional 1.2 million square kilometers of Arctic territory<sup>102</sup> and the new shipping channel that has been exposed by the melting snow and ice.<sup>103</sup> Under UNCLOS, this would give Russia claim to the mineral rights contained within this territory, which includes the North Pole—referred to as a modern day “gold rush” because of the copious amounts of not only gold, but also natural gas and oil.<sup>104</sup>

Russia’s claim is refuted by Denmark, which argues that the Lomonosov Ridge is actually an extension of Greenland and that the mineral rights are therefore Danish under UNCLOS.<sup>105</sup> Canada made similar claims based on the ridge’s geographic relation to Canada’s Ellesmere Island.<sup>106</sup> The CLCS neither accepted nor rejected the Russian

96. 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. 329, 335 (2007) (quoting Peter Croker, Chair, Comm’n on the Limits of the Continental Shelf).

97. *See id.*

98. UNCLOS art. 76, ¶ 8, 1833 U.N.T.S. 429. UNCLOS establishes the Commission on the Limits of the Continental Shelf (“CLCS”), a scientific body which arbitrates territorial sea claims. Under the process outlined by UNCLOS, after a country ratifies the treaty, it has ten years to submit a claim to CLCS. The claim should include scientific research and “evidence that the Arctic seafloor’s underwater ridges are not a separate feature from the country’s continental shelf but, rather, are simply geological extensions of the shelf.” Jacquelyn Coston, *What Lies Beneath: The CLCS and the Race to Lay Claim over the Arctic Seabed*, 3 ENVTL. & ENERGY L. & POL’Y J. 149, 151 (2008) (footnote omitted). Once the claim is submitted, it may take CLCS a few more years to make a determination. *Id.*

99. Carolyn Gramling, *Cold Wars: Russia Claims Arctic Land*, GEOTIMES, Aug. 1, 2007, <http://www.geotimes.org/aug07/article.html?id=WebExtra080107.html>.

100. Barry Hart Dubner, *On the Basis for Creation of a New Method of Defining International Jurisdiction in the Arctic Ocean*, 13 MO. ENVTL. L. & POL’Y REV. 1 (2005).

101. *Id.*

102. *Id.*

103. Dubner, *supra* note 100, at 1.

104. *Gold Rush under the Ice*, ECONOMIST, Aug. 3, 2007, <http://www.economist.com/node/9607005>.

105. Gramling, *supra* note 99; Dubner, *supra* note 100, at 1.

106. *Id.*

proposal, but requested additional scientific information.<sup>107</sup> Subsequently, Russia embarked on new geological research via submarine to present to the ISA, which will evaluate the research and make a final recommendation to the CLCS.<sup>108</sup>

Despite lack of conclusive findings or endorsement by the ISA or CLCS, in 2007 a team of Russian scientists traveled in a mini-submarine to plant a rust-proof, titanium-submersible flag of Russia in the seabed 14,000 feet below the North Pole,<sup>109</sup> signaling to the world its territorial claim.<sup>110</sup>

### C. *The United States Reconsiders UNCLOS*

The disputed region's proximity to Alaska and the Arctic's untapped resources<sup>111</sup> renewed interest in U.S. ratification of UNCLOS as negotiations between disputing countries began.<sup>112</sup> On May 15, 2007, President George W. Bush explicitly endorsed U.S. ratification for the first time, urging Congress to act quickly and favorably.<sup>113</sup> Following the President's statement, on October 31, 2007, Foreign Relations Committee Chair Senator Joseph Biden announced that ratification of UNCLOS

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107. The 2002 CLCS report concluded that "the scientific evidence presented in the proposal [for extending Russia's Arctic territory] was insufficient for a final determination and recommended that Russia submit a revised version." Coston, *supra* note 98, at 153 (footnote omitted).

108. Gramling, *supra* note 99. Prior to the 1982 Convention on the Law of the Sea, the International Court of Justice decided the *North Sea Continental Shelf* cases, centering around disputes about the limits of the continental shelf in the North Sea between Germany and Denmark and Germany and the Netherlands. See *North Sea Continental Shelf* (F.R.G. v. Den. & F.R.G. v. Neth.), 1969 I.C.J. 3 (Feb. 20). The Court adopted the "fundamental concept of the continental shelf as being the natural prolongation of the land domain [of a coastal State]," *id.* ¶40, and stated that this prolongation was a natural extension of the state's domain, so that the continental shelf is "actually part of the territory over which the coastal State already has dominion." *Id.* ¶43. UNCLOS incorporated this ruling into article 76, defining a nation's territory as encompassing the more distant of either "the natural prolongation of [a nation's] land territory to the outer edge of the continental margin, or . . . a distance of 200 nautical miles," UNCLOS, art. 76, ¶1, 1833 U.N.T.S. 428, and stating that the continental margin "ends at the reach of the slope and the rise of the shelf, excluding the deep floor." Dubner, *supra* note 100, at 9 n.111.

109. *Russia Plants Flag on Arctic Floor*, CNN.COM, Aug. 4, 2007, <http://www.cnn.com/2007/WORLD/europe/08/02/arctic.sub.reut/index.html>.

110. See *id.* Media called Russia's actions a "publicity stunt" and Canadian Prime Minister Stephen Harper reiterated Canada's commitment to "emphasis on reinforcing, on strengthening our sovereignty in the Arctic." Coston, *supra* note 98, at 154 (quoting *Canada PM Asserts Arctic Claims*, BBC NEWS, Aug. 10, 2007, <http://news.bbc.co.uk/2/hi/americas/6939732.stm>).

111. The Arctic's riches "may include 10 billion tonnes of oil and gas deposits, tin, manganese, gold, nickel, lead, platinum and diamonds, plus fish and perhaps even lucrative freight routes." *Gold Rush under the Ice*, *supra* note 104.

112. See *id.*; see also Gramling, *supra* note 99.

113. Statement of the President, *supra* note 4.

would be the Committee's lead agenda item.<sup>114</sup> In his statement, Biden reiterated the arguments for U.S. accession, including military,<sup>115</sup> economic,<sup>116</sup> and diplomatic<sup>117</sup> benefits to the United States. Despite renewed U.S. interest in UNCLOS, it sunk in the Senate once again.

Despite the numerous defeats for UNCLOS ratification, President Bush tried once more to revive favorable interest in the treaty during the final days of his administration.<sup>118</sup> President Bush issued a directive to U.S.

114. Senator Joseph Biden, Remarks at the Senate Foreign Relations Committee Business Meeting to Consider the Convention on the Law of the Sea 1 (Oct. 31, 2007) (transcript available at <http://oceanlaw.org/downloads/references/senate/Biden-31Oct07.pdf>). After explicitly setting reconsideration of UNCLOS as the Committee's lead agenda item for the session, Biden personally endorsed ratification:

The Convention is long and complex, but for the United States, I believe the choice is relatively simple.

Do we join a treaty that establishes a framework to advance the rule of law on the oceans, that is clearly in our military, economic, and environmental interests, and that has broad acceptance among the major maritime powers? Or do we remain on the outside, to the detriment of our national interests? I strongly believe that we should become a party to the Convention and that any risks it poses are far outweighed by the benefits.

*Id.*

115. On the military benefits of the U.S. accession, Biden stated:

[T]he treaty codifies key rights of navigation on which the United States Navy relies. The opponents of the Convention contend that we can use customary international law, and the military muscle of the Navy, to protect our navigational interests. This argument is curious, coming as it does from people who often question whether there is such a thing as customary law. More to the point, however, customary law is less stable, and commands less respect among nations, than rights firmly established by treaty. I think we owe our armed forces a firm legal footing as we project power around the globe.

*Id.* at 1–2.

116. On the Convention's economic benefits:

Prominent among [the treaty's benefits] is a means to firmly establish our legal claims to the resources on the continental shelf beyond 200 nautical miles; off the coast of Alaska, our shelf may extend for 600 miles. The oil and gas industry is unanimous in support of the Convention, as they seek the legal certainty needed to invest the dollars necessary to extract resources from the shelf.

The Convention establishes a legal regime to govern deep seabed mining in a manner that satisfies all the objections of President Reagan. Among other things, it abolishes mandatory technology transfer requirements, gives the United States a permanent seat on the Council of the International Seabed Authority . . . .

*Id.* at 2.

117. On U.S. diplomacy:

The coalition of supporters also includes both of President Reagan's Secretaries of State, Al Haig and George Shultz; his National Security Advisers, Bud McFarlane and Colin Powell; and his Secretary of Treasury and Chief of Staff [James] Baker. It was also supported by his Chairman of the Joint Chiefs of Staff, Admiral William Crowe . . . .

*Id.*

118. Stephen Power, *Bush Moves to Update U.S. Policy in Arctic Region*, WALL ST. J., Jan. 8, 2009, [http://online.wsj.com/article/SB123146453521166747.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB123146453521166747.html?mod=googlenews_wsj).



agencies to better define the U.S. territorial limits in the Arctic zone, due to concerns over climate change and competitive interests in the region.<sup>119</sup>

#### V. WHAT NON-RATIFICATION MEANS FOR THE UNITED STATES

Though the United States lacks the ability to submit claims to enlarge its coastal territory until it ratifies UNCLOS, some commentators stress that because of the length of the ISA and CLCS review process, the United States might not be out of the running for these Arctic treasures quite yet.<sup>120</sup> In the meantime, however, the UNCLOS member nations of Canada, Denmark, Finland, Iceland, Norway, Sweden, and Russia are all currently competing for these valuable overlapping rights.<sup>121</sup> While these countries may begin evaluation by the ISA of their claims at any time, the United States continues to have its hands tied—unable to use the ISA procedure (the only treaty-sanctioned procedure) until it ratifies UNCLOS.

While progress on UNCLOS ratification has been stalled in the Senate for almost twenty-five years, the change in presidential administration in 2009 may ignite a new push for ratification. Former Senate Foreign Relations Chair Biden, a vocal supporter of UNCLOS, will be influential in foreign policy as Vice President.<sup>122</sup> During his campaign, President Barack Obama also showed his support for ratification.<sup>123</sup> In addition, Senator John Kerry, who assumed leadership of the Foreign Relations

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119. *Id.* White House spokesman Gordon Johndroe states that the purpose of the directive is to “recognize that the U.S. has important and strategic interests in the Arctic region. . . . Many countries have been aggressively pursuing their interests in the Arctic . . . . The U.S., as an Arctic nation, has competitive interests in the region, and we need to be a player there along with all the other Arctic nations.”

*Id.*

120. Coston, *supra* note 98, at 154. Coston argues that “[d]ue to the lengthy CLCS review process, oil and gas drilling activity in the extended continental shelf regions by any country is likely a long way away.” *Id.*

121. Dubner, *supra* note 100, at 7.

122. See generally Christina Bellantoni, *Biden’s Strength in Foreign Policy Recruited by Obama*, WASH. TIMES, May 30, 2008, at A1.

123. When asked about his plans on protecting ocean health, then-Senator Obama responded:

The oceans are a global resource and a global responsibility for which the U.S. can and should take a more active role. I will work actively to ensure that the U.S. ratifies the Law of the Sea Convention—an agreement supported by more than 150 countries that will protect our economic and security interests while providing an important international collaboration to protect the oceans and its resources.

Karen Kaplan, *In Another Debate, Candidates Weigh In on Science*, L.A. TIMES, Sept. 27, 2008, at A9.

Committee after Biden's departure, has shown support for ratification efforts.<sup>124</sup>

## VI. CONCLUSION

In light of a global climate crisis and the escalating battle over the valuable resources below the North Pole, Congress should make ratification of UNCLOS one of its top priorities. Until the United States is a treaty member, it cannot enjoy voting privileges on the influential ISA (on which it would be granted a permanent seat) nor submit claims to the CLCS to gain legal rights to the resources in the North Pole's seabed. The concerns that influenced President Reagan not to sign the treaty in 1982 have largely disappeared, and the remaining concerns are easily refuted. U.S. ratification of UNCLOS makes sense not just for economic, national security, and environmental reasons, but also to enhance the diplomatic standing of the United States. Accession to UNCLOS now would be a powerful and meaningful gesture on behalf of the United States, symbolizing a recommitment to global cooperation.

*Elizabeth M. Hudzik\**

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124. After a May 5, 2009, SRFC roundtable on UNCLOS, Senator Kerry stated, "[The Law of the Sea treaty] is very interesting to me. It is very challenging, but it is also very urgent. We need to get on this fast." Allison Winter, *Senator Kerry Looks for a Window to Ratify the Law of the Sea*, N.Y. TIMES, May 7, 2009, <http://www.nytimes.com/gwire/2009/05/07/07greenwire-sen-kerry-looks-for-window-to-ratify-law-of-th-12208.html>.

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