

THE SENATE SHOULD GIVE IMMEDIATE
ADVICE AND CONSENT
TO THE LAW OF THE SEA CONVENTION:

WHY THE CRITICS ARE WRONG

BY

JOHN NORTON MOORE
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I. *Introduction*

As national security professionals who have spent much of our lives working on oceans and security issues, we believe that Senate advice and consent to ratification of the Law of the Sea Convention is strongly in the national interest of the United States. Elsewhere we have each testified at length as to why advice and consent is urgently needed.¹ This short paper, which supplements our earlier testimony, is motivated by our mutual concern that arguments being spread against the treaty are simplistic and erroneous.

Not only are specific arguments advanced against the treaty wrong, but even more importantly, the critics ignore the powerful reasons for United States adherence, including that the 1982 Convention supersedes the far less favorable 1958 Conventions currently in force for the United States. This response will first briefly summarize a few of the broader issues ignored by the critics and will then address erroneous arguments or “myths” being advanced against the Convention.

We respect the privilege of all Americans to disagree with their elected officials. It is only through a full exchange of views that truth emerges. And some

¹ See Ambassador John Norton Moore’s testimony before the Senate Foreign Relations Committee: Senate Advice and Consent to the Law of the Sea Convention: Urgent Unfinished Business (October 14, 2003); testimony before the Senate Committee on Armed Services: Senate Advice and Consent to the Law of the Sea Convention: United States Security Interests (April 8, 2004); testimony before the House Committee on International Relations: United States Adherence to the Law of the Sea Convention: A Compelling National Interest (May 12, 2004).

See Admiral William L. Schachte Jr.’s testimony before the Senate Foreign Relations Committee (October 14, 2003); testimony before the Senate Committee on Armed Services: Senate Advice and Consent to the Law of the Sea Convention (April 8, 2004); testimony before the Senate Select Committee on Intelligence: Senate Advice and Consent to the Law of the Sea Convention: U.S. Accession to the Law of the Sea Convention (June 8, 2004).

of the critics are personal friends. Perhaps, as Churchill said, we should “not resent criticism, even when, for the sake of emphasis, it parts for the time with reality.” Nevertheless, the critics are wrong in their opposition to the Law of the Sea Convention and we cannot stand idly by while myths are advanced against a treaty of the utmost importance for the national security of this Great Nation.

II. The Broadest Context Ignored by the Critics

As we have testified elsewhere there are powerful affirmative reasons rooted in restoring United States oceans leadership, protecting United States oceans interests, and enhancing United States foreign policy, which strongly support United States adherence to the Convention. For example, we will be in a stronger position to respond to illegal oceans claims such as the People’s Republic of China harassment of the Navy’s ocean survey ship *USNS Bowditch*. And we will be able to move forward more rapidly with development of oil and gas resources beyond 200 nautical miles (approximately 15 percent of our continental shelf), require United States approval of any transfer of seabed revenues, and reclaim for the United States prime deep seabed mining sites now abandoned. Further, adhering to the Convention will finally give the United States an opportunity to officially declare its views as to the correct operation of the Convention. This will end the more than decade long self-imposed silence of the United States in the face of vocal efforts by extremist opponents to roll back gains achieved in the Convention.

The critics show no understanding of the continuing struggle of the United States as a major maritime state for the protection of navigational freedom. Yet controlling unilateral coastal state claims against United States shipping, both military and commercial, is a core oceans issue truly at stake for the United States. In this respect, the Convention is the most important achievement for the protection of our critical naval and commercial shipping interests in the history of the nation. For example, the new provisions for protection of straits transit passage and archipelagic sea lanes passage, and the improved provisions for innocent passage in the territorial sea are of the utmost importance for United States naval mobility. The United States negotiating team achieved a great victory for our nation in these provisions that the critics seem not to understand. By second guessing our naval experts, the critics would have us snatch defeat from the jaws of victory. Paradoxically, by opposing the Convention, they would be reinforcing the views of Third World nations the United States defeated in the negotiations. We must also never forget that thousands of military men and women of the United States who have volunteered to go in harm’s way depend on the navigation

and overflight provisions guaranteed in the Convention. As General Richard B. Myers, the Chairman of the Joint Chiefs of Staff, recently unequivocally stated “The Convention remains a top national security priority.” See Annex II.

The critics show little understanding of the realities of achieving and protecting the rule of law in the world’s oceans. They simplistically seem to believe that American interests will be protected by just shooting our way around the oceans rather than developing a stable and favorable rule of law that provides the basis for our naval and air operations that we are then prepared to defend with force if necessary. The United States is simply not going to shoot our way to acceptable resolution of oceans disputes with Canada, Chile, Brazil, India, Italy and other democracies. Nor is it in the slightest realistic to ignore the effect of law and agreement in our interaction with others. It is simply hubris to believe we can ignore the law without consequences for the behavior of other nations in turn ignoring the law and affecting our interests in important ways. Ironically, at a time when the President of the United States is urging others toward the rule of law as a core foreign policy interest of the United States, the critics voice only disdain for that principle.

The critics present a simplistic view of the Convention as a Soviet Third World conspiracy for the redistribution of wealth or for first steps in world government. The United States and the Soviet Union both sought new provisions on protection of navigation through straits to protect strategic interests in naval mobility long before any Third World interest in a deep seabed mining “common heritage of mankind.” And the Soviets, as a major maritime power, supported the United States – and opposed the “Group of 77” Third World states – on almost every major issue in the negotiation. Deep seabed mining, which briefly encouraged Third World dreams of ocean riches, was only one among many critical oceans issues in the negotiations, including navigational freedom, fisheries, oil and gas, telecommunications, ocean surveys, scientific research and environmental protection. Almost all of the issues were decided on bottom line national interests, such as whether a nation was a distant water or coastal fishing nation, or did or did not have a large continental shelf off its coast, rather than on Third World “New Economic Order” principles. True, the original deep seabed mining negotiations in the 1970s did reflect this Third World view, although the protectionist interests of land-based mineral producers were at least equally important in this difficult negotiation. But when the Reagan Administration refused to accept a deep seabed mining regime tainted with the “New Economic Order” it was renegotiated to reflect market principles – and the renegotiation, concluded in 1994, met every one of the Reagan conditions and then some. There was no mystery in this renegotiation; the world simply changed in the aftermath of the collapse of the Soviet Union and the damage done to developing countries by the double oil shock of the 1970s. Even more laughable is the charge of a conspiracy for world government. For the reality was a Convention expanding *national* sovereign rights more than any international agreement in history. The

central thrust of the Convention is an expansion of *coastal nation* resource and economic rights in a vastly expanded exclusive economic zone and continental shelf while also fully protecting sovereign rights in navigational freedom. No, the corridors of the law of the sea negotiation were predominantly filled with thoughts of nationalism rather than internationalism. And ironically, in their attack against the Convention, the critics join extreme internationalists who have been the principal opponents of the Convention because of its focus on national sovereign rights.

The critics complain of provisions requiring submarines to surface and show their flag in the territorial sea, limiting rights to board foreign flag ships, and similar provisions. But apparently out of ignorance they never disclose that such provisions are *already binding* on the United States pursuant to the 1958 Geneva Conventions ratified with the advice and consent of the Senate almost a half-century ago and with which we have lived since. Nor do the critics note the reciprocal nature of the law. Provisions protecting against overly broad boarding are there precisely to protect the sovereignty of America's flag ships on the high seas. And do the critics *really* want Chinese submarines submerged off the beaches of New York or Los Angeles? Most importantly, the critics fail to note that the 1982 Convention has powerfully improved the 1958 Law of the Sea Conventions to meet current United States resource and strategic needs. Arguments against the Convention that ignore the 1958 Conventions as treaty obligations of the United States effectively are arguments to keep the now outdated 1958 Conventions and to forego the new strategic rights of transit passage through straits, archipelagic sea lanes passage, the improved regime of innocent passage, and many other issues critical to U.S. national security and ocean interests.

The critics fail to acknowledge that the Convention deals with the peacetime law of the oceans. It is the law concerning the inherent right of self-defense or the law of war that applies to actions against terrorists. Quite apart from any provision of the Law of the Sea, the right of self-defense under international law would, of course, always permit the United States to intercept a shipment of weapons of mass destruction on the way to a terrorist group for use against the United States.

The critics fail to understand that the negotiations leading to the 1982 Convention were an enormous success for the United States. The United States was by far the most influential player in the negotiations, not the Soviets or the Third World, and every strategic objective of the United States was met in the original 1982 Convention except the regime governing deep seabed mining, which was met in the 1994 renegotiation enabling United States support. The critics would set aside one of the most important United States negotiating successes of the twentieth century – achieved in many cases over the very Third World objections said by the critics to underlie the convention.

The critics evince little knowledge of international law or oceans law and as a result sometimes make arguments contrary to U.S. interests. For example, some have argued that the provision in Article 88 of the Convention limiting use of the high seas for “peaceful purposes” would constrain United States warships or prevent military activities on the high seas. But in making this argument they are unknowingly adopting the “old” Soviet line – no longer even embraced by Russia – and which was never supported by the United States. During the Law of the Sea negotiations the United States representative accurately described the “peaceful purposes” language when he said:

The term “peaceful purposes” did not, of course, preclude military activities generally. The United States had consistently held that the conduct of military activities for peaceful purposes was in full accord with the Charter of the United Nations and with the principles of international law. Any specific limitation on military activities would require the negotiation of a detailed arms control agreement.

Indeed, in their zeal to come up with complaints about the Convention, the critics are promoting an interpretation of this language that may be cited by opponents of U.S. space-based missile defense programs in years ahead. Thus, the implication of the critic’s argument beyond law of the sea would be to ban space-based ballistic missile defense systems for the United States because of our adherence to the Outer Space Treaty that contains the same “peaceful purposes” language. And the most simple comparison against the yardstick of the real world refutes this argument made by the critics by showing warships of every major power freely navigating the world’s oceans despite the Convention being in force for 148 nations. Moreover, the Senate Text of the Resolution of Advice and Consent to Ratification approved by the Foreign Relations Committee specifically provides: “The advice and consent of the Senate under section 1 is subject to the following . . . understandings: (1) The United States understands that nothing in the Convention, including any provisions referring to ‘peaceful uses’ or ‘peaceful purposes,’ impairs the inherent right of individual or collective self-defense or rights during armed conflict.” But never mind that this argument of the critics is nonsense on stilts and rooted in ignorance of law, if it sounds plausible in a smokescreen of charges against the Convention, make it! Yet another critic asserts based on ignorance of law that the language in Article 301 that Parties “should refrain from any threat or use of force against the territorial integrity or political independence of any state” would prevent the United States from taking the defensive actions it took in Afghanistan following the September 11, 2001, attacks or taking action in a future defense of Korea or Taiwan. This argument not only fails to understand that Article 301 simply paraphrases an obligation under Article 2(4) of the United Nations Charter already binding on every nation in the world, but it also implicitly and erroneously agrees with America’s most extreme critics

that such perfectly lawful defensive actions are illegal. Again, such an interpretation is nonsense!

The critics seem to suggest that if only the United States would refuse to adhere, the Convention will go away. But the Convention is already in force for 148 nations, is acknowledged by the United States as a reflection of customary law, and is the core of modern ocean law. United States continued non-adherence would not, for example, end the International Seabed Authority, but would merely disenfranchise the United States and remove our veto over potential distribution of seabed mining revenues. Every major developed nation is a party. All other NATO members except Turkey are parties. And all other permanent members of the Security Council are parties. Only the United States, among major maritime nations, is not yet a party.

The critics sometimes advance “conspiracy” or “personality” theories that the president has been hoodwinked by Vice President Cheney, military holdovers from the Clinton Administration, or unnamed “special interests.” But such charges ignore the reality of what is almost certainly one of the most careful processes for determining United States national interests in any area of foreign policy: United States negotiating instructions during the Nixon and Ford Administrations were developed by an eighteen agency task force specially set up within the National Security Council by presidential order to ensure full vetting of national interests. And this process included an almost 100 member private sector advisory committee representing every oceans interest of the United States as well as representatives of the Senate. A similar methodology was employed by subsequent administrations. Indeed, there has probably never in the history of the nation been a process for as thorough vetting of the national interests on any complex issue of foreign policy as was the case under the NSC Interagency Task Force on the Law of the Sea. Subsequently, the Reagan Administration conducted a multi-year full interagency review which concluded that the provisions of the Convention other than those on seabed mining were in the national interest. The Clinton Administration then conducted a review before submitting the Convention, with its renegotiated part XI on deep seabed mining, to the Senate in 1994. And, most recently, the Bush Administration conducted careful reviews before twice recommending the Convention to the Senate on its top priority list of treaties for Senate approval. This Bush Administration review included an exhaustive Defense Department review of every objection raised by anyone, no matter how remote the risk, and careful interagency review of recommended United States statements for the proposed Senate resolution of advice and consent. For more than a quarter century the Joint Chiefs of Staff and the Navy, fully understanding our strategic needs for naval mobility, have been among the strongest supporters of the Convention. We also note that recently high-level Administration officials have strongly supported United States’ accession to the Convention. These officials have included Condoleezza Rice, in her confirmation hearing as Secretary of State, and John Bellinger, in his confirmation hearing as Legal Adviser of the

Department of State. Further, even John Bolton, in his confirmation hearing as United States Ambassador to the United Nations, testified that he supports the Administration's decision to make accession to the Convention a priority.

The critics urge that the Convention will turn the world's oceans over to the United Nations. To the contrary, the Convention establishes coastal nations' control over the principal resources of the oceans while protecting freedom of navigation. The United Nations has no decision authority over any oceans issue under the Convention and no organization created is a branch of the United Nations. Rather, the three strictly limited organizations created report to the States parties to the treaty, not the United Nations. As with many arms control agreements of the United States, the negotiations proceeded under United Nations auspices. It was individual nations, however, who developed the Convention, not the United Nations. And the negotiations leading to the Convention were supported by the United States precisely because of its strategic and resource interests in the oceans. The real threat to United States ocean interests has been out-of-control coastal state "unilateralism" sometimes referred to as "creeping jurisdiction." This is a threat for which multilateral negotiations provided the best forum for protecting core U.S. oceans interests – and the great success of the United States in this negotiation bore this out.

The effort of the critics, if even erroneously, to "tar" the treaty through equating it with the United Nations is also a simplistic argument in relation to United States interests toward the United Nations. The United Nations, of course, has serious deficiencies and lapses, the now-repealed infamous "Zionism as Racism" resolution is one such example. But in other respects the United Nations has served United States interests well, supporting United States actions in the Korean and Gulf Wars, delimitation of the boundary between Iraq and Kuwait after the Gulf War and substituting Canadian for United States forces in Haiti after the United States went into Haiti. The availability of the United Nations facilities for negotiating law of the sea issues – and rebutting out-of-control coastal state unilateralism threatening U.S. navigational interests – unequivocally served United States national interests.

The totality of argument from the critics is a denigration of law: they seem implicitly to urge that any international agreement is an unwelcome infringement of sovereignty of the United States. But to the contrary agreements are an exercise of sovereignty of this Great Nation. President George Washington regarded the Jay Treaty with Great Britain as the most important achievement of his administration. No one accepts a loss of United States sovereignty. At the same time, one of our most important sovereign rights is our legal ability to enter into agreements – just as individual citizens in our own country have a right to agree to contract with one another. In fact, it is only children and the mentally incompetent who have no right to contract – thus truly losing some of their "sovereignty." To deny our government the right to enter into agreements with other nations would deprive it of one of the most fundamental rights of sovereignty and leave us with

few options short of expending the lives of our armed forces to establish and enforce our rights. It should also be understood that under the Constitution of the United States national sovereignty, meaning our national freedom of action, can never be lost through an international agreement. It is well-accepted foreign relations law of the United States that a subsequent act of Congress can override a prior international agreement for purposes of national law. Further, the critics fail to mention that precisely because we do always retain our national sovereignty the United States remains free to withdraw from the Convention.

The critics argue that the Convention has not had adequate consideration by the Senate. But again this ignores a process of Senate, and even House consideration, far beyond that for most treaties, including the SALT I arms control treaty, and the four 1958 law of the sea treaties currently binding on the United States. Thus the Senate Foreign Relations Committee held a full committee hearing on the Convention in 1994 even before it was submitted by the President to the Senate. And last year, *after a decade in which the Convention was before the Senate*, full committee hearings were held on the Convention before the Senate Foreign Relations Committee, the committee of principal jurisdiction. All members of the Senate Foreign Relations Committee then supported the Convention unanimously by a vote of 19-0. The Senate Committee on Environment and Public Works, the Senate Armed Services Committee, the Senate Select Committee on Intelligence, and even the House International Relations Committee (which has no role in treaty advice and consent) also held full committee hearings. The argument for more hearings is in fact a transparent tactic urged by critics of the Convention to kill it through delay. They correctly understand that whenever the Convention is taken to a Senate vote it will be overwhelmingly approved.

Finally, the critics brush aside the consensus among affected oceans interests and knowledgeable oceans experts in the United States in favor of their own judgment as persons admittedly lacking expertise in international law or the operational aspects of oceans policy of the United States and representing no United States oceans interest. Indeed, almost no conventions have been so unanimously supported by knowledgeable experts and affected interests. Support includes every president of both parties who has considered the Convention subsequent to the successful renegotiation of Part XI on deep seabed mining in 1994, every Chairman of the Joint Chiefs from the Nixon Administration to today, all military services from the Nixon Administration until today, all of the Combatant Commanders, every Secretary of State from the Nixon Administration until today, every affected American oceans interest from the oil and gas industry, fisheries interests, shipping, oceanic cables, marine scientists, and environmentalists. Most recently, the congressionally established United States Oceans Commission and the new Bush Administration Oceans Interagency Task Force each *unanimously* recommended Senate advice and consent. As Senators consider advice and consent they might want to ask who they trust more for

national security advice – every Chairman of the Joint Chiefs, the Combatant Commanders of our united geographic commands and the consistent view of the Navy since the Nixon Administration, or those few who admittedly are not naval, oceans, or international law experts. Further, how can the totality of United States agencies, military departments and private sector oceans industries and interests constitute a “special interest” as charged by the critics? By what criteria are the most vocal critics *not* special interests?

III.

Setting the Record Straight: Specific Myths Advanced Against the Convention²

A. MYTHS CONCERNING NATIONAL SOVEREIGNTY

- **Myth: The United States is giving up sovereignty to a new international authority that will control the oceans.** Nothing could be further from the truth. The United States does not give up an ounce of sovereignty in this Convention. Rather, as just noted, the Convention solidifies a truly massive increase in resource and economic jurisdiction of the United States, not only to 200 nautical miles off our coasts, but to a broad continental margin in many areas even beyond that. The new International Seabed Authority created by this Convention, which, as noted, has existed for a decade and will continue to exist regardless of United States actions, deals solely with the mineral resources of the deep seabed beyond national jurisdiction. It has nothing to do with the water column above the seabed. The deep seabed is an area in which we not only have no sovereignty but also in which we and the entire world have consistently opposed extension of national sovereignty claims. Moreover, to mine deep seabed minerals requires security of tenure for the billion dollar plus costs of such an operation. Our industry has emphatically told us that they can not mine under a “fishing approach” in which everyone simply goes out to seize the minerals as the critics seem to suggest. Rather, they must have both exclusive rights to mine sites – and international recognition of titles to the minerals recovered – requirements that led to a limited international agency to provide security of tenure and title for mineral resources

² A list of myths (with page reference to the specific myth and response) is appended to this paper (Annex I).

of the seabed beyond national jurisdiction and otherwise owned by no one. The Authority was a necessary specialized agency, of strictly limited jurisdiction, to deal with this need for security of tenure and stable property rights so that investors may securely amortize their debt. Quite contrary to the recent testimony of one critic before the Senate Committee on Environment and Public Works, the Seabed Authority would not have “the exclusive right to regulate what is done, by whom, when and under what circumstances in subsurface international waters and on the sea-floor.” Rather, the Authority is a small, narrowly mandated specialized international agency that, emphatically, has no ability to control the water column and only has functional authority over the mining of the minerals of the deep seabed beyond national jurisdiction. Again, this is a necessary requirement for seabed mining, in an area beyond where any nation has sovereignty, to provide security of tenure to mine sites, without which mining will not occur. Without adherence to the treaty America will simply lose its deep seabed mine sites, the best in the world, and our seabed mining industry will be permanently deep sixed.

- **Myth: U.S. adherence will entail history’s biggest voluntary transfer of wealth and surrender of sovereignty.** To the contrary, the Convention enhances not only sovereignty of United States military ships and aircraft, but also bolsters our resource jurisdiction over a vast area off the coasts of the United States. In fact, the Convention supports the sovereign rights of the United States over extensive maritime territory and natural resources off its coast, including a broad continental shelf that in many areas extends well beyond the 200-nautical mile limit. The area of resource jurisdiction confirmed under national control of the United States by this Convention is approximately equal to that of the continental United States and exceeds the area of the Louisiana purchase, the purchase of Alaska or any other addition to United States sovereignty in American history. It is also the most extensive of any nation in the world. The mandatory technology transfer provisions of the deep seabed mining part of the original Convention, an element of the Convention that the United States objected to, were eliminated in the 1994 Agreement. Any transfer of funds to nations from deep seabed mining revenues, or oil and gas development beyond 200 miles, is subject to a United States veto. As such, we not only have a veto over where revenue from our seabed mining would go, but also from that of all other nations in the world. This new power is simply lost if we fail to adhere.

B. MYTHS CONCERNING THE UNITED NATIONS

- **Myth: The Convention would turn the oceans over to the United Nations.** Completely and utterly false. Not a drop of oceans water nor an ounce of oceans resources would be turned over to the United Nations. To the contrary, the Convention disappointed extreme internationalists who believed in “blue helmet” solutions to oceans issues. It placed all coastal resources of the water column and the continental shelf under coastal nation rather than international jurisdiction. And it maintained and strengthened freedom of navigation on the world’s oceans. These critical issues in the negotiation, by far the most important at stake, both hugely strengthened *national sovereign rights*. Even the International Seabed Authority that the Convention creates is an independent international authority, supported by the United States, as necessary to provide stability of property rights to deep seabed minerals not owned by any nation. Without such an authority *providing exclusive property rights* to seabed mine sites of the deep ocean floor, seabed mining, including U.S. mining in the oceans, would never be realized. And remember that this body is limited to the mineral resources of the deep seabed *beyond national jurisdiction* that have yet to be mined, in contrast with the billions of dollars in economic value in the fisheries and oil and gas of the continental margins, all placed under national jurisdiction.
- **Myth: The Convention “is designed to place fishing rights, deep-sea mining, global pollution and more under the control of a new global bureaucracy”** This is so erroneous as to be humorous if it were not so seriously and repeatedly advanced by the critics. The Executive Branch that led U.S. negotiations on the Convention and that is supporting Senate Advice and Consent would never have supported such nonsense. The International Seabed Authority deals solely with mineral resources beyond national jurisdiction, not with fishing, not with global pollution and not with navigation – or even activities in the water column. It is necessary in order to create enforceable rights to mine sites not owned by any nation as required if United States mining firms are ever to mine the deep seabed. The United States is already party to hundreds of specialized international organizations. The Seabed Authority would add an unremarkable one more. Indeed, one more that even after ten years of operation today still has a staff of only thirty-five.

- **Myth: The Convention gives the United Nations its first opportunity to levy taxes.** False. The Convention does not provide for or authorize taxation of individuals or corporations. It does include modest revenue sharing provisions for oil/gas activities on the continental shelf beyond 200 miles after the first five years of production and certain fees for deep seabed mining operations. The oil/gas fees are less than the royalties paid to foreign countries for drilling off their coasts and none of the revenues go to the U.N. These *de minimus* revenues, averaging between two and four percent over the projected life of a well, were a small price to pay for enlarging the U.S. continental shelf by 15 percent – an area larger than the state of California. This is one of the reasons the U.S. oil and gas industry so strongly supports the Convention. With respect to deep seabed mining U.S. companies applying for deep seabed mining licenses would pay the application fee directly to the Seabed Authority; no implementing legislation would be necessary. U.S. consent – that is its veto would be applicable – would be required for any transfer of such revenues. With respect to deep seabed mining, because the United States is a non-party, U.S. companies currently lack the ability to engage in such mining under U.S. authority. Becoming a Party will give our firms such ability and will open up new revenue opportunities for them when deep seabed mining becomes economically viable. The alternative is no deep seabed mining for U.S. firms, except through other nations who are Convention parties. When the Interior Department charges royalties to American oil companies for development of the oil and gas from our continental shelf it is not exercising a “taxing power,” rather it is selling access to an asset. Similarly, royalties paid for access rights to deep sea mineral resources are not a “tax” on the American taxpayers anymore than such royalties paid by U.S. miners to Chile or Indonesia to mine resources there are such a “tax.” Perhaps most importantly, until the United States accedes to the Convention it will not be able to exercise its veto over distribution of revenues from every other nation in the world generated by these provisions. And when we do accede we not only have veto rights over distribution of revenues from U.S. mines but also from all other seabed mines. As such, these provisions greatly expand United States influence over financial aid decisions.

C. MYTHS CONCERNING NATIONAL SECURITY

- **Myth: The Convention is harmful to the Proliferation Security Initiative (PSI).** Again, this is false. The Proliferation Security Initiative has already been negotiated explicitly in conformance with the Convention; and not surprisingly so, since the nations with which we are coordinating in that initiative are parties to the Convention. This charge apparently rests on the false belief that if the United States does not adhere to the Convention it will be free from any constraints in relation to oceans law. Again, a false assumption; we are today a party to the 1958 Geneva Conventions that are much more restrictive than the 1982 Convention now before the Senate. This charge is also misguided in failing to understand the critically important interest we have in protecting navigational freedoms on, in and above the worlds oceans. The Convention allows our vessels to get on station, a capability that is essential before any issue even arises about boarding. Moreover, we emphatically do not want a legal regime that would permit any nation in the world to seize United States commercial vessels anywhere in the worlds oceans. *That* would be a massive loss of U.S. sovereignty! The Proliferation Security Initiative was carefully constructed with parties to the 1982 Convention, using the flag state, port state and other jurisdictional provisions of the 1982 Convention precisely to avoid this problem. Nor is this charge at all realistic in failing to note that nothing in the Law of the Sea Convention could or does trump our inherent rights to individual and collective self-defense. Most recently, we note, Under-Secretary of State John Bolton, a principal architect of the PSI, has testified to the Senate that adhering to the Convention will not harm the PSI.
- **Myth: The Convention would interfere with the operations of our intelligence community.** Having either chaired or participated in the eighteen agency National Security Council interagency process that drafted the United States negotiating instructions for the Convention, we found this charge so bizarre that we recently checked with the Intelligence Community to see if we had missed something. The answer that came back was that they, too, were puzzled by this charge, and there was absolutely no truth to it. We are confident that there is no provision in the Law of the Sea Convention which will, if approved by the Senate, add constraints on the operations of our intelligence community. Indeed, remember in this connection that the United States is already bound by the 1958 Conventions and that since 1983, pursuant to President Reagan's

order, we have been operating under the provisions of the 1982 Convention, other than for deep seabed mining in part XI.

- **Myth: Freedom of navigation is only challenged from “[t]he Russian navy [that] is rusting in port [and] China has yet to develop a blue water capability. . . .”** The implication here is that the principal challenge to navigational freedom comes from major power war or conflict and we do not really have any national concerns at this time about preserving freedom of navigation. But the 1982 Convention deals with the law of peace, not war, or self-defense. Thus this argument misses altogether the serious and insidious challenge, which, again, is what the LOS Convention is designed to deal with; that is, repeated efforts by coastal nations to control navigation, many from allies and trading partners of the United States, which through time add up to death from a thousand pin-pricks. That is the so-called problem of “creeping jurisdiction” that remains the central struggle in preserving navigational freedom for a global maritime power. After years of effort we have won in the Law of the Sea Convention the legal regime that supports our operators in our efforts to control this “creeping jurisdiction.” To unilaterally disarm the United States from asserting what we won in the Convention against illegal claimants is folly and undermines our national security.
- **Myth: U.S. adherence to the Convention is not necessary because navigational freedoms are not threatened (and the only guarantee of free passage on the seas is the power of the U.S. Navy).** Wrong. It is not true that our navigational freedoms are not threatened. There are more than one hundred illegal, excessive claims around the globe adversely affecting vital navigational and overflight rights and freedoms. The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights as reflected in the Convention. On occasion these operations can entail a certain amount of risk – e.g., the Black Sea bumping incident with the former Soviet Union in 1988. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a far stronger position to assert our rights and affording us additional methods of resolving conflict and aligning expectations of behavior at sea.

- **Myth: Friendly relations with the few states that sit astride sea lanes are more likely to protect U.S. navigational rights than an abstract multilateral treaty to ensure passage.** This myth simply does not understand oceans policy. There are not simply a “few” states that “sit astride” sea lanes, rather there are more than 100 straits used for navigation overlapped by a twelve-mile territorial sea. Our difficulties in working with bordering “straits” states shows we were far better off as a party to an international agreement that articulates these rights in a multilateral negotiation in which we would mobilize the major maritime powers of the world against extreme straits states demands. The implication that bilaterally negotiated agreements with straits states is a better way to protect U.S. ocean interests is fundamentally wrong – indeed it is the path to a rapid loss of our sovereign rights to freedom of navigation. This was our bitter experience concerning the Persian Gulf and our reliance on the Shah of Iran to provide stability. Finally, there is nothing “abstract” about the Convention, it protects our navigational rights with greater clarity than ever before in our history.
- **Myth: The Convention was drafted before – and without regard to – the war on terror and what the United States must do to wage it successfully.** An irrelevant canard. It is true that the Convention was drafted before the war on terror. However, the Convention enhances, rather than undermines, our ability to successfully wage the war on terror. Maximum maritime naval and air mobility that is assured by the Convention is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for our forces, weapons, and materiel to get to the fight without hindrance – and ensures that our forces will not be hindered in the future. Thus, the Convention supports our war on terrorism by providing important stability for navigational freedoms and overflight. It preserves the right of the U.S. military to use the world’s oceans to meet national security requirements. It is essential that key sea and air lanes remain open as an international legal right and not be contingent upon approval from nations along the routes. A stable legal regime for the world’s oceans will support global mobility for our Armed Forces.
- **Myth: Obligatory technology transfers will equip actual or potential adversaries with sensitive and militarily useful equipment and know-how (such as anti-submarine warfare technology).** Bunk! No technology transfers are required by the

Convention. Mandatory technology transfers were eliminated by Section 5 of the Annex to the Agreement amending Part XI of the Convention. Further, Article 302 of the Convention explicitly provides that nothing in the Convention requires a party to disclose information the disclosure of which is contrary to the essential interests of its security.

- **Myth: As a nonparty, the U.S. is allowed to search any ship that enters our EEZ to determine whether it could harm the United States or pollute the marine environment. Under the Convention, the U.S. Coast Guard or others would not be able to search any ship until the United Nations is notified and approves the right to search the ship.** Absurdly false! Under applicable treaty law – the 1958 conventions on the law of the sea – as well as customary international law, no nation has the right to arbitrarily search any ship that enters its EEZ to determine whether it could harm that nation or pollute its marine environment. Nor would we want countries to have such a blanket “right,” because it would fundamentally undermine the freedom of navigation that benefits the United States more than any other nation. Thus, the descriptions of both the status quo and the Convention’s provisions are incorrect and seriously misleading. Adhering to the Convention will make no change in our existing ability or authority to search ships entering our EEZ with regard to security or protection of the environment. And under the Convention, the UN *has no role at all*, much less a role in deciding when and where a foreign ship may be boarded.
- **Myth: The Convention would place restriction on antisubmarine sonars to protect whales.** This is false. The Convention’s provisions concerning the environment do not apply to warships that enjoy complete immunity under the Convention. The environmental measures the United States applies to its own warships remain a matter of national law.
- **Myth: The PRC asserts that the Convention entitles it to exclusive economic control of the waters within a 200 nautical-mile radius of its artificial islands - including waters transited by the vast majority of Japanese and American oil tankers en route to and from the Persian Gulf.** Wrong again on both facts and law. The United States Government is not aware of any claims by China to a 200-mile economic zone around its artificial islands. Any claim that artificial islands generate a territorial sea or EEZ would be illegal under the Convention. The Convention specifically provides

that artificial islands do not have the status of islands and have no territorial sea or EEZ of their own.

D. MYTHS CONCERNING PART XI ON SEABED MINING

- **Myth: The Convention would mandate technology transfer and contains other fundamentally non-free market provisions with respect to deep seabed mining in Part XI.** This charge seems to stem from a failure to understand that a series of flawed seabed mining provisions in Part XI of the 1982 Convention, including mandatory transfer of technology, were successfully renegotiated at the courageous insistence of President Reagan. Today, the Convention, as so modified, provides for first-come rights to mine the deep seabed under a joint venture arrangement providing guaranteed access rights to deep seabed minerals. And the renegotiated Part XI even goes beyond the Reagan conditions in adopting the important pro-free-market GATT principle against subsidization of seabed miners. The mining regime adopted by the Authority may well be even more flexible than what we have here at home. But whatever imperfections there may be in the deep seabed regime, it is a certainty that *United States non-adherence has to date, and if continued will permanently, kill all hope of a United States seabed mining industry.* Bankers simply will not lend the billion dollars plus required for a deep sea mining operation without an unchallengeable legal title to the resource.
- **Myth: The problems identified by President Reagan in 1983 were not remedied by the 1994 Agreement relating to deep seabed mining.** Wrong. Each objection was addressed and remedied. Among other things, the 1994 Agreement provides for access by U.S. industry to deep seabed minerals on the basis of non-discriminatory and reasonable terms and conditions; overhauls the decision-making rules to accord the United States critical influence, including veto power over the most important future decisions that would affect U.S. interests; restructures the regime to comport with free-market principles, including the elimination of the earlier mandatory technology transfer provisions and all production controls. The unique, and singular, veto awarded the United States in this renegotiation is of enormous precedential importance to the United States. This is worth repeating: the United States has been singled out in the renegotiation as *the only nation in the world to be given a permanent veto over critical decisions of the Authority.* By

non-adherence we turn our back on this highly favorable development.

- **Myth: The International Seabed Authority has the power to regulate seven-tenths of the earth's surface, impose international taxes, etc.** Nothing could be further from the truth. The Convention does address seven-tenths of the earth's surface, but primarily to affirm coastal nation sovereign rights over resources and freedoms of all nations. However, the International Seabed Authority (ISA) does not apply to seven-tenths of the earth's surface. The authority of the ISA is strictly limited to administering mining of minerals in seafloor areas of the deep seabed beyond national jurisdiction, generally more than 200 miles from the shore of any country. At present, and in the foreseeable future, such deep seabed mining is economically unfeasible. The ISA has no other role and has no general regulatory authority over the uses of the oceans, including freedom of navigation and overflight. The ISA has no authority or ability to levy taxes.
- **Myth: The United States might end up without a vote in the ISA.** Not possible unless we follow the critics' advice and refuse to participate. The Council is the main decision-making body of the ISA. The United States would have a permanent seat on the Council, by virtue of its being the State with the largest economy in terms of gross domestic product on the date of entry into force of the Convention, November 16, 1994. (1994 Agreement, Annex Section 3.15(a)) This would give us a uniquely influential role on the Council, the body that matters most. This is a unique international precedent – *to provide the United States and only the United States with a permanent seat in the Seabed Authority*. It would be folly to reject this precedent.

E. MYTHS CONCERNING DISPUTE SETTLEMENT

- **Myth: United States military activities will be subject to a world court.** There was consensus in the UNCLOS negotiations that military activities should be exempted from dispute settlement. Accordingly, Article 298 of the Convention permits nations to opt out of the dispute settlement provisions for military activities, and under the president's submission, as embodied in the Senate draft resolution of advice and consent, this option is unmistakably

exercised for the United States. Further, the scope of dispute settlement is severely cabined in general. For example, none of the decisions of the United States in relation to access by foreign fishermen to our fish stocks are subject to dispute settlement. In addition, under the president's submission, as embodied in the Senate draft resolution, the United States will be accepting "special arbitration" as our preferred modality of dispute settlement rather than the International Court of Justice (the World Court) or the International Tribunal for the Law of the Sea. The United States is already a party to literally hundreds of international agreements, including more than eighty-five submitting disputes to the International Court of Justice, that provide for compulsory dispute resolution. Recently, the Senate of the United States approved the 1995 agreement implementing certain fisheries provisions of the LOS Convention; an agreement strongly supported by American fishing interests and which contains the dispute resolution procedures decried by the critics. As a result of these agreements concerning dispute resolution, remedies are often available when the rights of the United States or its citizens are violated by other countries. In this connection, compulsory dispute settlement is particularly useful in controlling illegal interference with navigation. Indeed, because of its importance in constraining these illegal claims, even the former Soviet Union was persuaded of the importance of compulsory dispute settlement in the Law of the Sea Convention, despite its longstanding general opposition to compulsory dispute settlement. The severely cabined dispute settlement procedures in the Law of the Sea Convention are far more restrictive than in most of the other dispute resolution provisions already binding on the United States. Moreover, as noted above, in the Law of the Sea Convention we would choose special arbitration rather than the International Court of Justice or the International Tribunal for the Law of the Sea.

- **Myth: The Convention mandates a tribunal to adjudicate the ocean disputes of the United States.** The Convention does establish the International Tribunal for the Law of the Sea. However, Parties are free to choose other methods of dispute settlement. The United States has stated that it will choose two forms of arbitration rather than the Tribunal. While the limited area of U.S. mining of the deep seabed would be subject to the Sea-bed Disputes Chamber if deep seabed mining ever takes place, the proposed Resolution of Advice and Consent makes clear that the Sea-bed Disputes Chamber's decisions "shall be enforceable in the territory of the United States

only in accordance with procedures established by implementing legislation and that such procedures shall be subject to such legal and factual review as is constitutionally required and without precedential effect in any court of the United States.” Importantly, the Chamber’s authority extends only to disputes involving the mining of minerals from the deep seabed; no other activities, including operations in the water column or on the surface of the oceans, are subject to it.

- **Myth: The International Law of the Sea Tribunal has already asserted, in the MOX case involving a UK nuclear plant, that it will determine its own competence, or scope and jurisdiction, even in the face of other extant treaties designed to address the issue at hand.** The MOX case was brought by Ireland against the UK. The Tribunal, in a setting in which the UK had failed to assert its right to invoke exceptions under Article 297 of the Convention, and in dealing solely with “provisional measures,” focused its analysis on the highly technical question regarding the relationship among a series of different treaties the UK had accepted, all of which provided for compulsory jurisdiction, but in different fora. Upon the completion of its analysis, the Tribunal denied Ireland’s request for intrusive provisional restraints on the UK’s activities. Then the Tribunal simply recommended that the parties cooperate, and dropped out of the case. An arbitral panel had been selected by Ireland and the UK, and that panel also suspended proceedings (which have not been resumed) pending litigation in the European Court of Justice pursuant to European law. Implying that these facts should be portrayed as an example of the Tribunal grabbing jurisdiction away from other courts is wrong.

F. MYTHS CONCERNING THE NEGOTIATING PROCESS

- **Myth: “[T]he Law of the Sea Convention was a grand scheme to create ‘an oceanic Great Society’. . . .”** It is true that one motivation of developing countries in the UNCLOS negotiations more than three decades ago, played out in the negotiation for Part XI, was an exaggerated hope of riches from deep seabed mining. It is also true that the concept of the “New International Economic Order” played a harmful role in the negotiation of Part XI on deep seabed mining. The motivation of the United States and other major powers, however, was to protect navigational freedom, end the out-of-control coastal state grab for the oceans, extend our jurisdiction

fully to the fish stocks and much of the oil and gas off our coasts and achieve international agreement on a mechanism providing security of tenure for deep seabed mining in areas beyond national jurisdiction. It was the other non-Part XI issues that were the real core of the UNCLOS negotiations, as attested by the fact that heads of delegation did not focus on Committee I, where Part XI was being negotiated, and spent their efforts in Committees II and III, where more critical national security issues were at stake. The United States and other major developed nations coordinated closely together on these crucial navigational and resource issues in the “Group of Five.” Moreover, the interest of certain land-based producers of nickel and copper, including developed nations, in preventing competition from deep seabed minerals, was probably a more important factor in the negotiating difficulties in Part XI than the “New International Economic Order.” The renegotiation of Part XI pursuant to the Reagan conditions solved this latter problem by abolishing the “production limitations” that the land-based producers had written into the original agreement.

- **Myth: The Convention is an effort by the radical left to move toward world government.** The reality is the opposite! The Convention works a massive extension of national sovereign rights over the most important oceans resources, including fish stocks and oil and gas, while protecting national sovereign rights in freedom of navigation for all nations. As such, it is a direct repudiation of radical claims, urged by some, for an international agency to control the oceans. Only seabed mineral resources beyond a broadly extended area of coastal state resource control are placed under limited control of an international authority – and this was necessary to establish the exclusive property rights needed by mining firms for minerals otherwise owned by no nation. Further, the International Seabed Authority, as renegotiated, adopts free market principles as its core and is itself a rejection of the “New International Economic Order.” And the negotiations rejected any effort to stray into arms control as urged by some. In reality the Convention is a triumph for both national sovereign rights and free market principles.

G. MYTHS CONCERNING THE NATIONAL DECISION PROCESS AND THE VIEWS OF PRESIDENT REAGAN

- **Myth: President Reagan would oppose moving forward with this Convention.** Again, the actions of the Reagan Administration show

this to be false. At the urging of one of us as a former United States Ambassador to the negotiations, and that of others, President Reagan wisely refused to accept the provisions on deep seabed mining then set out in Part XI of the Convention and he approved instructions for the United States delegation to reengage in the negotiations to achieve a series of critical access and institutional changes in Part XI. After a full and careful interagency review of the then draft Convention *President Reagan had no changes to suggest to the remainder of the Convention, including the most important security provisions that had been sought by the United States.* The reason for this is simple; the United States had superbly achieved its security objectives in the negotiations under Presidents Nixon and Ford. Further, in 1983 *President Reagan issued orders to the Executive Branch to act in accordance with the substantive provisions of the Convention, other than Part XI, as though the United States were a party to the Convention.* While the Reagan conditions for changes in Part XI were not achieved in the negotiations under his tenure, when subsequently negotiations were resumed during the Clinton Administration, President Clinton accepted the Reagan conditions as the basis for United States adherence. And the Clinton Administration negotiators were successful by 1994 in achieving *all* of the Reagan conditions and then some. They also achieved all of the conditions that had been earlier set out by the Congress as requirements for a deep seabed mining regime. Only then did the United States indicate total acceptance, and submit the Convention to the Senate for advice and consent.

- **Myth: If the Convention is a treaty about the Navy's conflict mobility and national security, why is the ratification effort being led by State Department environmentalists?** This disingenuous statement simply ignores the reality that the United States Navy and the Joint Chiefs have been the principal proponents of the Convention since negotiations began in the 1970s. When the Convention sat before the Senate Foreign Relations Committee for a decade because of opposition from the then Chairman of the Committee it was the Chiefs and the Navy who worked tirelessly to move the Convention. This statement further ignores the strong support of *every* United States ocean agency, all United States oceans industry (e.g. oil and gas, fishing, etc.), and the unanimous support of the Congressionally established United States Commission on Ocean Policy. Further, the United States position on law of the sea reflected in this Convention, was developed in an

eighteen agency interagency task force under the White House National Security Council mechanism.

- **Myth: There has been inadequate consideration of the Law of the Sea Treaty and we need more time to study it.** Nonsense! Those who espouse this view fail to note that this is the second round of Senate hearings on the Convention. The first round was held in 1994 just before the Convention was initially submitted to the Senate. The Senate, and the Country, has had a decade to study the Convention, and for several decades, since 1983, we have lived under the legal regime of everything but Part XI. We have an especially hard time in finding any sympathy for this position urging delay when it comes from spokesmen who were not heard calling for more consideration of the Convention for the full decade while the treaty languished before the Senate Foreign Relations Committee. Rarely has any Convention to come before the Senate been more fully studied and debated – and, in real effect, lived under.
- **Myth: President Bush is urging Senate advice and consent to the Convention for little better than “go-along, get-along multilateralism.”** Give us a break! Among presidents prepared to take the heat internationally for actions they believe in, as Afghanistan and Iraq surely demonstrate, this president is near the top. Is it too much to understand that after lengthy and careful review this president has urged Senate advice and consent because it is in the national interest of the United States? Further, does anyone really believe Ronald Reagan was a “go-along, get-along” president?

H. MYTHS CONCERNING LEGAL EFFECTS

- **Myth: Other Parties will reject the U.S. “military activities” declaration as a reservation.** The U.S. declaration is consistent with the Convention and is not a reservation. It is an option explicitly provided by Article 298 of the Convention. Other parties to the Convention that have already made such declarations exercising this option include the United Kingdom, Russia, France, Canada, Mexico, Argentina, Portugal, Denmark, Ukraine, and Norway.
- **Myth: The 1994 Agreement doesn’t even pretend to amend the Convention; it merely establishes controlling interpretive**

provisions. Nonsense! The Convention could only have been formally “amended” if it had already entered into force. The 1994 Agreement was negotiated as a separate agreement in order to ensure that the Convention did not enter into force with Part XI in its flawed state. The 1994 Agreement made explicit, legally binding changes to the Convention and has the same legal effect as if it were an amendment to the Convention itself. Indeed, the International Seabed Authority has been operating under the changes for a decade and has incorporated them article-by-article into the treaty in its compilation of basic documents. *See* “The Law of the Sea: Compendium of Basic Documents,” 48-89, 206-226 (International Seabed Authority, 2001). A letter personally endorsed by all living former Legal Advisers of the U.S. Department of State, representing both Republican and Democratic Administrations, confirms the legally binding nature of the changes to the Convention effected by the 1994 Agreement. Their letter states that “[T]he Reagan Administration’s objection to the LOS Convention, as expressed in 1982 and 1983, was limited to the deep seabed mining regime. The 1994 Implementing Agreement that revised this regime, in our opinion, satisfactorily resolved that objection and has binding legal effect in its modification of the LOS Convention.” Moreover, the proposed resolution of advice and consent does not simply accept the 1982 Convention but rather the Convention with the 1994 Agreement implementing Part XI (Section 1 of the Text of Resolution of Advice and Consent to Ratification).

- **Myth: Most of the benefits are available without the treaty.** A major error in this assertion is that it misses altogether the ongoing struggle for navigational freedom in the world’s oceans – a struggle requiring active United States engagement and leadership. Such engagement and leadership is simply not possible if we are the only permanent member of the Security Council not to adhere to the Convention. It also fails to address the cost to the United States of being excluded from the principal institutions created by the Convention – including the loss of a U.S. veto over major decisions concerning deep seabed mining. And it is wrong in ignoring the permanent loss of a U.S. deep seabed mining industry that would be a cost of non-adherence. And, among other reasons, it further ignores the cost to the United States and its international negotiating credibility of holding out requests for renegotiation of a major international agreement – having those requirements met – and then turning our back on the renegotiated agreement that met all of our stated requirements.

- **Myth: We do not need to adhere to the Convention because it already represents customary international law binding on the United States.** This argument urges that our navigational interests are already protected. Curiously, those who advance this argument fail to note that if the United States is already bound to the Convention as customary international law it is also bound by provisions they may object to in the Convention. The critics cannot have it both ways. More importantly, the argument misses the reality that the United States is legally disenfranchised as a non-adherent and will not receive the full benefits of the Convention without acceding to it. Further, customary international law is subject to change, which can be abrupt, such as how the customary international law of outer space was changed overnight when Sputnik was launched.

I. MISCELLANEOUS MYTHS

- **Myth: Adhering to the Convention will come with substantial financial obligations.** U.S. financial obligations under the Convention will be modest. Had we been a full party throughout 2001, our contribution to the Seabed Authority would have been approximately \$1.3 million computed at the 25% rate, and this reduced to a 22% rate in 2002. Our contribution to the International Tribunal is estimated to be approximately \$2 million per year. This total level of contribution is less than the United States pays each year for membership in the U.S./Canada Great Lakes Fish Commission.
- **Myth: The Convention purports to govern claims of rising sea level and melting ice caps.** More nonsense! These issues are neither dealt with in the Convention nor were they featured in the negotiations.

IV.
***Are There Accurate Reasons to Oppose
the Law of the Sea Convention?***

While we strongly support immediate Senate advice and consent – and seek to rebut false arguments being made against senate advice and consent – we present below a list of arguments against advice and consent we do *not* support – but which are at least accurate in stating the effect of non-adherence. Thus, you should oppose Senate advice and consent:

- If you favor a gradual loss of United States’ sovereign rights over naval and commercial navigation on the world’s oceans;
- If you believe the United States should substitute the lives of service men and women for the stability of the rule of law;
- If, at this time of high oil prices, you want to greatly delay development of the oil and gas on the United States continental margin beyond 200 nautical miles with its associated jobs in the United States;
- If you want to kill the United States seabed mining industry, permanently lose U.S. mine sites staked out as the best in the world, and prevent the development of seabed mining jobs in the United States;
- If you do not want American fishermen and merchant mariners to have legal protection against corporal punishment and imprisonment in jails around the world;
- If you do not want the United States to participate in assessing continental margin claims, such as that of Russia in the Arctic Ocean;
- If you believe it wrong for the Convention to confirm for the United States the most extensive exclusive economic zone in the world;
- If you oppose stable expectations and the rule of law in the world’s oceans;

- If you believe that the United States should have a diminished voice in protecting our oceans interests worldwide;
- If you believe that providing a guaranteed permanent seat and veto right for the United States on the Governing Council of the Seabed Authority – the only guaranteed seat for any nation – is a bad precedent;
- If you oppose protection of fish stocks and the ocean environment;
- If you believe the United States should no longer lead in the development of oceans law and policy; and
- If you believe that advice from non-Law of the Sea experts on oceans security issues is more reliable than that from the Joint Chiefs of Staff, the Navy, presidents of both parties, all United States oceans industries, and the unanimous opinion of the Congressionally established U.S. Commission on Ocean Policy.

ANNEX I

LIST OF MYTHS

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MYTH: THE CONVENTION WAS DRAFTED BEFORE – AND WITHOUT REGARD TO – THE WAR ON TERROR AND WHAT THE UNITED STATES MUST DO TO WAGE IT SUCCESSFULLY.15

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MYTH: AS A NONPARTY, THE U.S. IS ALLOWED TO SEARCH ANY SHIP THAT ENTERS OUR EEZ TO DETERMINE WHETHER IT COULD HARM THE UNITED STATES OR POLLUTE THE MARINE ENVIRONMENT. UNDER THE CONVENTION, THE U.S. COAST GUARD OR OTHERS WOULD NOT BE ABLE TO SEARCH ANY SHIP UNTIL THE UNITED NATIONS IS NOTIFIED AND APPROVES THE RIGHT TO SEARCH THE SHIP.16

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About the Authors

JOHN NORTON MOORE

John Norton Moore is the Walter L. Brown Professor of Law at the University of Virginia School of Law and Director of the Center for Oceans Law and Policy. He formerly served as the Chairman of the National Security Council Interagency Task Force on the Law of the Sea, which formulated United States international oceans policy for the law of the sea negotiations under Presidents Nixon and Ford, he headed D/LOS, the office which coordinated both State Department and Interagency Policy on the law of the sea, and he served in the international negotiation as a Deputy Special Representative of the President and a United States Ambassador to the Third United Nations Conference on the Law of the Sea. Subsequently, he chaired the Oceans Policy Subcommittee of the Natural Resources Committee of the Republican National Committee and was a member of the National Advisory Committee on Oceans and Atmosphere (NACOA). Before the successful renegotiation of Part XI of the Treaty, he wrote to the incoming Reagan Administration opposing United States adherence until the problems with Part XI had been resolved. This letter was instrumental in triggering the Reagan review which in turn led to the successful Rumsfeld mission and ultimately effective renegotiation of Part XI. The Center for Oceans Law and Policy, which he directs, led the UNCLOS Commentary project, which has provided the most authoritative article-by-article analysis of the 1982 Convention. This six-volume Commentary is I-VI M. Nordquist (ed.) *1982 United Nations Convention on the Law of the Sea, A Commentary* (Center for Oceans Law and Policy, 2002).

WILLIAM L. SCHACHTE JR.

Rear Admiral (Ret.) Schachte is a Navy veteran who served in many capacities related to ocean policy during his naval career. In addition to being a member of the U.S. Delegation to the United Nations Conference on the Law of the Sea negotiations during the Reagan Administration, he was subsequently appointed by the Secretary of Defense as the Deputy and later The Department of Defense Representative for Ocean Policy Affairs. He was also the Deputy Assistant Judge Advocate General (International Law). During his last year of active duty he served as both the Deputy Judge Advocate General and the Acting Judge Advocate General of the Navy, as well as The Department of Defense Representative for Ocean Policy Affairs. As a line officer, he was a Vietnam volunteer (Swift Boats) and served in combat from January to December 1968. He retired in October 1993 after over 30 years of active duty service to his country. While in private practice, Admiral Schachte was also an Adjunct Professor (“International Law of the Sea”), University of South Carolina Law School ’94-’96. He is currently a Special Counsel to Tetra Tech Inc. and is also Counsel to Blank Rome, LLP.