

Chapter XV The Future of U.S. Ocean Policy

Implementation of U.S. Ocean Policy

A basic tenet of U.S. ocean policy has been, and continues to be, preservation of the historic principle of freedom of the seas. This policy comprehends that the navigational articles of the Law of the Sea Convention constitute a fair balance of the interests of all nations in their use of the oceans and are fully consistent with the traditional freedoms of navigation and overflight. The central consideration is how this policy can best be effectively implemented, i.e., what should the United States do domestically and internationally to both assert and preserve these vital maritime rights?

Over the past fifteen years, U.S. oceans policy has been pursued on three tiers—

- 1) A vigorous freedom of navigation program;
- 2) Promulgation of guidance to military forces; and,
- 3) Active development and support of conventional international law addressing ocean issues.

Freedom of Navigation Program: The “Lever” of U.S. Ocean Policy

The purpose of the FON program is to preserve and protect the global mobility of U.S. forces, and the navigation and overflight rights of all ocean users. Peaceful rather than provocative in intent, it impartially rejects excessive maritime claims of allied, friendly, neutral and unfriendly States alike.

The preceding chapters have detailed the operation and results of the program in specifically targeting unrecognized historic waters; improperly drawn baselines for measuring the breadth of the territorial sea; territorial sea claims greater than 12 miles; impermissible restrictions on innocent passage, transit passage through international straits and archipelagic sea lanes passage; and impermissible restrictions on navigation and overflight in the 24 mile contiguous zone and the 200 mile exclusive economic zone. The latter includes the claim to establish in peacetime so-called “security zones” beyond the territorial sea which purport to restrict high seas freedoms of navigation and overflight.

The effectiveness of the FON program as a lever to gain full coastal State compliance with the navigation and overflight provisions of the Convention has been positive. It has clearly and convincingly demonstrated to the international community that the United States will not acquiesce in excessive maritime claims. It has played a positive role in curbing non-conforming territorial sea, contiguous zone and exclusive economic zone claims and, arguably, has helped

persuade States to bring their domestic laws into conformity with the Convention.

The number of coastal States that claim territorial seas greater than 12 miles in breadth is now less than 20, and the 24 mile contiguous zone and 200 mile EEZ are virtually the international norm. On the other hand, a number of coastal States, among them friends and allies as well as potential adversaries, continue to seek to convert areas of the high seas to national jurisdiction. Typically, they do this by drawing baselines in inconsistent and unacceptable applications of Convention rules. Other attempts to unlawfully restrict navigation and overflight rights in the EEZ and contiguous zones, and in international straits and archipelagic sea lanes, include discrimination among ships and aircraft on the basis of nationality, type, propulsion, destination or cargo, all in direct contravention of the Convention.

Perhaps the most dramatic demonstration of the program's positive impact was the aftermath of the 1988 Black Sea "bumping" incident involving U.S. and U.S.S.R. naval units. Subsequent bilateral discussions led to the U.S.-U.S.S.R. Uniform Interpretation of the Rules of International Law Governing Innocent Passage, signed by the two nations and issued at Jackson Hole, Wyoming, in September 1989.¹ This agreement signalled to the international community that the two global powers view the navigation and overflight articles of the LOS Convention as reflective of customary international law. The "bumping" incident also prompted ongoing bilateral discussions on excessive baseline and historic water claims.

As the number of U.S. naval ships and aircraft decrease in the immediate post-Cold War environment, the opportunity for FON operational assertions is necessarily decreased. Hopefully, the success of the U.S. program to date will encourage other nations to join with the United States in actively promoting and protecting the freedoms of navigation and overflight reflected in the Convention by utilizing their naval and air forces to conduct similar FON operational assertions.

The question may legitimately be asked whether the requirement for the FON program, and operational assertions in particular, will continue when the LOS Convention comes into force. Certainly entry into force of the Convention would then provide a treaty base—for States party—for the navigational provisions. One would hope that State practice would then increasingly conform with the Convention. Certainly the chances for that to occur rise now that the deficiencies of Part XI (Deep Sea Bed Mining) of the Convention have been redressed so that the United States and other industrialized nations are able to join in a reformed treaty regime that commands universal acceptance.²

Promulgation of Policy Guidance for Maritime Forces

The principal test of a nation's commitment to the rule of law in this arena is the degree to which international and domestic rules are embodied in the

guidance promulgated to its military forces for compliance. As a practical matter, the process of signature and ratification of international conventions has little significance unless the rules which those agreements propound are implemented in the field, in the cockpit, and on the deckplates.

As noted in Chapter I, the President's 1983 Oceans Policy Statement³ emphasized that provisions of the Convention pertaining to navigation and overflight, and others except for Part XI, constitute a fair balance of the interests of all nations. Most importantly, the Statement directed that U.S. maritime forces operate worldwide in a manner fully consistent with that balance.

International stability and the full and fair development of the rule of law in the ocean arena require that all maritime and coastal nations promulgate guidance generally reflecting these principles. The United States, as the world's leading maritime power, seeks widespread, universal support from the international community for its policy toward the oceans. Unilateral action is not enough. In this connection, the United States has not only issued guidance to its own forces, but it had also actively worked for adoption of this policy by other nations with like interests in the oceans.

The U.S. Naval Warfare Publication (NWP) 9A/Fleet Marine Force Manual (FMFM) 1-10, entitled *The Commander's Handbook on the Law of Naval Operations*, was developed to provide definitive guidance to the operating forces and, in a broader sense, to serve as a model for use by other nations. Published in 1987 and revised in 1989, NWP 9A provides authoritative guidance to U.S. maritime forces consistent with the spirit and intent of Presidential direction. It states that the 1982 LOS Convention codifies existing and emerging customary international law pertaining to navigation and overflight and, as such, is binding upon all U.S. forces operating in the maritime environment.⁴

NWP 9A does far more than ensure compliance by U.S. military forces with U.S. ocean policy and the navigational articles of the LOS Convention. It also provides other nations an authoritative demonstration of how the United States interprets and applies those rules in its daily maritime activity worldwide. In this way, the United States has taken the lead in breathing real life into most Parts of the LOS Convention. NWP 9A has been distributed informally to virtually every nation with a navy or coast guard. It has been adopted by the Canadian Ministry of Defence as its interim manual,⁵ and translated into Spanish and Japanese.⁶ It has also been the subject at international conferences and symposia sponsored by the Department of Defense⁷ and international organizations.⁸ The success of this effort is reflected in the fact that NWP 9A is being widely cited and emulated by other maritime nations in the preparation of their own military guidance.⁹ It has emerged as a key reference on contemporary ocean law and regulation.¹⁰

Most importantly, NWP 9A is serving to influence, in a positive and constructive way, the behavior of other nations in their use of the world's

oceans—ensuring their approach to ocean policy is consistent with the balance of interests reflected in the LOS Convention.

Development of Conventional International Law

On a broader plane, in a process known as “international codification”, customary international law, in a number of important areas, has been converted over time into conventional international law. This process seeks to substitute a degree of stability for the uncertainty and risk of claim, counterclaim and acquiescence which often characterizes the development of customary international law. Since World War II, the United States has taken an active leadership role in this process. Its participation in the three UN Conferences on the Law of the Sea¹¹ are examples—particularly the Third Conference (UNCLOS III), the nine year effort which produced the 1982 LOS Convention.¹²

On a multilateral level, other examples of international codification range from matters relating to the safety of surface and air navigation (e.g., Convention on the International Regulations for Preventing Collisions at Sea¹³ and the Convention on International Civil Aviation¹⁴), through protection of the marine environment (e.g., Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter¹⁵ and the International Convention on Oil Pollution Preparedness, Response and Co-operation¹⁶), to interdiction of seaborne drug trafficking (e.g., article 17 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances¹⁷).

Bilateral agreements embrace virtually every aspect of U.S. ocean use and include, by way of example, the U.S.-U.S.S.R. Agreement on the Prevention of Dangerous Military Activities;¹⁸ the U.S.-Canada Agreement Concerning Pacific Salmon;¹⁹ the U.S.-New Zealand Treaty on the Delimitation of the Maritime Boundary Between Tokelau and the United States;²⁰ and the U.S.-U.K. Agreement to Facilitate the Interdiction by the United States of Vessels of the United Kingdom Suspected of Trafficking in Drugs.²¹

Whether through broadly based multilateral conventions or more narrowly focused bilateral agreements, proactive U.S. involvement in the development of conventional international law has played a major role in the implementation of U.S. ocean policy. Specifically, it has had a positive influence on international recognition of the need to preserve fundamental high seas freedoms, particularly navigation and overflight. The active involvement of the Department of Defense in the formulation of negotiating positions, and indeed in the negotiations themselves, has ensured that vital national security interests have been addressed and safeguarded as appropriate. No matter how carefully undertaken, however, this incremental process cannot stem the erosion over time of rights and freedoms that underpin U.S. security interests in the oceans. The 1982 LOS Convention, given its all-encompassing scope, has the potential to arrest or substantially slow that erosion.

U.S. strategic interests in the world's oceans would clearly be best served if the Convention were reformed to meet U.S. deep seabed requirements while preserving its already satisfactory provisions on navigation and overflight and other traditional law of the sea matters. Becoming a party to the Convention under such conditions would be fully consistent with the broad range of U.S. interests in the oceans. Moreover, as the United States is now playing a positive role in the reform process,²² it underscores and enhances the traditional leadership position the United States has taken in ocean policy matters. As importantly, it strengthens the hand of the United States in dealing with the broad range of ocean issues—from coastal State encroachment on vital high seas freedoms of navigation and overflight to those involving the environment, resources and counter-drug operations.

Emerging Ocean Policy Issues

Historically, the principal threat to the preservation of high seas freedoms of navigation and overflight has taken the form of excessive maritime claims by coastal States. While that area of concern remains, and in fact drives the Freedom of Navigation Program, equally difficult, although more subtle issues have emerged which also threaten the exercise of traditional freedoms of navigation and overflight. These include environmental protection and resource conservation, sovereign immunity, and maritime trafficking in narcotics.

Environmental Protection and Resource Conservation

Part XII of the LOS Convention is the first comprehensive approach to the protection and preservation of the marine environment. It sets forth responsibilities for both coastal States and maritime users to control all sources of marine pollution. In doing so, it requires due regard to the exercise of high seas freedoms such as navigation and overflight, resource development, and marine scientific research.²³ Part XII requires States exercising enforcement rights over pollution from vessels in their EEZs to apply “generally accepted international rules and standards established through the competent international organization or general diplomatic conference.”²⁴ Thus, the Convention in that area serves not only as a mechanism to protect and preserve the ocean environment, but also as a means to curb any excessive coastal State enforcement regime.

Part XII addresses pollution of the marine environment from vessels, from land-based sources, from or through the atmosphere, by dumping, and from seabed activities subject to national jurisdiction. In addition to the Convention, there are three global treaties, to which the United States is a party, also designed to protect and preserve the marine environment. In brief:

- The Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)²⁵ regulates

discharges from the normal operations of ships. Sources include bilge water, oily or hazardous wastes, sewage, and garbage including plastics.

- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London [Dumping] Convention)²⁶ regulates the disposal of wastes in the ocean from all activities except normal ship operations. An example would be deliberate dumping of nuclear waste from a barge towed to a disposal site.
- The Convention on Oil Pollution Preparedness, Response and Co-operation²⁷ regulates international response to oil spills.

These treaties exempt warships and other vessels entitled to sovereign immunity from coastal State enforcement measures and inspections, while encouraging State parties to ensure compliance with their provisions,²⁸ and otherwise fully respect navigation and overflight freedoms.

Environmental Protection

Potential threats to navigation and other high seas freedoms are often encountered in the negotiation of regional treaties and strategies, and in other fora.

For example, the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (commonly called the Cartagena Convention)²⁹ in draft form included a protocol (Protocol Concerning Specially Protected Areas and Wildlife of the Wider Caribbean Region, or SPAW) which would have prohibited or restricted navigation through certain treaty areas. Intensive negotiations were required on the part of the United States to eliminate those unacceptable, restrictive measures. As concluded, the treaty is a regional agreement to regulate pollution from vessels, dumping, land-based sources, sea-bed activities and airborne sources. The SPAW Protocol aims to protect endangered flora and fauna of the Caribbean marine environment by allowing the parties to establish “specially protected areas” offshore, including in the EEZ.³⁰ A second protocol provides for Cooperation in Combatting Oil Spills in the Wider Caribbean Region.³¹

Throughout the negotiations leading to the conclusion of the 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region³² (SPREP), and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping,³³ vigilance was maintained to ensure that traditional navigation rights were not impaired. For example, while the Parties agreed to establish “specially protected areas,” the Convention specifically provided that “the establishment of such areas shall not affect the rights of other Parties or third States under international law.”³⁴ SPREP is a regional seas convention covering a large portion of the South Pacific. The agreement regulates pollution from vessels, dumping, land-based sources, sea-bed activities, airborne sources, and the storage of toxic and hazardous wastes. SPREP was the

first agreement the United States signed that bans the disposal at sea of radioactive waste. The United States considered that SPREP promotes harmony in the South Pacific region, an area with unique geographic circumstances, which preliminary scientific evidence indicated, at the time of signing, was not particularly well suited for dumping low level radioactive waste. The Parties also agree to conduct environmental studies and cooperate during environmental emergencies.

On June 14, 1991, the eight circumpolar nations—Canada, Denmark, Finland, Iceland, Norway, Sweden, the United States, and the U.S.S.R.—signed a nonbinding Strategy to protect the Arctic Environment.³⁵ Signatories will cooperate in monitoring pollution caused by radioactivity, noise, oil, heavy metals, acidification and persistent organic contaminants. They will also cooperate in formulating response plans for emergencies such as oil spills. Although restrictions on navigation and overflight were not addressed, they nonetheless are potential measures States may possibly seek to use to implement the Strategy. To ensure against that possibility, the Strategy includes a provision specifying that implementation must be consistent with the LOS Convention.³⁶

On November 16, 1992, Canada deposited its instrument of accession to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). At the time of its accession, Canada deposited a declaration concerning arctic waters, as follows:

Canada made the following declarations based on Article 234 of the 1982 United Nations Convention on the Law of the Sea, signed by Canada on December 10, 1982:

(a) The Government of Canada considers that it has the right in accordance with international law to adopt and enforce special non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered waters where particularly severe climatic conditions and the presence of ice covering such waters for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance.

(b) Consequently, Canada considers that its accession in the Protocol of 1978, as amended, Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) is without prejudice to such Canadian laws and regulations as are now or may in the future be established in respect of arctic waters within or adjacent to Canada.³⁷

Because Canada's declarations did not follow completely the wording of Article 234,³⁸ on November 18, 1993, the United States filed with the Secretary-General of IMO, as the Depositary of MARPOL, its understanding of the permissible scope of Canada's declarations:

262 Excessive Maritime Claims

The Government of the United States of America considers that Canada may enact and enforce only those laws and regulations in respect of foreign shipping in arctic waters that are within 200 nautical miles from the baselines used to measure the breadth of the territorial sea as determined in accordance with international law:

- that have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence in arctic waters, and
- that are otherwise consistent with international law, including articles 234 and 236 and other relevant provisions of the 1982 United Nations Convention on the Law of the Sea.³⁹

The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal⁴⁰ regulates such activity through a consent and notice regime. It required additional negotiations to safeguard navigational freedoms, through the inclusion of a provision that the Convention does not affect “the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.”⁴¹

This issue has surfaced in other regional negotiations in which the United States was not involved. An example is the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa,⁴² a regional treaty concluded by member States of the Organization of African Unity. The treaty requires parties to control all carriers of hazardous wastes in the Convention area in a manner that respects navigation and overflight rights. The Convention recognizes “the exercise by ships and aircraft of all States of navigation rights and freedoms as provided for in international law and as reflected in relevant international instruments.”⁴³

Holding the line against the erosion of vital high seas freedoms of navigation and overflight requires oversight over U.S. domestic as well as international considerations. The United States is not only the dominant global maritime power, it also has one of the world’s longest coastlines. As such, it has maritime interests which may, on occasion, be at odds with the full expression of navigational freedoms. Environmental protection in off-shore waters, conservation of fisheries beyond the EEZ (e.g., salmon and tuna), and enforcement of customs and immigration regulations seaward of the territorial sea and contiguous zone are examples.

Conservation of Living Marine Resources

Controls in this area are imposed to preserve and protect fish and marine mammal stocks not only in the high seas but also in the exclusive economic

zones, contiguous zones, and territorial seas of individual States. Agreements are bilateral as well as multilateral and are often negotiated under the auspices of a specialized international body. The International Whaling Commission⁴⁴ is an example. They generally deal with a specific species and typically specify the area, season, catch limit, and harvesting methods. An example is the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (with Protocols)⁴⁵ (commonly called the Wellington Convention). U.S. ratification includes an understanding that application of treaty “measures will only be applied when consistent with traditional high seas freedoms of navigation and overflight as reflected in” the LOS Convention.⁴⁶

On June 14, 1992, the United Nations Conference on Environment and Development (UNCED) adopted Agenda 21. Chapter 17 of that document sets forth several hundred action items for the protection of the oceans, of all kinds of seas, including enclosed and semi-enclosed seas, and of coastal areas, and the protection, rational use and development of their living resources, over the next twenty years. The introduction to Chapter 17 begins by stating that international law as reflected in the LOS Convention “sets forth rights and obligations of States and provides the international basis upon which to pursue the protection and sustainable development of the marine and coastal environment, and its resources.”⁴⁷ The challenge will be to maintain that international basis in all the following actions called for in Agenda 21.

Sovereign Immunity of Warships and Military Aircraft

“Sovereign immunity of warships and military aircraft” traditionally refers to immunity from the exercise of enforcement jurisdiction, i.e., their immunity from arrest, attachment, or execution in the territory of any foreign State.⁴⁸ It also refers to the immunity of public vessels on the high seas from jurisdiction to prescribe by any State other than the flag State.⁴⁹ In the territorial sea, public vessels are only immune from the jurisdiction of the port or coastal State to enforce its laws against them.⁵⁰ It may also be used in those situations where the terms of a particular treaty are not going to be applied to public vessels; in those situations public vessels are typically exempted from the treaty’s application by the words “not apply” or “not be applicable”.⁵¹ Or, if public vessels are to be covered by the treaty, it will typically expressly say that it does “apply” to them.⁵² A large number of environmental protection treaties exempt public vessels and aircraft but require the flag State to “ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships and aircraft owned or operated by it, that such ships and aircraft act in a manner consistent, so far as is reasonable and practicable, with” the treaty.⁵³

The undefined term “sovereign immunity” is used in only a few maritime treaties: the 1972 Oslo Convention (article 15(6)),⁵⁴ 1992 Dumping annex to OSPAR (annex II, article 10(3)),⁵⁵ the 1972 London [Dumping] Convention

(article VII(4)),⁵⁶ and article 4(1) of the 1989 Salvage Convention.⁵⁷ The term also appears in the titles of article 236 of the LOS Convention, article XIV of the 1982 Jeddah regional convention,⁵⁸ article 12(4) of the 1986 SPREP Dumping Protocol,⁵⁹ article 11 of Annex IV to the 1991 Antarctic Environmental Protection Protocol,⁶⁰ and article IV of the 1992 Black Sea Pollution Convention.⁶¹ The term is used in the US/UK interpretative statement attached to the Final Act of the Cartagena Convention,⁶² and in the US understandings to SPREP⁶³ and Basel Conventions.⁶⁴

Reference is made to the “immunity” of public vessels in the title of the 1926 Brussels Convention,⁶⁵ and in article I of the 1934 Protocol thereto.⁶⁶ “Immunity” is also used in articles 8 and 9 of the 1958 High Seas Convention,⁶⁷ articles 32, 95 and 96 of the LOS Convention,⁶⁸ article 22(2) of the 1958 Territorial Sea Convention,⁶⁹ article X(3) of the 1962 Brussels Nuclear Ships Operators Convention,⁷⁰ and article 2(2) of the 1988 Maritime Terrorism Convention.⁷¹

Because of the very different ways in which “sovereign immunity” for public vessels/aircraft has been used in treaties and agreements, it is preferable that those documents specify the actions from which such vessels/aircraft are immune, rather than rely on the term. The following are factors to consider in drafting “sovereign immunity” clauses:

- are public vessels/aircraft to be covered by the terms of the treaty?
- is the conduct to be regulated by the treaty to include the conduct of public vessels/aircraft?
- are States other than the flag State to be empowered to prescribe as to the conduct of foreign flag public vessels/aircraft?
- are flag States to be required, or merely encouraged, to prescribe/enforce against its public vessels and aircraft?
- what enforcement authority will States other than flag States be granted against foreign flag public vessels and aircraft?
- what enforcement authority will other States have directly against the flag State for acts of its public vessels/aircraft contrary to the terms of the treaty?
- what private causes of action in the “enforcement” State will be permitted against the foreign State for the conduct of its public vessels/aircraft?

Summary. International agreements (and U.S. domestic legislation) on the protection of the ocean environment and marine resources have the potential, in their application and enforcement, to infringe on the exercise of traditional high seas freedoms of navigation and overflight. The United States has been, and must continue to be, alert to this fact and continue to successfully assert the primacy of customary international law relating to these rights, thus deterring the unravelling of hard-won provisions in the Convention essential to national security.

Maritime Counter-drug Operations

The U.S. counter-drug campaign has the highest national priority. It actively involves all the uniformed services—the Army, Navy, Air Force, Marine Corps and Coast Guard—in stemming the flow of illegal drugs and substances into the United States from overseas points.

This typically involves military operations in the international waters and airspace adjacent to coastal States from which drug trafficking is known to originate. The objective is to deter the transport of illegal drugs and substances into the United States and, if deterrence fails, to detect and intercept carriers (air and seaborne) en route to their destination, if possible, well before they arrive in the continental United States.

These surveillance and interdiction operations rely on the free and unimpeded exercise of the traditional high seas freedoms of navigation and overflight. They involve close and continuing coordination and cooperation between the United States and the coastal State. Problems have arisen where the imperatives of counter-drug operational security conflict with requests from individual coastal States to be informed in advance of operations on and over the high seas off their coasts. Such notification is inconsistent with U.S. ocean policy. These difficulties have been addressed bilaterally on a case by case basis. In each instance, the United States has taken into consideration the sensitivities involved without compromising essential freedoms of navigation and overflight.

Problems have also arisen when counter-drug operations have been conducted in waters which are the subject of excessive baseline, territorial sea or EEZ claims, wherein the coastal State purports to assert a right to control or authorize such operations. Other problems have surfaced in which coastal States have protested the consensual boarding and searching by the United States of their flag vessels. In this latter regard, a small number of States have objected, claiming that their ships' masters do not have the authority to grant such permission, and that the decision must be referred to the government of the maritime State involved. The United States does not support such restrictions on the ship master's traditional authority to consent to non-intimidating boardings/inspections, and the matter is not settled. The United States has opened bilateral talks with a number of affected States with the object of reaching a mutually satisfactory understanding on these issues.

U.S. Oceans Policy for the 21st Century

U.S. defense policy for the late 1990's and beyond is critically dependent upon traditional freedoms of navigation and overflight of the world's oceans, including unimpeded transit of international straits and archipelagic sea lanes.⁷² Each of the four major elements of the national security policy—strategic deterrence, forward presence, crisis response and force reconstitution—is premised in significant part on the preservation of those freedoms. A stable law of the sea

regime embodying traditional freedoms of navigation and overflight is thus vital to U.S. security interests. The right of the United States to navigate and overfly the world's oceans in furtherance of its national security must remain securely rooted in accepted principles of international law. To be effective, U.S. military operations and deployments must be consistent with the rule of law.

The non-deep seabed mining provisions of the 1982 LOS Convention continue to constitute a fair balance of the interests of all nations in their use of the oceans and are fully consistent with the traditional freedoms of navigation and overflight. U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the non-deep seabed mining provisions of the 1982 LOS Convention, and as bolstered by diplomatic representations and the assertions of right where necessary under the Freedom of Navigation Program, have served adequately so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.

Promulgation of policy guidance to U.S. forces operating in the maritime environment, ensuring their compliance with the navigation and overflight provisions of the LOS Convention, has effectively implemented the non-seabed provisions of the Convention for the United States. Dissemination of that guidance to other nations has gone far to foster U.S. views concerning the proper interpretation of the Convention. This is reflected in the fact that U.S. guidance in this area is being widely adopted by other maritime nations.

However, excessive maritime claims to sovereignty or jurisdiction by coastal States continue to threaten U.S. security and economic interests. Additionally, emerging maritime issues, including overly restrictive efforts to protect the marine environment and conserve ocean resources, present equally serious challenges. All seek to restrict traditional ocean freedoms, particularly navigation and overflight rights, or exact an unacceptable price for the exercise of those rights. This trend may expand and intensify in the period ahead.

The risk, cost and effort to counter these challenges will increase as U.S. military force structure, including continental United States and overseas basing, is reduced over the next decade. Nonetheless, acquiescence and accommodation to the erosion of high seas freedoms of navigation and overflight remain unacceptable policy options. Unilateral U.S. demonstrations of resolve—especially operational assertions—are sometimes viewed as antagonistic. They risk the possibility of military confrontation and of political costs that may be deemed unacceptable, with prejudice to other U.S. interests, including worldwide leadership in ocean affairs and support for use of cooperative, international solutions to mutual problems.

The long-term stability of the oceans, which U.S. security interests require, can best be met by a comprehensive and widely accepted Law of the Sea

Convention. Codification of existing and emerging rules of customary international law into a single, comprehensive convention of universal application is clearly preferable to primary reliance on the uncertainties associated with unilateral assertions of rights premised upon the process of claim and counterclaim of customary international law. This process should press coastal State practice into increasing conformity with agreed international norms. While not eliminated outright, the need to assert U.S. navigation and overflight rights in the face of excessive claims should be reduced substantially, and with it the risk and cost of unwanted turmoil and confrontation on and over the high seas.

Some of the deep seabed mining provisions of the LOS Convention, as originally constituted, were incompatible with the interests of the United States and other western industrialized powers. Beginning in 1990, there developed a growing recognition within the international community, among developed and developing nations alike, that the deep seabed mining provisions of the Convention required reform.

On balance, weighing costs and benefits, the United States had much to gain in exercising a leadership role in the United Nations effort to reform the deep seabed mining regime, removing the principal obstacle to broad international acceptance of the 1982 Law of the Sea Convention. For a positive outcome, U.S. leadership will continue to be required in defining and promoting a regime that protects overall U.S. interests and is acceptable to all parties to the Convention.

In the meantime, U.S. military and economic activities on, over and under the sea are guided by the President's 1983 Ocean Policy Statement and the U.S. Freedom of Navigation Program. In particular, U.S. naval and air forces continue to operate on, over and under the world's oceans in a manner fully consistent with the navigational articles of the LOS Convention. In addition, the United States continues vigorously to protest excessive maritime claims and exercise routinely and on a global scale, U.S. navigational, overflight and other defense-related rights and duties in accordance with the Convention. That program should be expanded to involve other maritime powers with like interests in the oceans in cooperative and individual effort.

The Department of Defense will continue to update and disseminate its ocean policy guidance not only to U.S. maritime forces, but also to nations with like interests in the oceans. Emulation of that guidance by other nations in the development and promulgation of their own ocean policy furthers international implementation of the navigational articles of the LOS Convention. To this end, the Departments of Defense and State will continue to sponsor bilateral LOS discussions, as well as symposia and conferences of military and civilian law of the sea experts to foster international understanding of, and support for, U.S. ocean policy.

To do otherwise is to permit the ocean enclosure movement to continue unabated and risk loss of the freedoms of navigation and overflight essential to worldwide economic security and peace.⁷³

Notes

1. For the full text see Appendix 4.
2. Agreement relating to the Implementation of Part XI of the UN Convention on the Law of the Sea, UNGA Doc. A/48/950, June 9, 1994 at 11-31; Anderson, *Efforts to Ensure Universal Participation in the United Nations Convention on the Law of the Sea*, 42 *Int'l & Comp. L.Q.* 654 (1993).
3. For the full text see Appendix 1.
4. U.S. Department of the Navy, *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations, NWP 9 (Rev. A)/FMFM 1-10 (1989) [hereinafter NWP 9 (Rev. A) ANN. SUPP.]*, Introduction at 33-34, & para. 1.1.
5. Canadian Department of National Defence, *Handbook on the Law of Naval Operations*, MAOP-331 (Ottawa, 1991).
6. By the Argentine Naval War College and the Japanese Maritime Self Defense Force Staff College.
7. Symposium on the Law of Naval Warfare: Targeting Enemy Merchant Shipping, Naval War College, January 1990. See Grunawalt (ed.), *THE LAW OF NAVAL WARFARE: TARGETING ENEMY MERCHANT SHIPPING*, 65 U.S. Naval War College International Law Studies (1993).
8. E.g., International Institute of Humanitarian Law, San Remo, Italy, Round-Table of Experts on International Humanitarian Law Applicable to Armed Conflicts at Sea, 1987-1994. See 7 SCHRIFTEN, *THE MILITARY OBJECTIVE AND THE PRINCIPLE OF DISTINCTION IN THE LAW OF NAVAL WARFARE* (Bochum 1989, W.H. v. Heinegg ed., 1991), and 8 SCHRIFTEN, *METHODS AND MEANS OF COMBAT IN NAVAL WARFARE* (Toulon 1990, W.H. v. Heinegg, ed. 1992).
9. E.g., Federal Ministry of Defence of the Federal Republic of Germany, *Humanitarian Law in Armed Conflicts - Manual ZDv 15/2* (1992).
10. See Robertson (ed.), *THE LAW OF NAVAL OPERATIONS*, 64 U.S. Naval War College International Law Studies (1991).
11. On the 1958 Conference, see FRANKLIN, *THE LAW OF THE SEA: SOME RECENT DEVELOPMENTS*, 53 U.S. Naval War College International Law Studies 1959-1960 (1961). For a discussion of the 1960 Conference, see Dean, *The Second Geneva Conference on the Law of the Sea: The Fight For Freedom of the Seas*, 54 *Am. J. Int'l L.* 751-89 (1963).
12. See 1 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY (Nordquist ed. 1985).
13. Done at London Oct. 20, 1972, entered into force July 15, 1977, 28 U.S.T. 3459, T.I.A.S. No. 8587.
14. Done at Chicago Dec. 7, 1944, entered into force Apr. 4, 1947, 61 Stat. 1180, T.I.A.S. No. 1591, 3 *Bevans* 944, 15 U.N.T.S. 295.
15. With annexes, done at Washington, London, Mexico City and Moscow Dec. 29, 1972, entered into force Aug. 30, 1975, 26 U.S.T. 2403, T.I.A.S. No. 8165, 1046 U.N.T.S. 120, 11 I.L.M. 1291 (1972).
16. Done at London Nov. 30, 1990, U.S. instrument of ratification deposited Mar. 9, 1992, not in force, 30 I.L.M. 735 (1991).
17. Done at Vienna Dec. 20, 1988, entered into force Nov. 11, 1990, T.I.A.S. No. ____, 28 I.L.M. 493 (1989).
18. With annexes and agreed statements, Moscow, June 12, 1989, entered into force Jan. 1, 1990, T.I.A.S. No. ____, 28 I.L.M. 877 (1989).
19. Done at Ottawa Jan. 18, 1985, entered into force Mar. 18, 1985, T.I.A.S. No. 11091.
20. Signed at Atafu Dec. 2, 1980, entered into force Sept. 3, 1983, T.I.A.S. No. 10775.
21. Exchange of notes at London Nov. 13, 1981, entered into force Nov. 13, 1981, 33 U.S.T. 4224, T.I.A.S. No. 10296, 1285 U.N.T.S. 197, 21 I.L.M. 439 (1982).
22. 10 *Ocean Policy News*, at 2-3 April 1993. *Id.*, Dec. 1993, at 1-4; UNGA Doc. A/48/PV.72, at 8 (Statement of U.S. representative); ASIL Newsletter, Jan.-Feb. 1994, at 14-16. See also U.N. Law of the Sea: Report of the Secretary-General, UN Doc. A/48/527, Nov. 10, 1993, at 7-8, and UNGA Resolution A/RES/48/28, Jan. 11, 1994, paras. 4-6.
23. Cf. LOS Convention, articles 58, 87 & 194(4).
24. LOS Convention, article 211(5).
25. With annexes and protocols, done at London Feb. 17, 1978, entered into force Oct. 2, 1983, T.I.A.S. No. ____.

26. *Supra* n. 15.
27. *Supra* n. 16.
28. London Convention, article VII(4); MARPOL 73, article 3; OPRC, article 1(3). *See further* text on sovereign immunity accompanying n. 48 and following.
29. With annex, done at Cartagena Mar. 24, 1983, entered into force Oct. 11, 1986, T.I.A.S. No. 11085, 22 I.L.M. 227 (1983).
30. S. Treaty Doc. 103-5; BNA, *Int'l Env. Rep.* 21:3261.
31. Entered into force Oct. 1986, 22 I.L.M. 240; T.I.A.S. No. 11085.
32. 26 I.L.M. 38(1987); U.N. LOS BULL., No. 10 (Nov. 1987), at 59; BNA, *Int'l Env. Rep.* 21:3171; S. Treaty Doc. 101-21.
33. 26 I.L.M. 65; U.N. LOS BULL., No. 10 (Nov. 1987), at 78, BNA, *Int'l Env. Rep.* 21:3191; S. Treaty Doc. 101-21.
34. SPREP Convention, article 14.
35. 30 I.L.M. 1624 (1991).
36. *Id.*, Introduction, at 1630.
37. IMO Doc. PMP/Circ. 105 dated Dec. 7, 1992.
38. Article 234 of the LOS Convention provides:

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

See generally, Joyner, *Ice-Covered Regions in International Law*, 31 *Natural Resources J.* 213 (1991). *See also* Chapter XI, n. 79 *supra*.

39. State Department telegram 349386, Nov. 18, 1993; American Embassy London telegram 20793, Nov. 18, 1993.
40. 28 I.L.M. 649 (1989); U.N. LOS BULL., No. 17, Dec. 1989, at 37; entered into force May 5, 1992.
41. *See supra* Chapter X, text accompanying nn. 104-07.
42. 30 I.L.M. 773 (1991).
43. Bamako Convention, article 5(4)(c), 30 *id.* at 784.
44. International Convention for the Regulation of Whaling with schedule of whaling regulations, signed at Washington Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849, 4 *Bevans* 248, 161 U.N.T.S. 72, and Protocol done at Washington Nov. 19, 1956, 10 U.S.T. 952, T.I.A.S. No. 4228, 338 U.N.T.S. 366.
45. Done at Wellington, Nov. 24, 1989, and Noumea, New Caledonia, Oct. 20, 1990, 29 I.L.M., 1449 (1990), U.N. LOS BULL., No. 14 (Dec. 1989), at 31.
46. S. Exec. Rep. 102-20.
47. U.N. Doc. A/CONF.151/4 (Part II), para. 17.1, at 1 (1992).
48. AMERICAN LAW INSTITUTE, RESTATEMENT (THIRD), FOREIGN RELATIONS LAW OF THE UNITED STATES, § 457, Reporter's Note 7 (1987).
49. 1958 High Seas Convention, articles 8-9; LOS Convention, articles 95-96.
50. 1958 Territorial Sea Convention, articles 22-23; LOS Convention, articles 30.
51. 1923 Statute attached to the Geneva Convention on the International Regime of Maritime Ports, 58 L.N.T.S. 286, article 13; 1926 Brussels Convention for the Unification of Certain Rules relating to the Immunity of State-owned vessels, 176 L.N.T.S. 201, 3 *Hudson* 1837, article 3(1); 1934 Protocol to the Brussels Convention, 176 L.N.T.S. 215, article I; 1972 European Convention on State Immunity, U.K.T.S. 74, II I.L.M. 470 (1972), article 30; 1954 Oil Pollution Convention, 12 U.S.T. 2989, T.I.A.S. No. 4900, U.K.T.S. No. 54 (1958), 327 U.N.T.S. 3, 9 I.L.M., 1 (1970), article II(1)(d); 1973 Protocol on Intervention on the High Seas In Cases of Marine Pollution by Substances Other Than Oil, T.I.A.S. No. 10561, U.K.T.S. No. 27 (1983), 13 I.L.M. 605 (1974), article II(1) (cross ref. to Article I(2)); 1969 Civil Liability Convention for Oil Pollution Damage, 973 U.N.T.S. 3, U.K.T.S. No. 106 (1975), 9 I.L.M. 45 (1970), 64 *Am. J. Int'l L.* 481, article XI(1); 1910 Brussels Convention for the Purpose of Establishing Uniformity in Certain Rules regarding Collisions, 4 *Am. J. Int'l L. Supp.* 121 (1910), article 11; 1910 Brussels Convention on Assistance and Salvage at Sea, T.S. 576, article 14; 1926 Brussels Convention on Maritime Mortgages and Liens, 120 L.N.T.S. 187, 3 *Hudson* 1845, 27 *Am. J. Int'l L.* 268 (1962), article 15; 1965 Convention on Facilitation of International Maritime Traffic, 18 U.S.T. 410, T.I.A.S. No. 6251, 591 U.N.T.S. 265, article II(3); 1966 Convention on Load Lines, 18 U.S.T. 1857, T.I.A.S. No. 6331, 640 U.N.T.S. 133, article 5(1)(a); 1969 Convention on the Tonnage Measurements of Ships, T.I.A.S. No. 10490, article 4(1)(a); 1989 Convention on Salvage, article 4

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(Party may decide otherwise); 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 27 I.L.M. 672 (1988), U.N. LOS BULL., No. 11 (July 1988), at 14, article 2(1).

State aircraft are exempted from the provisions of the following treaties: 1944 I.C.A.O. Convention, 61 Stat. 1180, T.I.A.S. No. 1591, 3 Bevans 944, 15 U.N.T.S. 295, article 3; 1948 Geneva Convention on the International Recognition of Rights in Aircraft, 4 U.S.T. 1830, T.I.A.S. No. 2847, 310 U.N.T.S. 151, article 13; 1953 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, 310 U.N.T.S. 181, 52 Am. J. Int'l L. 593, article 26; 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 20 U.S.T. 2941, T.I.A.S. No. 219, 12 I.L.M. 1042, article 1(4); 1970 Hague Convention on the Suppression of Unlawful Seizure of Aircraft (Hijacking), 22 U.S.T. 1641, T.I.A.S. No. 7192, 860 U.N.T.S. 105, article 3(2); 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), 24 U.S.T. 564, T.I.A.S. No. 7570, 974 U.N.T.S. 117, article 4(1).

Article 13(2) of the 1993 Convention on Maritime Liens and Mortgages, U.N. Doc. A/CONF.162/L5; article X(3) of the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships, 57 Am. J. Int'l L. 268 (1962, article I(2) of the 1969 Intervention Convention for Oil Pollution, 26 U.S.T. 765, T.I.A.S. No. 8068, U.K.T.S. No. 77 (1975), 970 U.N.T.S. 212, 9 I.L.M. 25 (1970); and article 3(1)(a) of the 1933 Rome Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft, 192 L.N.T.S. 289, 6 Hudson 327, all specifically exempt public vessels or State aircraft from enforcement jurisdiction.

52. The 1972 International Regulations for Preventing Collisions at Sea (COLREGS 1972), 28 U.S.T. 3459, T.I.A.S. No. 8587, Rule 1(a); 1974 Convention for the Safety of Life at Sea (SOLAS 1974), 32 U.S.T. 47, T.I.A.S. No. 9700, 14 I.L.M. 959 (1975), article II; 1979 US-Canada Exchange of Notes: Vessel Traffic Management System for the Juan de Fuca Region, T.I.A.S. No. 9706, 32 U.S.T. 377, Annex para. 208 (except when compliance would impair defense operations or defense operational capabilities).

A few treaties are silent on the scope of application to ships: 1981 Lima Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific, and the 1985 Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region. The United Kingdom reserved the right not to apply the provisions of the 1952 International Convention relating to the Arrest of Sea-going Ships, 439 U.N.T.S. 193, 53 Am. J. Int'l L. 539 (1959) to "warships or to vessels owned by or in the service of a State."

53. 1926 Washington Draft Convention on Oil Pollution of Navigable Waters, I FOREIGN RELATIONS OF THE UNITED STATES 1926, at 238, XIX INTERNATIONAL PROTECTION OF THE ENVIRONMENT 9587 (Ruster, Simma & Bock, eds., 1979), articles III and IV; 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter (London [Dumping] Convention), 26 U.S.T. 2403, T.I.A.S. No. 8165, 1046 U.N.T.S. 120 U.K.T.S. No. 43 (1976), 11 I.L.M. 1302 (1972), article VII; 1973 Convention for the Prevention of Pollution by Ships (MARPOL 73), 1340 U.N.T.S. 22484, 12 I.L.M. 1319 (1973), Int'l Env. Rep. 21:2301 (MARPOL Protocol of 1978, T.I.A.S., No. ___), article 3(4); 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers, with Annex (STCW), S. Exec. EE, 96th Cong., 1st Sess., S. Exec. Rep. 102-4, T.I.A.S. No. ___, article III(a); 1976 Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona), 1102 U.N.T.S. (Reg. No. 16008); U.N. Doc. ST/LEG.SER.B/19, p. 459; 15 I.L.M. 300 (1976); Int'l Env. Rep. 35:0301, article 11(2); 1978 Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution (ROPME), 1140 U.N.T.S. 133, 17 I.L.M. 511 (1978), Int'l Env. Rep. 21:2721, article XIV; 1982 U.N. Convention on the Law of the Sea, 21 I.L.M. 1261 (1982), Int'l Env. Rep. 21:3301, article 236; 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, JEDDAH, NEW DIRECTIONS IN THE LAW OF THE SEA (New Series), v.2, Doc. J.19, article XIV; 1986 Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, S. Treaty Doc. 101-21, S. Exec. Rep. 102-8, 26 I.L.M. 65 (1987); U.N. LOS BULL., Nov. 1987, at 78; Int'l Env. Rep. 21:3191, article 12(4); 1990 Protocol concerning Specially Protected Areas and Wildlife to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (SPAW Protocol), S. Treaty Doc. 103-5, Int'l Env. Rep. 21:3261, article 2(3); 1990 Convention on Oil Pollution Preparedness, Response and Co-operation (OPPRC), S. Treaty Doc. 102-11, S. Exec. Rep. 102-16, 30 I.L.M. 733 (1991), Int'l Env. Rep. 21:1801, article 1(3); 1991 Protocol on Environmental Protection to the Antarctic Treaty, S. Treaty Doc. 102-22, S. Exec. Rep. 102-54, 30 I.L.M. 1483 (1991), Int'l Env. Rep. 21:3801, article 11(1); 1992 Convention on the Protection of the Black Sea against Pollution, 32 I.L.M. 1110 (1993), U.N. LOS Bull., No. 22, Jan. 1993, at 31, article IV; 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), 13 I.L.M. 555 (1974), article 4(4); 1992 Convention on the Protection

of the Marine Environment of the Baltic Sea Area (Helsinki Convention), U.N. LOS BULL., No. 22, at 54 (Jan. 1993); Int'l Env. Rep. 35:0401, article 4(3).

Similar understandings have been made by the United Kingdom and the United States to the Cartagena Convention, and by the United States to SPREP and Basel Conventions. The United States believes this has become the norm for all marine environmental protection conventions and thus has proposed the following understanding to the Biodiversity Convention:

The Government of the United States of America understands that although the provisions of this Convention do not apply to any warship, naval auxiliary, or other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

Sen. Treaty Doc. 103-20, p. XVII. See Chandler, *The Biodiversity Convention: Selected Issues of Interest to the International Lawyer*, 4 Col. Int'l Envtl. L. & Pol'y 141, 153 (1993).

In depositing its instrument of ratification of the 1982 LOS Convention, Malta declared its view that:

the sovereign immunity contemplated in article 236 does not exonerate a State from such obligation, moral or otherwise, in accepting responsibility and liability for compensation and relief in respect of damage caused by pollution of the marine environment by any warship, naval auxiliary, other vessels or aircraft owned or operated by the State and used on government non-commercial service.

U.N. LOS BULL., No. 23, at 7 (June 1993).

54. 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 932 U.N.T.S. 3, 11 I.L.M. 262 (1972), Int'l Env. Rep. 35:0101, Cmnd 6228, 119 U.K.T.S. (1975).

55. 1992 Annex II on the Prevention and Elimination of Pollution by Dumping or Incineration to the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), 32 I.L.M. 1090 (1993), Int'l Env. Rep. 35:0151.

56. 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London [Dumping] Convention), 26 U.S.T. 2403, T.I.A.S. No. 8165, 1046 U.N.T.S. 120, U.K.T.S. No. 43 (1976), 11 I.L.M. 1302 (1972).

57. 1989 Convention on Salvage, S. Treaty Doc. 102-12, S. Exec. Rep. 102-1, U.N. LOS BULL., No. 14, at 77 (Dec. 1989).

58. 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, JEDDAH, NEW DIRECTIONS IN THE LAW OF THE SEA (New Series), Doc. J.19.

59. 1986 Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, S. Treaty Doc. 101-21; S. Exec. Rep. 102-8; 26 I.L.M. 65 (1987); U.N. LOS BULL., No. 10, at 78 (Nov. 1987); Int'l Env. Rep. 21:3191.

60. 1991 Protocol on Environmental Protection to the Antarctic Treaty, S. Treaty Doc. 102-22, S. Exec. Rep. 102-54, 30 I.L.M. 1483 (1991), Int'l Env. Rep. 21:3801.

61. 1992 Convention on the Protection of the Black Sea against Pollution, 32 I.L.M. 1110 (1993); U.N. LOS BULL., No. 22, at 31 (Jan. 1993).

62. 22 I.L.M. 226, S. Treaty Doc. 98-13, pp. 17-18, 43.

63. S. Treaty Doc. 101-21, p. 53.

64. S. Treaty Doc. 102-5, S. Exec. Rep. 102-36.

65. 176 L.N.T.S. 201, 3 Hudson 1837.

66. 176 L.N.T.S. 215.

67. 13 U.S.T. 2312, T.I.A.S. No. 5200, U.K.T.S. No. 5 (1963), 450 U.N.T.S. 82.

68. 21 I.L.M. 1261 (1982).

69. 15 U.S.T. 1601, T.I.A.S., No. 5639, U.K.T.S. No. 3 (1965), 516 U.N.T.S. 205.

70. 57 Am. J. Int'l L. 268 (1962).

71. 27 I.L.M. 672 (1988), U.N. LOS BULL., No. 11, at 14 (July 1988).

72. Schachte, *National Security Interests in the 1982 UN Convention on the Law of the Sea*, Council on Ocean Law, Special Report, Feb. 1993; Galdorisi, *Who Needs the Law of the Sea?*, U.S. Nav. Inst. Proc., at 71 (July 1993); Galdorisi, *A Narrow Window of Opportunity*, *id.*, at 60-62 (July 1994).

73. Panel on the Law of Ocean Uses, *U.S. Interests and the United Nations Convention on the Law of the Sea*, 21 Ocean Deve. & Int'l L. 373 (1990).