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Security at Sea
The Case for Ratifying the Law of the Sea Convention

POLICY BRIEF

By Will Rogers

The United States should ratify the Law of the Sea Convention (LOSC). To date, the United States has protected its maritime interests successfully without ratifying this treaty. However, the rise of modern navies and unconventional security threats are making this approach ever more risky and will increasingly imperil U.S. national security interests.[1] Failure to ratify LOSC will cede to other countries America's ability to shape the interpretation and execution of the convention and protect the provisions that support the existing international order. It will also complicate America's ability to address maritime challenges in the Arctic and South China Sea, inhibit America's ability to drill for oil and gas offshore and allow other countries to lay claim to strategic energy and mineral reserves located in the high seas. The United States can ill afford to continue forgoing LOSC and the benefits that accrue to American interests.

LOSC and Maritime Security

Civilian and military leaders across the U.S. security community support LOSC ratification.[2] "Joining the Convention will advance the interests of the U.S. military," said former Secretary of State Condoleezza Rice in January 2005.[3] "As the world's leading maritime power, the United States benefits more than any other nation from the navigation provisions of the Convention." More recently, the commander of U.S. Pacific Command, Admiral Samuel J. Locklear, stated that "U.S. accession to the Law of the Sea Convention would benefit the U.S. military's mission in the Asia-Pacific region by enabling the United States to reinforce and assert the Convention's rights, freedoms, and uses of the sea."[4] Beyond the support from these government leaders, the treaty also enjoys widespread support among American private companies and non-governmental organizations, from the American Petroleum Institute to the World Wildlife Fund.[5]

This support is not new. American political leaders and military strategists have long recognized the need for a multilateral framework setting rules for maritime activities – since the early to mid-1900s, when increasing maritime activity and commercial efforts to tap undersea resources prompted concerns over the potential for maritime conflict. The United Nations (U.N.), with American support, convened the Third Conference on the Law of the Sea in 1973

to begin preparing a multilateral treaty. The conference produced the U.N. Convention on the Law of the Sea (UNCLOS), which became available for signature and ratification as of December 1982 and entered into force in 1994. Today, 161 countries and the European Union have ratified the convention, with the United States remaining one of the few holdouts, despite its key role in the negotiations.[6]

U.S. naval and Coast Guard forces benefit from the fact that most countries in the world operate according to international norms enshrined in LOSC. These norms include freedom of navigation on the high seas for vessels and aircraft of all countries, as well as their innocent passage in territorial waters and straits used for international transit. Such norms benefit a range of U.S. operations, including joint counter-piracy activities, humanitarian assistance and disaster relief missions with international partners and power projection. The convention also established specific dispute resolution processes. Although these processes are voluntary and nonbinding, they provide a formal avenue for cooperation – a critical means of preventing violent conflict from emerging.

Perhaps most notably, the convention clarifies the difference between military activities and innocent passage, an increasingly important distinction in international disputes over freedom of navigation rights.[7] For example, surveying and using weapons or intelligence-gathering capabilities (e.g., tapping into seabed fiber optic cables) in territorial waters are activities that violate innocent passage as described in the convention.[8] LOSC also specifies norms and duties for submarines and other underwater vehicles, surface vessels and aircraft that must be met to ensure innocent passage in territorial waters and international straits. Submarines or other underwater vehicles operating in another state's territorial waters, for example, are required to surface and show their flag in order to signal innocent passage.[9]

As navies around the world modernize, states may seek to redefine or reinterpret customary international laws in ways that directly conflict with U.S. interests, including freedom of navigation.

LOSC critics often argue that the treaty's navigational provisions are redundant given that countries – including the United States – comply with customary international law. However, as navies around the world modernize, states may seek to redefine or reinterpret customary international law in ways that directly conflict with U.S. interests, including freedom of navigation. Ratification will help the United States counter efforts by rising powers seeking to reshape the rules that have been so beneficial to the global economy and to U.S. security. China, for example, seeks to alter customary international law and long-held interpretations of LOSC in ways that will affect operations of the United States as well as those of many of its allies and partners. Some U.S. partners and allies share China's view on some of these issues. Thailand, for example, has adopted China's view that foreign navies must have consent of the coastal state before conducting military exercises in its Exclusive Economic Zone (EEZ), a view that runs counter to traditional interpretation of the treaty.[10] LOSC provides a legitimate and recognized framework for adjudicating disagreements that will enable the United States to sustain access to the global commons.

Ratification will also help the United States deflate Iran's recent challenges to U.S. freedom of navigation through the Strait of Hormuz. Historically, Iran has stated that the right to freedom of navigation does not extend to non-signatories of the convention and has passed domestic legislation that is inconsistent with international law, specifically

by requiring warships to seek approval from Iran before exercising innocent passage through the strait.[11] Ratifying LOSC would nullify Iran's challenges should it ever choose to close the strait to U.S. or other flagged ships. Moreover, ratifying LOSC will provide the U.S. Navy the strongest legal footing for countering an Iranian anti-access campaign in the Persian Gulf.

Emerging Maritime Challenges

The maritime threat from transnational and non-state actors has risen considerably. The U.S. Navy, Marine Corps and Coast Guard cautioned in their 2007 maritime strategy that the global security environment is "increasingly characterized by a hybrid blend of traditional and irregular tactics, decentralized planning and execution, and non-state actors using both simple and sophisticated technologies in innovative ways."[12] Given that many emerging maritime challenges do not fit squarely within the realm of customary international maritime law, LOSC is the only regime that the United States can rely on to work with its global partners to overcome a range of new and unconventional maritime threats.

Piracy, weapons of mass destruction (WMD) proliferation and natural resource exploitation are three key areas where ratifying LOSC will benefit the United States.

PIRACY

Piracy threatens vital shipping routes in the Horn of Africa, the Indian Ocean and elsewhere, and the U.S. military works closely with regional partners to address this threat. LOSC signatories have a duty to interdict ships suspected of piracy anywhere beyond the territorial sea of a coastal state.[13] The convention also enumerates the rights of states to board ships suspected of piracy and legally defines what constitutes an act of piracy, providing the United States the strongest legal footing possible in conducting its counter-piracy operations and bringing violators to justice.[14]

The continued failure to ratify LOSC will not prohibit the United States from taking action against piracy. The United States conducts counter-piracy operations today despite its reluctance to ratify LOSC. The U.S. Navy and Coast Guard often execute such operations using the legal authorities granted under the 1988 Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention) – to which the United States is a party.[15] Regardless, U.S. Navy and Coast Guard officials continually argue that LOSC adds legitimacy to counter-piracy efforts. In an era of hybrid threats in the maritime domain, this added legitimacy will make it easier for the United States to cooperate with international partners in this area.

Ratifying LOSC will also enhance U.S. counter-piracy efforts by improving America's ability to shape the legal authorities the international community relies on to combat piracy, especially in instances where existing agreements do not account for advancements in technology. The United States, for example, relies increasingly on remote sensing systems and a fleet of low- and high-altitude remotely piloted vehicles to provide persistent surveillance where the United States lacks a sustained maritime presence. These technologies may help U.S. maritime officials track piracy activities and facilitate a faster response. However, as one analyst notes, use of these technologies may not be clearly protected within existing international maritime treaties, including LOSC: "[R]emote sensing from satellites and high-flying surveillance aircraft have for decades undertaken maritime scientific research and surveys in others['] EEZs without the permission – or even the advance knowledge – required by the 1982 UNCLOS."[16] As the United States continues to field remotely piloted or semi-autonomous vehicles and sensors – including maritime ones – it will need to be prepared to challenge efforts to constrain or prohibit their use.

Ratifying LOSC will allow the United States to participate in international fora such as the Law of the Sea Tribunal, which would enable it to challenge states that may seek to constrain American use of remote sensing and remotely operated technologies, or otherwise seek to adopt narrow legal definitions that prevent U.S. law enforcement officials from combating piracy. Since debates at this tribunal will occur whether or not the United States is a member, U.S. interests will be better served by ratifying LOSC so that it can shape and participate in these debates, and try to prevent less favorable rules and norms from being adopted.

PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Ratifying LOSC will bolster the U.S. ability to create bilateral and multilateral agreements with other countries to counter WMD proliferation, one of the biggest threats to U.S. security according to numerous analysts both in and outside of government.[17] Government efforts to strengthen land-based interdiction efforts are increasing maritime transit of dual-use technologies critical to developing and deploying WMD. In just one striking example, in June 2011 a U.S. Navy destroyer trailed a Belize-flagged ship suspected of carrying missile components to Burma and pressured the vessel to return to its origin in North Korea.[18]

In particular, ratifying LOSC will strengthen programs such as the Proliferation Security Initiative (PSI), since key partner and potential partner countries often voice skepticism over U.S. commitments to these transnational programs in light of the U.S. failure to ratify the convention. President George W. Bush launched PSI in 2003 to leverage existing national laws to improve interception of materials in transit and halt WMD-related financial flows. LOSC ratification will give PSI a stronger legal foundation under international law by removing "the bogus argument that PSI is a renegade regime that flies in the face of international law," according to Rear Admiral William D. Baumgartner, former U.S. Coast Guard Judge Advocate General. "The net result will be more partners, more intelligence, more preemptive actions that help protect us from this most serious threat."[19] Indeed, removing this excuse for other countries' non-participation in programs to counter proliferation would benefit the United States diplomatically and could help in negotiating future innovative solutions and programs.

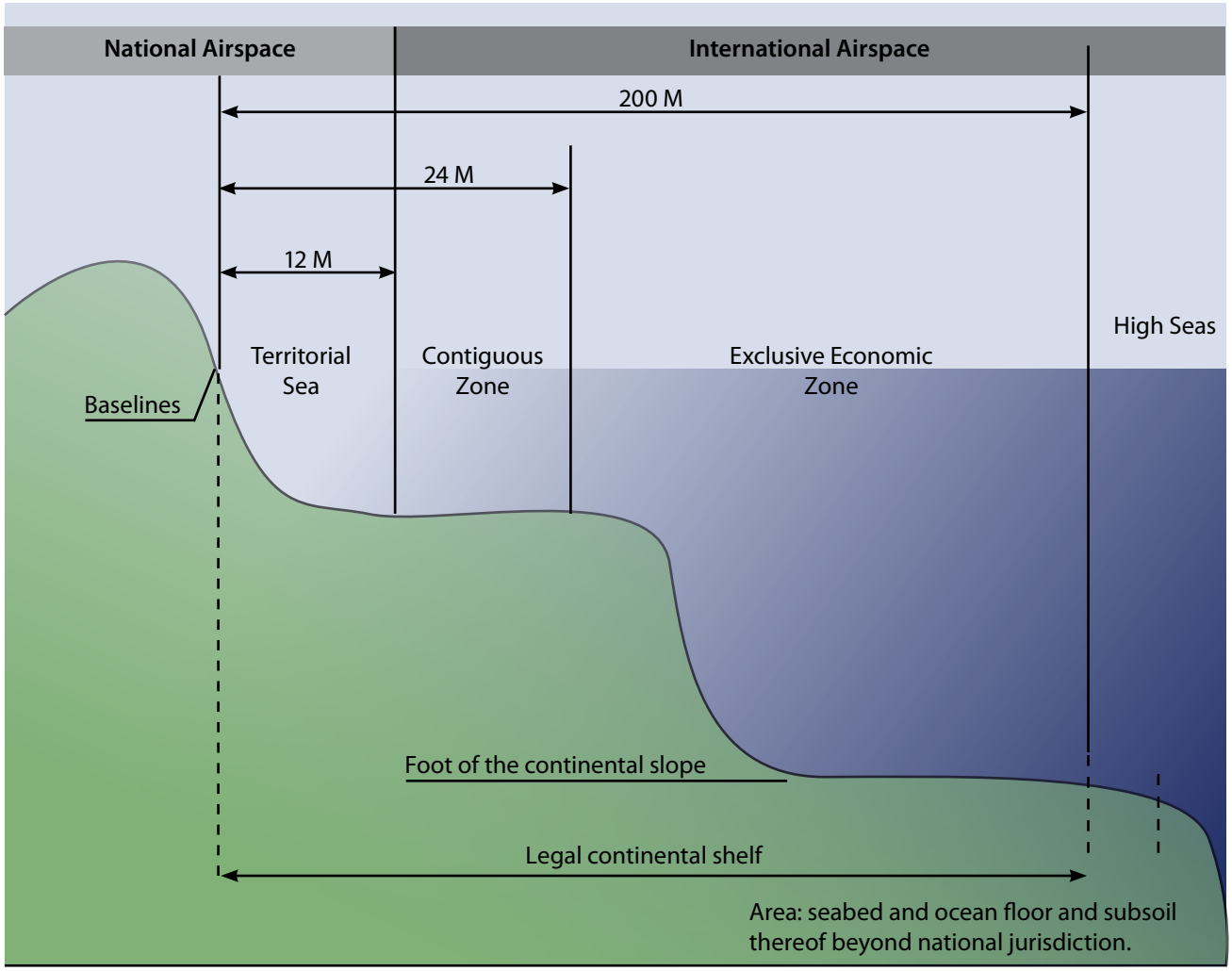
NATURAL RESOURCE EXPLOITATION

Maritime natural resource exploitation – from oil and natural gas to seabed minerals – has strategic implications for the United States. Ratifying LOSC will put the United States in a position to secure internationally recognized claims to those important natural resources.

The United States is committed to exploring for additional domestic reserves of oil and natural gas in an effort to bolster domestic production and provide assured access to energy resources. Increasing production from domestic reserves will not necessarily help reduce higher oil prices, since these prices are set by the global market, but it can help close the U.S. trade deficit and provide more assured access to energy if a major crisis chokes off access to foreign energy imports for any length of time.

Offshore oil and natural gas exploration along the extended continental shelf – an area beyond the 200-nautical-mile EEZ – is expected to increase U.S. reserves over the next decade. However, the United States cannot secure internationally recognized sovereign rights to those resources unless it ratifies LOSC. While the United States enjoys national jurisdiction over living and non-living resources above and below the seabed out to 200 nautical miles, claims to resources beyond the EEZ must be formally made to the U.N. Commission on the Limits of the Continental Shelf, the

BOUNDARIES OF THE OCEAN AND AIRSPACE



Source: United Nations, available at http://www.un.org/depts/los/clcs_new/marinezones.jpg.

international body established by LOSC for parties to adjudicate claims to the extended continental shelf. Without the United States ratifying LOSC, U.S. companies operating beyond the EEZ would be considered on the high seas and beyond the formal legal protection of the United States. As a result, offshore drilling companies have increasingly expressed their concern about the lack of legal protections afforded to U.S. companies and have indicated a reluctance to assume significant risk in operating in areas beyond U.S. jurisdiction. In short, U.S. failure to ratify LOSC could have a chilling effect on commercial resource exploration and exploitation on the extended continental shelf.

Ratifying LOSC will allow the United States to make a claim to the extended continental shelf – an area estimated to be twice the size of California – and bring the potential oil and natural gas resources beyond the existing EEZ under

U.S. jurisdiction.[20] Furthermore, these sovereign resources would be beyond the jurisdiction of the International Seabed Authority (ISA), which only has authority over resources in the deep seabed beyond other national jurisdictions.[21] While critics often cite concerns about the ISA and its administration of U.S. companies drilling under the deep seabed, such concerns will be assuaged by bringing the extended continental shelf under internationally recognized U.S. jurisdiction.

As long as the United States remains outside the international legal protections afforded by LOSC, the private sector remains hesitant to invest in seabed mining – investments that would reduce U.S. vulnerabilities to external pressure and supply disruption.

Seabed mining, in the Arctic and elsewhere, is also becoming an important strategic interest for the United States. U.S. companies increasingly seek to engage in seabed mining for minerals such as rare earth elements and cobalt that are critical to the broad U.S. economy and used in producing defense assets. However, as long as the United States remains outside the international legal protections afforded by LOSC, the private sector remains hesitant to invest in seabed mining – investments that would reduce U.S. vulnerabilities to external pressure and supply disruption. Indeed, since few suppliers provide such minerals and they are prone to intentional or unintentional disruptions and price spikes, increasing U.S. production will help prevent suppliers from exerting political and economic leverage over the United States and its allies.[22]

Regional Security Challenges

Beyond these specific security issues, LOSC ratification plays a key role in several regional security challenges with serious implications for American security. In particular, the rise of regional powers and their ascendant modern navies may challenge the existing international order and U.S. interests. The United States has long championed a rules-based international order. Ratifying the convention will both demonstrate U.S. commitment to the existing international order and enable the United States to rebuff attempts to alter international maritime law in ways that conflict with its national interests.

The Arctic, the South China Sea, and the North Atlantic Ocean and Caribbean Sea exemplify how LOSC could secure U.S. interests in the maritime domain.

THE ARCTIC

The Arctic is emerging as one of the most important maritime domains in the world. Russia, the United States and other Arctic-bordering countries are increasing activity in the Arctic as changing environmental conditions provide access to new shipping routes and natural resource deposits. Arctic countries are jockeying for power by remapping the sea floor and increasing their military presence, driving new security and diplomatic concerns that carry strategic significance for the United States.

"The foundation of our future success in the Arctic must be built upon the 1982 Convention on the Law of the Sea, the seminal agreement that provides the international legal framework for use of the world's seas and oceans, including the Arctic Ocean," said General Charles H. Jacoby, commander of U.S. Northern Command, testifying before the Senate Armed Services Committee.[23] "Joining the convention would protect and advance a broad range of U.S. interests, including navigational mobility and offshore resources."

In January 2009, President George W. Bush issued National Security Presidential Directive-66/

Homeland Security Presidential Directive-25 (NSPD-66/HSPD-25) outlining U.S. interests in the Arctic. The directive requires the U.S. Department of Homeland Security – and through it, the U.S. Coast Guard – to execute missions to manage natural resources and protect the environment in the Arctic, for example by responding to environmental damage such as oil spills and conserving commercial fisheries. NSPD-66/HSPD-25 also cites the need to safeguard U.S. interests regarding hydrocarbon resources such as oil and natural gas, especially those that may overlap with resources claimed by other states.[24]

The United States cannot adequately protect its energy, environmental and natural resource interests in the Arctic unless it ratifies LOSC.

However, the United States cannot adequately protect its energy, environmental and natural resource interests in the Arctic unless it ratifies LOSC. As the Arctic continues to open up as its ice cover declines, other Arctic countries, such as Russia and Canada, continue to submit claims to the U.N. Commission on the Limits of the Continental Shelf in order to acquire sovereign rights over valuable energy and minerals resources. While the United States continues to map its extended continental shelf in the Arctic,[25] it cannot make internationally recognized sovereign claims to energy and other natural resources it discovers until it ratifies the treaty[26] – and it cannot challenge claims made by Russia or other Arctic countries that conflict with its own scientific assessments. As noted above, today the United States may only make sovereign claims to seabed resources within its 200-nautical-mile EEZ. However, as U.S. Coast Guard Commandant Admiral Robert J. Papp, Jr., recently wrote, "with accession to the Law of the Sea Convention, the United States has the potential to exercise additional sovereign rights over resources on an extended outer continental shelf, which might reach as far as 600 nautical miles into the Arctic from the Alaskan coast."[27]

Meanwhile, U.S. influence in the region is waning, which will only exacerbate America's ability to secure its interests in the region. Within the Arctic Council, the primary venue for promoting cooperation in the region, the United States remains the only member that has not ratified LOSC. The Arctic Council is a consensus-based forum which often debates and makes decisions regarding issues already governed by previous agreements and international law, such as the natural resource exploitation protections provided by LOSC. Considering agreements within existing frameworks such as LOSC can make it easier to level the playing field and hold discussions with countries – except the United States. Given its failure to date to ratify LOSC and subsequent lack of international legitimacy and protections provided under the International Seabed Authority for its natural resource claims, the United States remains excluded from important mechanisms for promoting economic cooperation and respect for rightful natural resource claims by all Arctic countries.

THE SOUTH CHINA SEA

Ratifying LOSC will give the United States added legitimacy as it seeks to defend the interests of allies and partners in the Asia Pacific, particularly countries involved in disputes over the South China Sea. Tensions between China and Southeast Asian states over historical territorial claims and jurisdiction over potentially lucrative seabed natural resources are escalating because of increasingly assertive behavior on all

sides. LOSC is central to mitigating tensions and avoiding conflict in the South China Sea, which involve territory demarcation, maritime navigation and other issues covered by the convention. Without ratifying LOSC, the United States will be unable to credibly encourage efforts of allies like the Philippines as it attempts to mediate a dispute with China over the joint development of resources in the South China Sea using the LOSC dispute settlement mechanism.

Moreover, U.S. failure to ratify LOSC will leave America hamstrung as countries in the region promote new international maritime norms that may conflict with U.S. interests. Legal scholars and military and political leaders in China, Thailand and elsewhere are interpreting the treaty in ways that bolster their own interests, but the United States cannot effectively counter these interpretations or promote new ones without ratifying LOSC and availing itself of the convention's legal bodies.[28] These interpretations could harm U.S. maritime security activities in the region if these counties successfully build consensus with others that conflict with the U.S. interpretation of customary international law.

Although critics of LOSC rightly argue that the treaty will not bind China's assertive behavior in the South China Sea,[29] evidence suggests that despite attempts to interpret the treaty in ways that promote its own interests, China is willing to work within the LOSC framework. According to one expert, recent statements by the ministry of foreign affairs reaffirm that "China will advance maritime claims that are consistent and compliant with UNCLOS," which may allow states to press China to clarify its claims through the treaty's dispute settlement mechanism and bring the region closer to a negotiated settlement.[30] However, countries in the region may be reluctant to press China to clarify its claims lest they strain relations with their largest trading partner. As a party to LOSC, the United States could support its partners by pressing China to clarify its maritime claims, which are legitimately tied to U.S. maritime interests in the region, including freedom of navigation rights for the U.S. Navy.

Ratifying LOSC would protect and enhance U.S. sovereignty by allowing the United States to make internationally recognized sovereign claims to its extended continental shelf and the natural resources lying beneath the seabed.

THE NORTH ATLANTIC OCEAN AND THE CARIBBEAN SEA

The North Atlantic Ocean and the Caribbean Sea is an important maritime domain that directly affects U.S. security and economic interests. Cuba, for example, is located only 90 miles away from Florida. As Cuba moves to develop its offshore oil and natural gas resources, it has reportedly signed contracts with oil companies from Brazil, India, Italy, Russia and Spain, and is negotiating with Chinese oil companies for leasing rights in its coastal waters. This could create additional diplomatic challenges for the United States if drilling occurs along the U.S. continental shelf.[31] As more oil companies – including national oil companies – begin to operate off the U.S. coast to exploit Cuba's offshore oil and natural gas reserves, ratifying LOSC will strengthen the ability of the United States to challenge claims to resources that may overlap with U.S. reserves in its continental shelf by adjudicating those claims in the convention's legal bodies. The likelihood of this challenge manifesting is far from remote, and the United States must be prepared to secure its interests.

Conclusion

While LOSC will not address every challenge the United States will confront at sea, ratifying the treaty will improve America's ability to protect its global interests by providing a stronger legal foundation for its own maritime activities and helping to shape and enforce international norms and legal authorities. Critics will continue to argue that ratifying LOSC would cede America's sovereignty, but the opposite is true: Ratifying LOSC would protect and enhance U.S. sovereignty by allowing the United States to make internationally recognized sovereign claims to its extended continental shelf and the natural resources lying beneath the seabed.

Given the growing importance of the maritime domain to U.S. interests and the rapidly changing global security environment, the United States can no longer afford to continue forgoing LOSC and the benefits that accrue to American interests.

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ENDNOTES

1. There are also strong economic reasons for the United States to ratify LOSC, especially because the international legal protection it affords to commercial activities would encourage investment by businesses and financiers. The convention, therefore, has strong support from the U.S. private sector. See, for example, the May 22, 2008, letter to the Senate majority and minority leaders from the Executive Vice President of Government Affairs at the U.S. Chamber of Commerce, R. Bruce Josten, and the President and CEO of the Institute for 21st Century Energy at the Chamber, Gen James L. Jones, USMC (Ret.), http://www.virginia.edu/colp/pdf/Reid-McConnell%20letter08.pdf. While these issues further increase the importance of ratification, this policy brief focuses more specifically on the security implications.

2. See, for example, the testimony of ADM Robert J. Papp, Jr., USCG Commandant, before the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard of the Senate Committee on Commerce, Science, and Transportation, "Defending U.S. Economic Interests in the Changing Arctic: Is There a Strategy?" July 27, 2011. See also the remarks of ADM Gary Roughead, USN, "Active in the Arctic Seminar," June 16, 2011, http://www.navy.mil/navydata/people/cno/Roughead/Speech/110616%20Arctic%20Capitol%20Hill.pdf; George W. Bush, "President's Statement on Advancing U.S. Interests in the World's Oceans," May 15, 2007, http://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070515-2.html; and the Executive Order on Stewardship of the Ocean, Our Coasts, and the Great Lakes, signed July 19, 2010, http://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes.

3. Nomination hearing for Dr. Condoleezza Rice, Questions for the Record from Senator Richard G. Lugar, January 2005, http://lugar.senate.gov/issues/foreign/sea/rice_qfa.html.

4. Admiral Samuel J. Locklear III, Nominee to be Commander of U.S. Pacific Command, Advance Policy Questions, February 20, 2012, http://armed-services.senate.gov/statemnt/2012/02%20February/Locklear%2002-09-12.pdf.

5. For a complete list of supporters, see "Law of the Sea Convention Supporters," U.S. State Department, http://www.state.gov/e/oes/lawofthesea/statements/index.htm.

6. Other countries that have not ratified LOSC include Afghanistan, North Korea, Libya and Iran, although in 1982 Iran signed the implementation agreement on the management of fish stocks. For a complete list of parties to the convention, see U.N. Division for Ocean Affairs and the Law of the Sea, "Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements" (June 3, 2011), http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm.

7. See part 7, section 1, article 95 of LOSC, which states: "Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State." See United Nations Convention on the Law of the Sea, http://www.un.org/depts/los/convention_agreements/texts/LOSC/LOSC_e.pdf, 59. See also article 110 on the "right of visit" with regard to the provisions on immunity.

8. For a list of activities that are not considered innocent passage, see part 2, section 3, subsection A, article 19, "Meaning of Innocent Passage," United Nations Convention on the Law of the Sea, http://www.un.org/depts/los/convention_agreements/texts/LOSC/LOSC_e.pdf, 31.

9. See part 2, section 3, subsection A, article 20, "Submarines and other underwater vehicles," which states that "in the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag." United Nations Convention on the Law of the Sea, http://www.un.org/depts/los/convention_agreements/texts/LOSC/LOSC_e.pdf, 59.

10. Peter Dutton, "Cracks in the Global Foundation: International Law and Instability in the South China Sea," in Patrick M. Cronin, ed., *Cooperation from Strength: The United States, China and the South China Sea* (Center for a New American Security, January 2012), 74.

11. See Charles Emmerson and Paul Stevens, *Maritime Choke Points and the Global Energy System: Charting a Way Forward* (Chatham House, January 2012); and Department of State, "Iran's Maritime Claims," *Limits in the Seas,* No. 144 (March 16, 1994), 5, http://www.state.gov/documents/organization/58228.pdf.

12. ADM Gary Roughead, USN; Gen James T. Conway, USMC; and ADM Thad W. Allen, USCG, "A Cooperative Strategy for 21st Century Seapower," remarks presented to the International Seapower Symposium at the Naval War College, Newport, Rhode Island, October 17, 2007; reprinted in *Naval War College Review* 61 (Winter 2008), www.usnwc.edu/press/.

13. "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State." United Nations Convention on the Law of the Sea, part 7, section 1, article 100, "Duty to cooperate in the repression of piracy." A subsequent article stipulates that "on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith." United Nations Convention on the Law of the Sea, part 7, section 1, article 105, "Seizure of a pirate ship or aircraft."

14. "Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)." United Nations Convention on the Law of the Sea, part 7, section 1, article 101, "Definition of Piracy." See also the U.N. interpretation of the rights of states to combat piracy within an exclusive economic zone, http://www.un.org/depts/los/piracy/piracy_legal_framework.htm.

15. This convention was ratified by the Senate on November 22, 1989 and entered into force on March 1, 1992.

16. Mark Valencia, *Intelligence Gathering, the South China Sea and the Law of the Sea,* Policy Forum 11-28 (Nautilus Institute, September 6, 2011), http://www.nautilus.org/publications/essays/napsnet/forum/Valencia_SCS#ii-article-by-mark.

17. See, for example, Department of Defense, *Nuclear Posture Review Report* (April 2010), http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf; Charles Ferguson, "Preventing Catastrophic Nuclear Terrorism," Council Special Report No. 11 (Council on Foreign Relations, March 2006), http://www.cfr.org/weapons-of-mass-destruction/preventing-catastrophic-nuclear-terrorism/p10067; and Emma Belcher, "The Proliferation Security Initiative: Lessons for Using Nonbinding Agreements" (Council on Foreign Relations, July 2011), http://www.cfr.org/proliferation/proliferation-security-initiative/p25394.

18. See Donald Kirk, "North Korean Ship Thwarted on Way to Burma (Myanmar)," *The Christian Science Monitor*, June 13, 2011.

19. RDML William D. Baumgartner, USCG, remarks at the Heritage Foundation/Federalist Society debate on the accession to the Law of the Sea convention (June 22, 2007), http://www.oceanlaw.org/downloads/references/presentations/Baumgartner-Heritage07.pdf.

20. "NOAA: Shelf data reveals oil, gas rights," United Press International (December 16, 2011), http://www.upi.com/Business_News/Energy-Resources/2011/12/16/NOAA-Shelf-data-reveals-oil-gas-rights/UPI-17831324042711/.

21. The United Nations Convention on the Law of the Sea states that "The coastal State exercises over the continental shelf *sovereign* rights for the purpose of exploring it and exploiting its natural resources." (Emphasis added) See part 6, article 77, paragraph 1, "Rights of the coastal state over the continental shelf." Claims to the continental shelf, including for national jurisdiction, are made through the Commission on the Limits of the Continental Shelf, as stated in Part 6, Article 76, paragraph 8. Of note, part 6, article 82, paragraph 1, "Payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles," describes the resources subject to "payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured," which are made through the International Seabed Authority (ISA). However, because the ISA's jurisdiction is limited to those areas beyond national jurisdiction, the "payments and contributions" provision under article 82 is taken not to apply to resources on or below the extended continental shelf (beyond 200 nautical miles) once recognized by the Commission on the Limits of the Continental Shelf.

22. Christine Parthemore, "Elements of Security: Mitigating the Risks of U.S. Dependence on Critical Minerals" (Center for a New American Security, May 2011), 23, http://www.cnas.org/elementsofsecurity.

23. Testimony of GEN Charles H. Jacoby, Commander of U.S. Northern Command and North American Aerospace Defense Command, before the Senate Armed Services Committee, March 13, 2012, http://armed-services.senate.gov/statemnt/2012/03%20March/Jacoby%2003-13-12.pdf.

24. National Security Presidential Directive-66 and Homeland Security Presidential Directive-25, "Arctic Region Policy," January 9, 2009, http://www.fas.org/irp/offdocs/nspd/nspd-66.htm.

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The Ticonderoga-class guided-missile cruiser USS Chancellorsville stands by as plane guard for the Nimitz-class aircraft carrier USS Ronald Reagan as the sun sets over the horizon.

(U.S. Navy)