The US and the Law of the Sea Convention
Past, Present and Future LOS Politics

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Rule of Law Committee for the Oceans

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Why Am I Here Today?

- WHY: US Accession to the UN Convention on the Law of the Sea Continues to be an Important Issue

- HERE: I began my work on the LOS Convention here at the Commerce Department and recognize that DOC has broad interests in the Law of the Sea

- TODAY: We are marking some major anniversaries related to the Convention in 2015
Current and Future Law of the Sea Issues

- Freedom of Navigation (EEZ, Straits, High Seas, Archipelagic Waters, Ice Covered Areas)
- Telecommunications
- Sustainable Development at Sea/Business and Environment
- Continental Shelf beyond the EEZ
- Deep Seabed Minerals
- Biological Diversity Beyond National Jurisdiction
- Dumping in International Waters
- Climate Change, Sea Level Rise, Ocean Acidification
The Law of the Sea Convention and 1994 Agreement

• An Agreement among States on jurisdiction, rights and obligations at sea;

• A “Constitution for the Oceans” that provides the legal infrastructure for future ocean agreements;

• 167 Parties (Including the EU);

• 20 Years in force and 32 years of acceptance for navigation, EEZ and continental shelf use.
Parties, Signatories and Non-Signatories of the LOS Convention

Non-party Coastal States: United States, North Korea, Iran, Syria, Libya, Venezuela, Colombia, Peru, El Salvador, Cambodia, United Arab Republics, Israel, Turkey and Eritrea
Opposition to the LOS Convention

- idea is to foster several mineral cartels dominated by third world nations - replicas, in other words, of OPEC
- Negotiations have served to inhibit United States exploration of the seabed for its abundant natural resources
- seabed mining will be cheaper and involve fewer adverse environmental side effects than most new land-based mines
- socialism
- whims of an unelected and unaccountable international bureaucracy
- The treaty...is the first step toward the inauguration of the New International Economic Order
- Resource War
- redistribute the world’s wealth...full employment program for international lawyers
- alarming collection of powers
- proposed supranational bureaucracy would strangle economic development
- almost unchecked regulatory power
- a new regime to govern seabed mining — or, more precisely, to keep it at a minimum
- will eliminate most prospective mining
- Common heritage...unwisely endorsed by American presidents
- The Seabed Authority would place unprecedented power in the hands of an international agency in which the U.S. and other industrial counties would have minimal influence.
Seabed Mining Today

• LOS Convention Came Into Force 20 Years Ago; Now has 167 Members, 31 Non-Party States;

• Only 14 Coastal States are Non-Parties;

• 20 member states sponsor 26 deep seabed mining operations;

• The only groups conducting At-Sea Exploration and Development are operating under the Convention;

• The LOS Convention is the only “Reciprocating Regime” for mutual recognition of claims;

• The Seabed Authority remains limited in size: its budget is less than 10% that of the Heritage Foundation and has 1/7th the staff.
# State Party Sponsors of Deep Seabed Mining

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<th>Industrialized States</th>
<th>Advanced Developing States</th>
<th>Pacific Small Island States</th>
<th>Eastern European &amp; Socialist States</th>
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<td><strong>Economic Affairs</strong></td>
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<td>- Competitiveness of US Industries</td>
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<td>- Leadership in New Technology</td>
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LOS Timeline

- 1966-67: Lyndon Johnson and Arvid Pardo
- 1969-79: Seabeds Committee and 1970 UN Resolution
- 1970: Nixon’s Draft Convention
- 1974: UNCLOS III Begins Substantive Negotiations
- 1980: Draft Convention Complete
- 1982: Reagan review and return with 6 criteria for a convention he would sign
Vote to Adopt - April 30, 1982

• US Calls for Vote
• Final Vote:
  • 130 Yes
  • 4 No (US, Venezuela, Israel, Turkey)
  • 17 Abstain (Eastern Socialist Block, UK and some western Europe)
• Open for Signature on Dec. 10, 1982 with 119 Signatories incl. France and Netherlands. Japan, Belgium and EC sign within 2 years.
Timeline 1982-94

  - NOAA issues 4 DSM Licenses under DSHMRA; Seeks Reciprocating States Regime, but no formal alternative regime established;
  - LOS Preparatory Commission;
  - Metal Markets Stagnate and Interest in Seabed Mining Declines;
- 1990-94: UN Secretary General’s consultations produce an Implementation Agreement that US signs;
Timeline 1994-2014

• 1994: Convention comes into force; Seabed Authority established with US as Provisional Member;

• 1998: US Provisional Membership Ends; Takes Observer role;

• 2001-02: Seven Pioneer Contractors Approved (France, Russia, Japan, South Korea, China, India and East European Group);

• 2005: German Application Approved as first regular applicant;

• 2007-2014 18 Additional applications approved
LOS in the Senate


- Nov. 1994: Republicans take control of Senate; Jesse Helms takes Foreign Relations Committee Chair;

- Nov 2002: Jesse Helms retires; Richard Lugar takes Chair

- October 2003: Lugar begins hearings; Foreign Relations Committee give unanimous approval; Senate Republican Leadership blocks floor action.
Second Attempt

• Nov 2006: Democrats win control of Senate; Biden chairs Foreign Relations Committee

• April, 2007: Bush Administration renews endorsement

• Oct. 2007: SFRC Hearings; Vote 17-4 to recommend Senate approval; Sent to Senate floor in December.

• Spring, 2008: Bush Administration Declines to Push UNCLOS to avoid undermining McCain Campaign (McCain dropped his support for LOS during campaign stop in Iowa)
Third Attempt

- June 2011: Initial push put on hold during Sen. Lugar’s primary campaign;
- May, 2012: Lugar loses primary; Push begins with substantial political and financial support;
- July, 2012: SFRC Hearings begin;
- Summer-Fall, 2012: Opposition gets 34 Senators to sign letters opposing a vote in the full Senate;
- Third Attempt notable for support from present and past Secretaries of State, Joint Chiefs, DOD Secretaries and a broad range of Industries.
Four Lessons from Past Ratification Efforts

• High-level central strategy and leadership within the Administration are essential;

• Presidential campaign seasons are bad times to address contentious conventions;

• Senators have three options: Yes, No and Later;

• Fear-based opposition stories trump detail-based explanations;

• Nationally coordinated State-based pressure can push uncommitted Senators to avoid a vote altogether.
Prospects for 2015-16

LOS Approval Vote Prospects: Cumulative and by Group

2014: 113th Congress

2015: 114th Congress

- Democrats
- Independents
- Core Republicans
- Supportive
- Avoiders
- Lean Against
- New & Unknown
- Opponent
A New Focus on LOS Education

Groups outside the government need to step up their activities:

• Focus outside the beltway where support is thin;

• Industry and NGOs can speak out where the swing votes are;

• Address LOS before it becomes a major media issue again;

• Address local interests and fears and counter opposition misinformation.
Present the Seabed Minerals Regime in a Positive Light

- Nixon designed the seabed regime; Reagan brought it back on track for US Interests;

- The Seabed Authority is working, due in large part to the contributions and leadership of Presidents Nixon and Reagan;

- US can and should lead work within the Seabed Authority to prepare rules and regulations for exploitation of deep seabed minerals;

- Regain a domestic deep seabed mining industry providing resources, jobs and profit;

- Reduce Dependence on China for REE and Refined Cobalt Needed by US Industry.
Emphasize Commercial Benefits

• As a Non-Party, US Industry cannot get exclusive access to sites, international recognition of title to minerals or investment from overseas for deep seabed mineral development;

• Commercial access to foreign EEZs can’t be secured by force. Joining the Convention would provide the US with legal and political leverage to protect our Interests;

• Diversification of supply and access to new sources of critical and strategic minerals and metals;

• US Leadership in negotiations affecting maritime trade and industry will be strengthened by demonstrating that the US is committed to the legal order of the seas.
Highlight US Interests in Environmental Provisions

- Guide interpretation and application of Sustainable Development principles: precautionary approach, polluter pays, right to develop, liability for damage;

- Promote international application of national responsibilities to address harm to the marine environment;

- Lead in developing new rules and regulations for activities in the International Seabed Area.
Observations

- US Leadership can fundamentally shape complex treaties and organizations;

- Negotiations such as BBNJ touch on business, trade issues and property issues; The whole of the Commerce Department should be engaged early in preparing for international consultations and negotiations;

- US participation in multilateral agreements is desirable but no longer viewed as “indispensable;”

- Senate advice must be sought during negotiations, not just consent after the negotiations are over;

- Senators have three options: “Yes,” “No” and “Later.” They and their constituents must be kept informed and engaged during negotiations to promote support after agreement is reached.