



Coast Guard Fact Sheet

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Issue Date: 12 June 2009
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The Law of the Sea Convention

BACKGROUND: The 1982 Law of the Sea Convention sets forth a comprehensive legal regime governing activities on, over and under the world's oceans. The European Community and well over 155 other countries, including most other major nations, are now party to the Convention. In 2007, President Bush emphasized, "Joining [the Convention] will serve the national security interests of the United States, including the maritime mobility of our armed forces worldwide." Secretary of State Clinton and other key administration officials and Senate leaders have called for early U.S. accession to the Convention. The Convention also has strong support from the national security community and a wide spectrum of the maritime and mining industries, environmental groups and ocean policy experts. The Senate Foreign Relations Committee held hearings on the Convention in 2003 and 2007. Following each of these sets of hearings, the Committee strongly recommended approval by the full Senate, but no floor vote was taken. The Coast Guard has long taken a lead role in advocating for the United States to join the Law of the Sea Convention as soon as possible. See <http://www.piersystem.com/go/doc/786/156912>.

SOME KEY REASONS THE COAST GUARD SUPPORTS THE CONVENTION:

- The Coast Guard is the nation's primary maritime safety, maritime security, marine environmental protection and maritime law enforcement agency. Joining the Convention would significantly enhance the Coast Guard's ability to protect the American public and its efforts to manage ocean resources and protect the marine environment by providing clear, internationally agreed-upon principles for operating in and governing ocean space.
- The challenges the United States faces in securing, preserving and protecting the world's oceans most often demand international solutions through the International Maritime Organization (IMO), the recognized international body for developing global standards for maritime safety, security and environmental protection. The Coast Guard plays a lead role in developing international standards at the IMO. Being an "outsider" to the Convention hampers U.S. negotiating positions at the IMO, making it more difficult to achieve U.S. policy objectives.
- Our outsider status is also an obstacle that we must overcome in developing virtually any international maritime agreement. For example, several nations that we want to join the Proliferation Security Initiative and counter-drug initiatives have expressed their reluctance to cooperate until we join the Convention.
- Ninety-five percent of U.S. imports and exports are carried by water at some point. Foreign-flagged ships carry the vast majority of these products. The Convention provides a solid foundation for the effective enforcement of U.S. laws and international standards on these foreign vessels plying our waters. Joining the Convention would benefit the Coast Guard's robust port-state control efforts and further ensure that foreign ships operating in our waters are safe and secure and that they do not harm our fragile marine ecosystem.
- The Convention strongly advances U.S. national security interests. It secures for military and commercial vessels, including Coast Guard ships and aircraft, navigational rights and freedoms throughout the world's oceans. These include the critical right of transit passage on, over and under international straits.
- Joining the Convention would put the United States' exercise of these vital rights on the firmest possible legal footing, providing far greater certainty and stability than customary international law affords.
- As a party, the United States would have a "seat at the table" and be in a far stronger position to refute excessive maritime claims and advance U.S. interests concerning the application of the Convention's provisions.
- By joining the Convention, the United States would be able to take advantage of the process set up in the Convention to obtain legal certainty and international recognition over the continental shelf and its vast resources beyond 200 nautical miles from the U.S. coastline in the Arctic, Bering Sea, Gulf of Mexico and elsewhere.

IMPORTANT PROVISIONS OF THE CONVENTION:

- Relevant provisions of the Convention preserve the right of the U.S. military, including Coast Guard units, to use the world's oceans to meet national security requirements. Among other things, the Convention:
 - Stabilizes the outer limit of the territorial sea at a maximum of 12 nautical miles.
 - Sets objective standards for drawing the normal baselines, straight baselines and bay and river closing lines from which to measure each of the maritime zones.
 - Provides a comprehensive list of objective activities to determine whether vessels, both commercial and military, are not engaged in "innocent passage" while underway through the territorial sea.
 - Assumes that, if a vessel is not engaged in any such activity, its "passage is innocent."
 - Provides the legal framework guaranteeing high-seas freedom of navigation and operations in, under and over international waters, including the 200-nautical mile exclusive economic zone (EEZ).
 - Codifies the critical rights of transit passage through, over and under international straits and archipelagic sea lanes passage through, over and under such sea lanes in the "normal mode" of operations.
- The contiguous zone provisions authorize the coastal State to take necessary action to prevent infringement of its customs, fiscal, immigration or sanitation laws within its territory or territorial sea out to 24 nautical miles.
- The Convention provides an effective process for resolution of most maritime disputes. During the Convention's negotiations, the United States had strongly advocated for just such a process, and achieved its goals. The Convention provides flexibility in terms of the forum (the United States will probably choose special arbitration) and certain sensitive issues, such as those disputes involving military activities (the United States will no doubt opt out).
- The provisions of the Convention do not inhibit U.S. military or law-enforcement operations. Among other things, it does not constrain military training exercises, intelligence gathering, counter-drug operations, illegal-migrant interdiction, the inherent right of self-defense, or rights of belligerents during military conflicts at sea.
- The provisions on the EEZ guarantee sovereign rights by the coastal State over all the living and non-living resources and other economic activities as far out as 200 nautical miles from shore or properly drawn baselines.
- The Convention's provisions permit coastal nations to secure sovereign rights over the potentially vast living and non-living resources on and under the continental shelf well beyond 200 nautical miles. These provisions would guarantee the United States its legal rights to explore and develop oil, gas and other mineral resources, as well as sedentary species, on its extended continental shelf, including large areas off Alaska and the Gulf Coast.
- Specific articles of the Convention ensure that commercial enterprises and governments enjoy the legal right to lay and maintain submarine cables and pipelines in the EEZ and on the continental shelf all over the world.
- The deep-seabed-mining provisions, as modified in the 1994 Implementing Agreement, allow mining companies to pursue free-market-oriented approaches to seabed mining. Moreover, this agreement addressed all of the concerns that the Reagan administration had raised, including eliminating any obligation to transfer technology and granting the United States a powerful and permanent decision-making role.
- The environmental provisions are consistent with U.S. marine environmental protection programs, in particular Coast Guard efforts to keep substandard and polluting vessels out of our ports and to prosecute violators.
- The Convention's provisions greatly enhance U.S. and allied efforts to protect the security of ports used for international shipping; to combat maritime traffic in illicit drugs, weapons and undocumented immigrants; to deal with the problem of illegal, unregulated and unreported fishing; and to fight the scourge of piracy.

OTHER RELEVANT INFORMATION:

- Virtually all of the national security, ocean policy, shipping, mining, fishing, legal, and environmental experts knowledgeable about the Convention, including the Joint Chiefs of Staff and the authors of the report of the U.S. Commission on Ocean Policy, overwhelmingly support the United States joining the Convention.
- The Convention provides the appropriate legal framework to govern maritime activities in the rapidly changing environment of the Arctic Ocean. All Arctic nations, except the United States, are now party to the Convention.
- The State Department is the lead federal agency concerning the Law of the Sea Convention, as well as other international issues affecting the oceans and polar affairs. For further information on the Convention that the State Department has put online, see <http://www.state.gov/g/oes/ocns/opa/convention/index.htm>.