



Advice and Consent for the Law of the Sea Treaty: Urgent Unfinished Business

**Prepared for
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by

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The United States Has a Broader Range of Oceans Interests Than Any Other Nation in the World. These Include:

- Naval Mobility
- Navigational Freedom for Commercial Shipping
- Oil and Gas from the Continental Margin
- Fishing
- Environmental Protection
- Marine Science
- Mineral Resources of the Deep Seabed
- Conflict Resolution

Navigational Freedom for Naval Mobility: Our Most Important National Oceans Interest



Navigational Freedom for Trade and Commercial Interests: The Real Common Heritage of Mankind



Organization of Briefing

- I. Oceans Policy Reasons for U.S. Adherence to the Law of the Sea Convention**
- II. Other Reasons for U.S. Adherence**
- III. An Examination of Concerns About U.S. Adherence**
- IV. Government and Industry Resolutions in Support of U.S. Adherence to the Convention**

I. Oceans Policy Reasons for U.S. Adherence to the Law of the Sea Convention

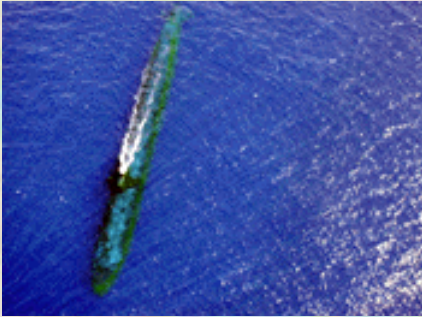
- **Maintaining U.S. effectiveness in protecting worldwide navigation and overflight freedoms vital to U.S. national security**
- **Maintaining U.S. effectiveness in protecting worldwide communication through undersea cables**
- **Enabling U.S. participation in important oceans institutions**
- **Continuing U.S. leadership in promoting the Rule of Law in the world's oceans**
- **Providing a vehicle to place critical U.S. interpretations of oceans law on the record**
- *And no U.S. interest is served by non-adherence since the Convention has been fully renegotiated to meet all U.S. conditions*

Maintaining U.S. Effectiveness in Protecting Worldwide Navigation and Overflight Freedoms Vital to U.S. National Security

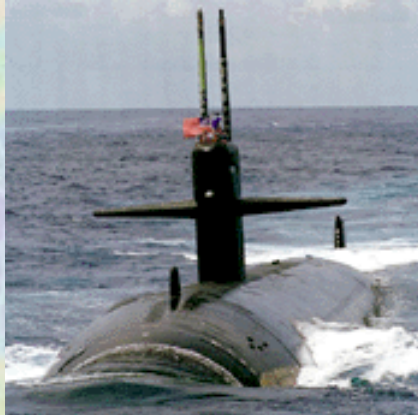
- **Navigation and Overflight Freedoms are the core common heritage of mankind**
- The United States has fought at least two major wars to preserve navigational freedoms, the War of 1812 & World War I
 - In Point II of his famous 14 Points at the end of WWI, Woodrow Wilson said we should secure “Absolute freedom of navigation upon the seas . . . alike in peace and in war. . . .”
- The Seventh Point of the Atlantic Charter, accepted by the Allies as their “common principle” for the post World War II world, provided “such a peace should enable all men to traverse the high seas and oceans without hindrance.”
- UNCLOS Treaty Provisions strongly protect navigation and overflight freedoms and those provisions meet all requirements of the United States military and of U.S. Commerce
- United States non-adherence handcuffs Uncle Sam in the continuing and critical struggle against illegal ocean claims

United States Submarines

A Critical Component for Strategic Stability



USS Chicago



USS Key West



USS Salt Lake City



Submarine, Pearl Harbor, Hawaii

Illegal Claims Affecting Navigation

<u>Type of Claim</u>	<u>Number*</u>
Historic Bay (15) & Baselines (27+)	42+
Territorial Sea Breadth	13
Contiguous Zones	19
Exclusive Economic Zones	32
Innocent Passage in the Territorial Sea	41
International Straits	16
Overflight Restrictions	5
TOTAL*	136+

*Note—all data is approximate as of June 22, 2001

December 2002 Illegal PRC Claim Over Military Survey Activities Within the 200 Mile Zone

- New law provides that Chinese civil and military authorities must approve all survey activities within the 200 mile economic zone.
- This new law follows harassment of the Navy's ocean-survey ship the *USS Bowditch* by Chinese military patrol aircraft and ships in September when the *Bowditch* was 60 miles off the coast—and the earlier EP-3 surveillance aircraft harassment.

In response, the U.S. has notified the PRC that we “will exercise our maritime rights in accordance with international law.”

Other Examples of Illegal Claims Harming U.S. Interests

- Peruvian challenges to U.S. transport aircraft in the EEZ—one aircraft shot down and a second incident in which two U.S. C-130s had to alter their flight plan around a claimed 650 mile Peruvian “flight information area”
- North Korean 50 mile “security zone”
- Brazilian claim to control warship navigation in the EEZ
- Libyan “line of death”

Maintaining U.S. Effectiveness in Protecting Worldwide Communications through Undersea Cables

- The Convention is also important in protecting vital U.S. rights to lay submarine cables and pipelines.

Enabling U.S. Participation in Important Oceans Institutions

- **Participation in the mechanisms for the settlement of oceans disputes** set out in the Convention, and inclusion of Americans as judges
- **Participation in the Commission on the Limits of the Continental Shelf**
 - U.S. participation would give us a voice in finalizing criteria for delimitation of the shelf and protecting U.S. offshore oil and gas rights.
- **Participation in the International Seabed Authority** to obtain the U.S. seats in the Council and Finance Committees
 - The U.S. must adhere and take its Council and Finance Committee seats in order to be able to exercise a veto over rules for revenue distributions and regulations for mining as needed to protect U.S. interests.
 - The U.S. must adhere to help shape the Authority to keep it limited and responsive to commercial realities and to ensure that the U.S. participates in drafting the rules that will apply to U.S. firms.

Some of the Costs to Date of Non-Participation

- The International Seabed Tribunal has adopted its rules of procedure and has decided many important cases without the participation of a United States judge.
- The Continental Shelf Commission has adopted its basic rules for operation and implementation of article 76 on the limits of the continental margin without U.S. participation. A critical proposal by Russia with respect to its arctic continental shelf is now pending before the Commission.
- The International Seabed Authority has adopted rules concerning seabed mining without U.S. participation.



Oil and Gas from the Continental Margin Bilby Tower, South of New Orleans

Continuing U.S. Leadership Promoting the Rule of Law in the World's Oceans

- The U.S. was a principal leader in promoting a basic Constitution for the world's oceans which would protect our common global heritage in navigational freedom, the oceans environment, fish stocks, cetaceans, and other oceans interests.
- Today **U.S. leadership is still vital** in protecting the important achievements embodied in this basic Constitution. No other nation combines our global oceans interests and our potential for leadership. If not America in promoting the Rule of Law in the world's oceans, then who?
- Further, during the renegotiation of Part XI the United States in effect *demand*ed that other Nations accept the Reagan/Congressional criteria as a requirement for U.S. adherence. These criteria were accepted. **For the U.S. to not adhere *after* these criteria have been accepted is to reduce the future effectiveness of the United States in international negotiations.** Indeed, continuing non-adherence to the LOS Convention will complicate national efforts to deal with serious concerns in relation to the Kyoto and International Criminal Court settings.

Providing a Vehicle to Place Critical United States Interpretation of Oceans Law on the Record

- Thomas Jefferson dreamed: “The day is within my time as well as yours, when we may say by what laws other nations shall treat us on the sea.”
- That day is *now*! America has had a vital say in developing the UNCLOS Treaty and was the most important player in the navigational and other security provisions.
- But over 50 nations in signing or adhering to the Treaty have made statements about its meaning, and too many of these statements seek to curtail the common heritage for special interests. **By itself adhering to the Treaty, America will get its opportunity to attach vitally important interpretations** that could be decisive in the ongoing struggle for oceans law.

No U.S. Interest Is Served By Non-adherence Since the Convention Has Been Fully Renegotiated to Meet All U.S. Conditions

- **The principal provisions of the Convention are already customary international law, accepted by the U.S. as binding.**
- **Part XI on deep seabed mining was a problem. But Part XI was renegotiated successfully to meet *all* the criteria set by President Reagan and Congress for U.S. adherence.**
Moreover, since Part XI has now been renegotiated, continued U.S. non-adherence will change nothing.
- **134 states (plus the European Community) are parties, including most of our NATO allies and all permanent members of the Security Council except the United States.**

II. Other Reasons for U.S. Adherence

- Countering international criticism of United States unilateralism
- Maintaining United States negotiating leverage
- Enhancing United States influence within the United Nations system

III.

An Examination of Concerns About United States Adherence—Including:

- Providing Assistance to the United Nations in the Absence of Full United Nations Reform
- Creating an International Bureaucracy for Deep Seabed Mining
- Loss of Control Over Distribution of Revenues By a Deep Seabed Authority
- Revenue Sharing from the Continental Shelf Beyond 200 Nautical Miles Unduly Burdening our Oil and Gas Industry
- United States Adherence is Not Needed Since We Can Simply Use Naval Force to Protect United States Navigational and Other Interests
- There is No Urgency About United States Adherence: The Issue Can Be Left to a Future Senate

Providing Assistance to the United Nations in the Absence of Full United Nations Reform

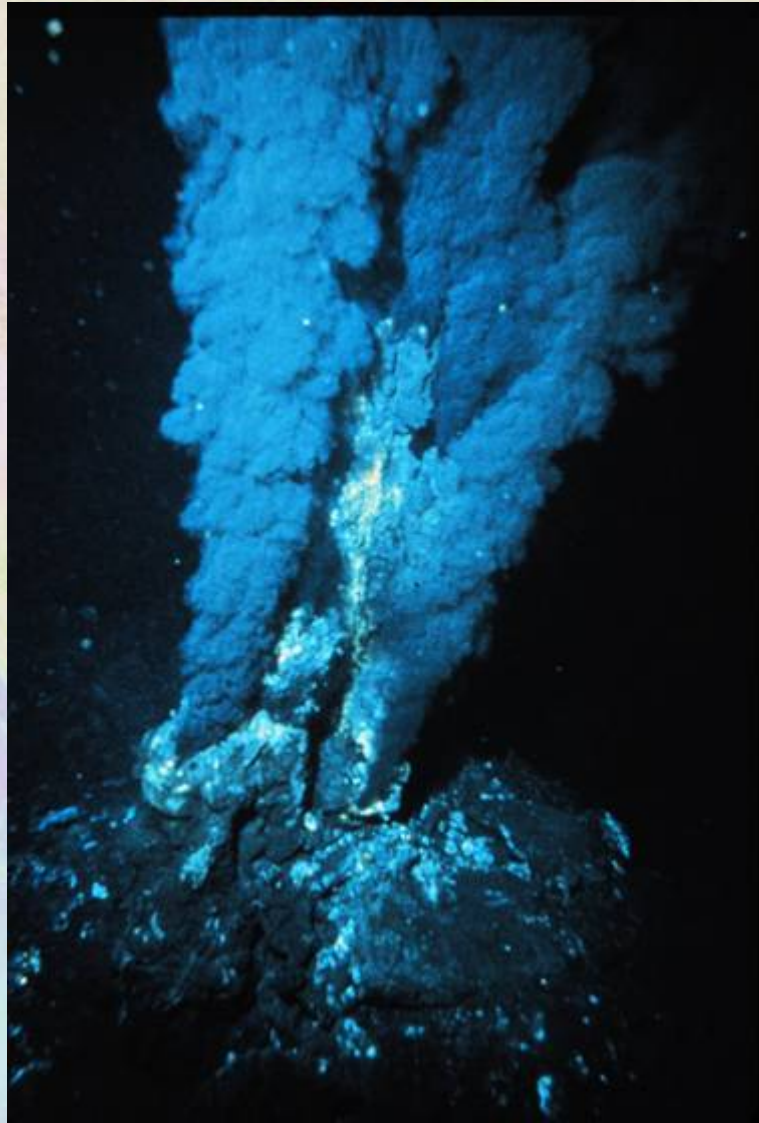
- No Institution Created by the LOS Convention is Either Part of the United Nations or is Even a Specialized Agency of the United Nations
- The United Nations Has Itself Recognized that the **Institutions Created by the LOS Convention** are Independent and **are not United Nations Bodies**
- **U.S. Participation in the LOS Convention Has No Financial Implications for the United Nations.** U.S. Assessments Under the Convention Would Go to the Independent Entities Created by the Convention

Creating an International Bureaucracy for Deep Seabed Mining: Part I

- Yes Part XI establishes a new international bureaucracy
- But, the Nixon Administration, the Reagan Administration, the Industry, and the Department of Defense/JCS were well aware that **there is no solution to the problem of U.S. access to seabed minerals beyond our national jurisdiction that does not accept a new international organization to ensure stable rights of access.** Indeed, a “fishing” approach to access, recommended at one time by the Treasury Department, was vetoed by the U.S. industry, which pointed out that our firms needed internationally recognized legal rights to specific sites in order to build cost-effective recovery and refining operations.
- **The regime for seabed mining found unacceptable by the Reagan Administration has been renegotiated and *all* of the Reagan conditions have been met.** The renegotiation also met *all* of the criteria set out by Congress in Title II of the 1980 Deep Seabed Hard Minerals Act for the United States to become a party to the Convention. In Renegotiating Part XI the U.S. Delegation had these criteria before them as essential changes to be made and they succeeded in making them.

Creating an International Bureaucracy for Deep Seabed Mining: Part II

- **The regime for seabed mining as renegotiated, and now in effect internationally, is the only mechanism by which United States seabed mining firms can have their interests legally recognized.** Absent a legally recognized site no bank is likely to provide needed funding for development.
- Importantly also, when the Nixon Administration conducted a thorough “economic review” of overall U.S. oceans interests, **seabed mining was a low priority compared with, for example, our interests in naval and commercial ship mobility.**



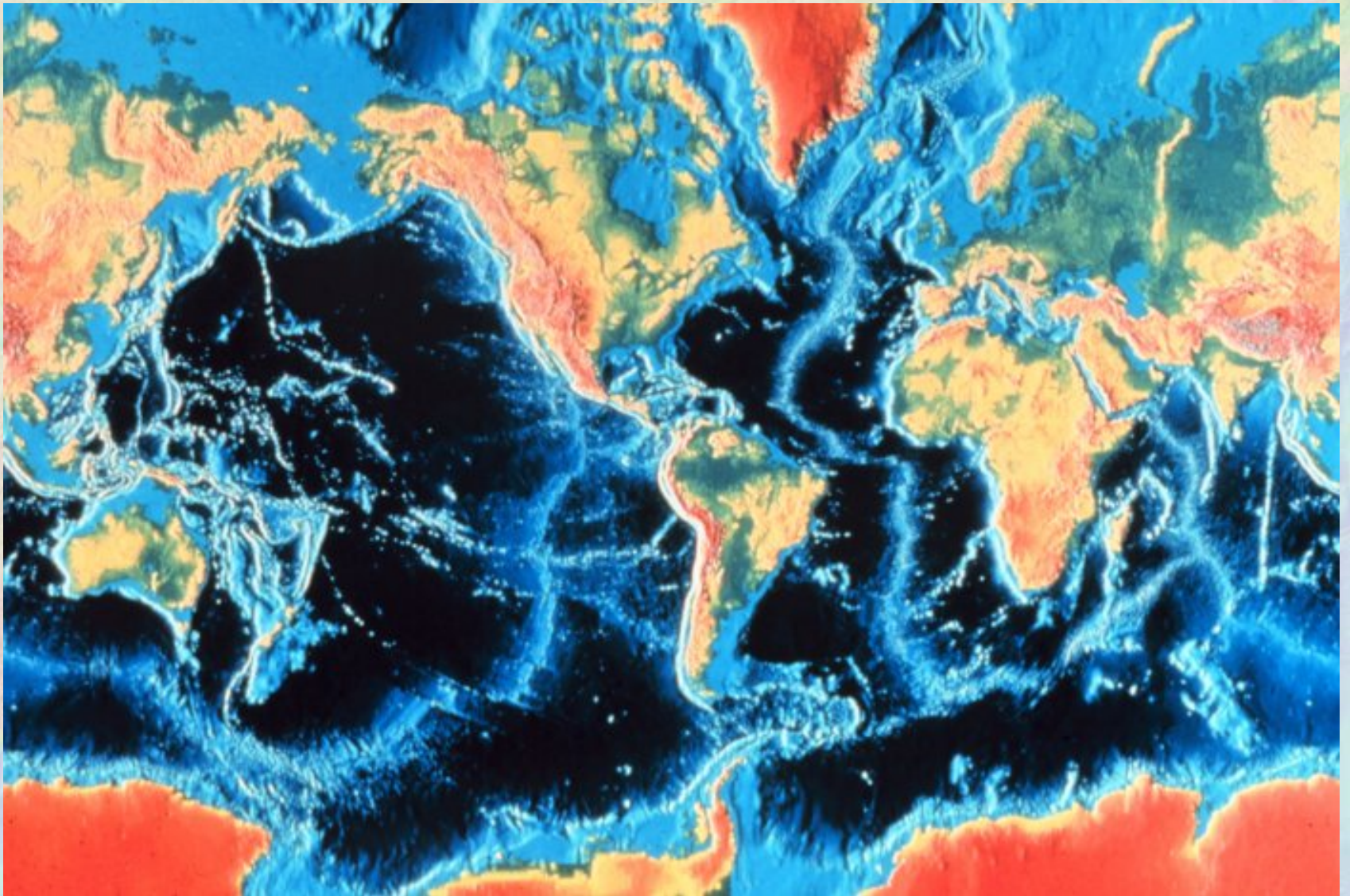
Deep Sea Hydrothermal Vent

Creating an International Bureaucracy for Deep Seabed Mining: Part I

- *Most importantly, the Seabed Authority has been created (by 134 countries and the E.C., including most of our NATO allies) and **United States non-adherence at this time will do nothing to prevent the Authority from coming into effect.***
- *To the contrary, **United States non-adherence has the important effect of losing the United States veto** over a range of important issues in operation of the Authority. The United States is the *only* state, singled out as such, effectively given a veto right over the important issues of rules for distribution of revenues and initial adoption of mining regulations. Not to exercise this right is to loosen, not tighten, U.S. control over the Authority. It is also to reject an important precedent recognizing a differential and special United States participation right in international organizations generally.*

Creating an International Bureaucracy for Deep Seabed Mining: Part II

- At present, **personnel of the authority number only about 36 and the Authority is holding only one three-week meeting per year.** The Authority is also under the leadership of Ambassador Satya Nandan, who has worked closely and cooperatively with the United States. We are much more likely to have substantial influence over the future direction of the Authority at this time, and in its crucial start up phase, than at any time in the future. Further, participation in the Council and the Finance Committee is much more important now, as rules, regulations, procedures and precedents are initially formulated.
- **U.S. financial obligations under the Convention will be modest.** Had we been a full party throughout 2001, our contribution to the Seabed Authority would have been approximately \$1.3 million computed at the 25% rate, and this will reduce to a 22% rate in 2002. Our contribution to the International Tribunal is estimated to be approximately \$2 million per year. This total level of contribution is less than the United States pays each year for membership in the Great Lakes Fish Commission.



Mid-Ocean Ridges

Loss of Control Over Distribution of Revenues by a Deep Seabed Authority

- Formulation of rules for the distribution of revenues by the seabed mining authority is one of the decisions subject to a potential United States veto. Thus, **the United States as a party could prevent any distribution with which we disagree *solely through U.S. decision.***
- As such, it is *only* if the United States does *not* adhere that revenues may be distributed to national governments—or even “liberation groups”—without the ability of the United States to prevent such **distributions**. That is, *non-adherence by the United States* could lead to decisions by others to distribute revenues in ways we would find objectionable or even harmful to our national security.
- The applicable provision here is Article 161 (8)(d & e) of the Convention which provides a veto not only over rules, regulations, and procedures for revenue distribution, but also over the initial adoption of rules, regulations, and procedures for seabed mining generally.

Revenue Sharing from the Continental Shelf Beyond 200 Nautical Miles Unduly Burdening Our Oil and Gas Industry: Part I

- Article 82 provides for payments from exploitation of the continental shelf beyond 200 nautical miles. Such payments begin only after the fifth year of production, start at 1% in the sixth year and increase by 1% per year until the twelfth year, after which they remain at 7%. No payments are made during either the period of exploration or the first five years of production.
- **Approximately 14% of the continental shelf off the United States lies beyond 200 nautical miles. The revenue sharing provision, averaging between two and four percent over the life of a well, was a small *quid pro quo* to obtain international agreement over this substantial portion of the U.S. continental shelf (which in areas off Alaska extends approximately 600 miles).**
- The specific revenue sharing mechanism was developed by John Garrett, a member of the U.S. Delegation representing the U.S. petroleum industry and working for Gulf Oil Company. It was carefully designed to be fully workable and acceptable to U.S. oil companies. Indeed, our LOS Advisory Committee at the time included senior representatives from Exxon, Texaco and Mobil, as well as Gulf.

Revenue Sharing from the Continental Shelf Beyond 200 Nautical Miles Unduly Burdening Our Oil and Gas Industry: Part II

- **In the absence of U.S. adherence to the LOS Convention and acceptance of this *quid pro quo* for a substantially increased U.S. shelf jurisdiction, development of our shelf beyond 200 nautical miles might be delayed in a climate of uncertainty with U.S. firms concerned about legal liability and the U.S. Government concerned about foreign policy complications.**
- **The American Petroleum Institute supports the United States adherence to the LOS Treaty and has *not* opposed the Treaty because of this provision.** They and United States oil companies, which support U.S. adherence now, understand their great interest in navigational freedom as well as a stable legal basis for development beyond 200 nautical miles.

Revenue Sharing from the Continental Shelf Beyond 200 Nautical Miles Unduly Burdening Our Oil and Gas Industry: Part III

- **Mr. Paul Kelly, the Senior Vice President of Rowan Industries, stated in a recent public address:**

The United Nations Law of the Sea Convention is important to the energy industry, and most of our major trade associations, including the American Petroleum Institute and the National Ocean Industries Association, . . . are on record supporting ratification of the convention by the United States Senate. . . . The Convention would provide stability and recognized international authority, standards and procedures for use in areas of potential boundary dispute, as well as a forum for dealing with such disputes and other issues.

- **The Interior Department has just begun the lengthy process for development of the outer continental shelf beyond 200 miles. Based upon past experience, it would be approximately 10 to 20 years before a single cent would be paid under this provision.**

United States Adherence is Not Needed Since We Can Simply Use Naval Force to Protect United States Navigational and Other Interests

- While Naval Force may be used in some settings to protect lawful United States oceans freedom, particularly our key naval mobility interests, and while our freedom of navigation program (FON program) is useful in asserting U.S. freedoms of naval mobility, **the great bulk of United States oceans interests simply cannot be protected by armed force.**
- Three years of heading the United States international oceans process demonstrated clearly to me how *most* **challenges to U.S. interests are incremental and will arise in settings where the United States has a range of other interests at stake which cut against any U.S. use of force.** It is against both international law, and principles such as the Weinberger Declaration on the effective use of U.S. military force, to rely on force to respond to most non-forceful encroachments on U.S. oceans interests, some of which even come from allies of the United States.

United States Adherence is Not Needed Since We Can Simply Use Naval Force to Protect United States Navigational and Other Interests

- The real task of protecting American oceans interests is one of providing leadership in the struggle for law and preventing death by a thousand pinpricks.**
- Adherence to the LOS Convention, where we won overwhelmingly on our core security interests, is essential in restoring U.S. leadership to this process of controlling illegal oceans claims.**

There Is No Urgency About United States Adherence: The Issue Can Be Left To A Future Senate: Part I

- Since the LOS Treaty *is* in force—with 135 parties including our principal NATO allies—and since it *has* been renegotiated to fully address our concerns with Part XI, there will be *no* further renegotiation. **It seems merely a matter of time before some future United States Senate gives advice and consent. If this is so, by this Senate not acting, it merely deprives itself of the power to attach important statements and declarations.**
- Moreover, each day the United States is deprived of the ability to invoke the Treaty against damaging “reinterpretations” and each day we fail to make *our* adhering statements and declarations we undermine United States oceans interests, particularly our key security interests in navigation and overflight freedoms that are most at risk. ***By the time some future Senate supports adherence, the legal struggle to protect U.S. interests may already be lost.***

There Is No Urgency About United States Adherence: The Issue Can Be Left To A Future Senate: Part II

- **By continuing non-adherence, the United States will lose all international legal protection for the seabed mining sites of United States companies.** Due to U.S. leadership in this industry initially claimed U.S. sites were the best in the world. If we lose legal protection for those sites the U.S. industry will risk suit in all of its multinational operations and, as such, is unlikely to proceed or to be able to obtain the billion plus of necessary financing to develop a site. **Not to adhere is, in effect, to kill the United States seabed mining industry.** Indeed all United States Deep Seabed Mining firms but Lockheed have already abandoned their sites even under United States domestic law, in part because of changed industry fundamentals. Continuing United States non-adherence is certainly not assisting our mining industry, which collectively spent approximately \$200 million to obtain their now abandoned claims. U.S. adherence would at least provide opportunity to reassert these earlier claimed U.S. sites should industry conditions change.

There Is No Urgency About United States Adherence: The Issue Can Be Left To A Future Senate: Part II

- **Unless the United States accedes and participates in the formulation of future regulations for deep seabed mining, any U.S. firms able to operate under the agreement will do so only under a legal regime in which the United States did not participate in formulating rules for protection of their interests.**

IV. Government and Industry Resolutions in Support of U.S. Adherence to the Convention

- On November 28, 2001, the congressionally nominated and presidentially appointed **Commission on Ocean Policy**, chaired by Admiral James D. Watkins, unanimously adopted a resolution urging accession of the United States to the United Nations Law of the Sea Convention. A copy was sent to the President and to the Chairman of the Senate Committee on Foreign Relations. A copy is attached.
- On May 24, 2001, the **United States Outer Continental Shelf Policy Committee**, acutely aware of United States energy needs, adopted a Resolution in support of the 1982 United Nations Law of the Sea Convention. This OCS Policy Committee is an independent advisory committee chartered under the Federal Advisory Committee Act to give the Secretary of the Interior advice on discretionary issues related to implementation of the OCS Lands Act. The members represent Governors of coastal states, local government, environmental interests, and the offshore oil and gas, minerals and fishing industries. A copy is attached.
- The **National Ocean Industries Association (NOIA)**, whose membership includes companies engaged in Outer Continental Shelf oil and natural gas exploration and productions, wrote a letter on June 6, 2001, to the Senate Foreign Relations Committee encouraging ratification of the Convention on the Law of the Sea. A copy is attached.

Resolution of the Congressionally-Established National Commission on Ocean Policy

The National Commission on Ocean Policy unanimously recommends that the United States of America immediately accede to the United Nations Law of the Sea Convention. Time is of the essence if the United States is to maintain its leadership role in the ocean and coastal activities. Critical national interests are at stake and the United States can only be a full participant in upcoming Convention activities if the country proceeds with accession expeditiously.

Nov. 14, 2001

OCS Policy Committee Resolution

[T]he OCS Policy Committee recommends that the Administration communicate its support for ratification of UNCLOS to the United States Senate

May 24, 2001

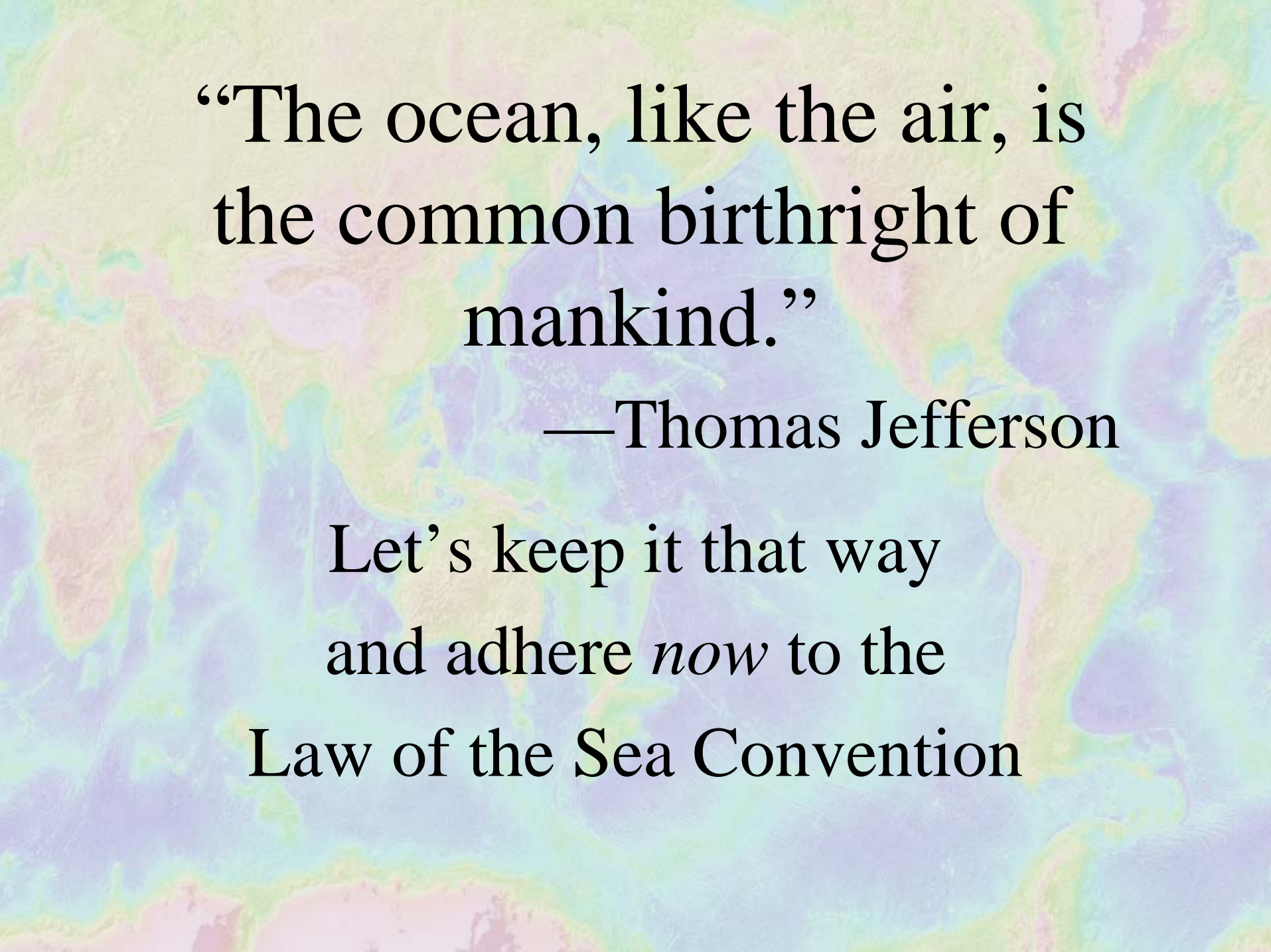
National Ocean Industries Association Resolution

Chairman, Senate Foreign Relations Committee

Dear Mr. Chairman:

The National Ocean Industries Association (NOIA) is writing to urge your prompt consideration of the Convention on the Law of the Sea The NOIA membership includes companies engaged in all aspects of the Outer Continental Shelf oil and natural gas exploration and production industry. This membership believes it is imperative for the Senate to act on the treaty if the U.S. is to maintain its leadership role in shaping and directing international maritime policy.

June 6, 2001



“The ocean, like the air, is
the common birthright of
mankind.”

—Thomas Jefferson

Let's keep it that way
and adhere *now* to the

Law of the Sea Convention

