



USALI Perspectives

The United States and the UN Convention on the Law of the Sea

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This year marks 40 years since the Third UN Conference on the Law of the Sea adopted the UN Convention on the Law of the Sea (UNCLOS). The United States was one of four countries that voted against the convention at the conference. On December 10, 1982, the convention was opened for signature in Montego Bay, Jamaica.

In the midst of the anniversary celebration, I felt some sadness. I felt sad because the US is still not a party to the convention. I felt sad because the valuable contributions made to the making of the convention by Elliot Richardson, Louis Sohn, John Norton

Moore, Myron Nordquist, Bernie Oxman, Thomas Clingan, and other members of the US delegation have not been acknowledged by their country. I want to pay a tribute to them. One day, the US will become a party to UNCLOS. American credibility as a world leader in this time of multiple challenges to the international legal order demands no less.

In the years leading up to UNCLOS, the US had an ocean policy that had the support of both the Democratic and Republican parties. What were the primary objectives of the United States

in the Third UN Conference on the Law of the Sea?

I think they were the following:

- Secure an agreement on the maximum breadth of the territorial sea;
- Secure an agreement on a regime of innocent passage for all ships in the territorial sea;
- Secure a special regime of passage for ships, aircraft, and submarines through, above, and below the international straits;
- Secure the same regime, in the event that the conference should recognize the concept of the archipelagic state, through archipelagic waters;
- Secure a fair agreement on fishing rights between coastal states and fishing nations;
- Secure an agreement on the sovereignty of coastal states over their continental shelves and continental margins;
- Secure a liberal regime for marine scientific research;
- Secure a strong chapter protecting the marine environment;
- Secure an agreement on mandatory dispute settlement for disputes under the new convention;
- Secure an agreement that would enable US commercial entities to

gain assured access, on fair terms, to the mineral resources of the international area of the seabed and ocean floor; and

- Secure an agreement that would ensure that all states enjoyed the freedom of navigation and overflight in the exclusive economic zone, as well as other lawful uses of the sea relating to such freedoms, such as the conduct of naval operations.

President Reagan did not accept the oceans policy of his predecessors. Compared to the Nixon Administration, the Reagan Administration was more conservative, more ideological, and more unilateralist. The dominant view was the US should depend on its own power and strength to get its way in the world. There was less interest in multilateralism and multilateral agreements.

After a lengthy review of the draft convention, the Reagan Administration submitted many amendments to Part XI, which dealt with deep seabed mining. The US amendments were contained in a book with a green cover. The conference called it the Green Book. The developing countries refused to negotiate with the US delegation on the amendments contained in the Green Book on the grounds that the US was not acting in good faith.

To break the impasse, I asked for the help of 12 Western countries: Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, Switzerland, and the Netherlands. The group submitted a series of compromise proposals to bridge the gap between the US and the developing countries. I appealed to the US to accept them. If it had done so, I would then appeal to the developing countries to do the same. Unfortunately, the US rejected the proposals.

A very strange thing happened after the US had voted against the convention. In its explanation of its vote, the US said it would not have voted against the convention if the compromise proposals of the group of 12 had been incorporated into the convention. To this date, I cannot reconcile what the US did with what it said.

Since President Reagan's only objection to the convention was Part XI, on seabed mining, the great Fijian diplomat, Satya Nandan, decided to do something about it. He was the UN secretary-general's special representative for the law of the sea.

In 1989, Satya Nandan managed to persuade the Group of 77, representing the developing countries, to adopt a declaration that the group was prepared to enter into a dialogue with the developed countries to resolve the

outstanding issues in Part XI. The UN secretary-general then wrote to the UK, Germany and the US to invite them to participate in the consultations which Satya Nandan was undertaking. They agreed to do so.

To cut a long story short, Satya Nandan's consultations culminated in 1994 in a document called the Implementation Agreement that effectively modified UNCLOS. The UN General Assembly adopted the Implementation Agreement, which was subject to signature and ratification. The US signed the agreement, but the US Senate has not consented to its ratification.

To date, the US Senate has not consented to ratify UNCLOS even though every US president after Reagan has been in favor of ratification. The convention also has the strong support of the US Defense Department, especially the US Navy, because it protects the US interest in freedom of navigation. On June 14, 2012, six four-star generals and admirals representing all the branches of the US armed forces [appeared before the Senate Foreign Relations Committee](#). They unanimously urged to Senate to approve the convention, arguing that it would strengthen US leadership in global maritime affairs, including its ability to challenge other countries when they behave contrary to UNCLOS.

On July 16, 2012, 34 Republican Senators informed the chairman of the Foreign Relations Committee that they would vote against ratification. Their decision was inexplicable since all the US objectives had been met and a Republican president, George H.W. Bush, had urged the Senate to approve the convention.

The Republican Party is usually a strong supporter of the US Defense Deployment. It is therefore puzzling that the Republican Senators decided not to heed the advice of the US Defense Department and the service chiefs. Instead, they have chosen to listen to the advice of conservative think tanks such as the Heritage Foundation. The Heritage Foundation has demonized UNCLOS. It has put out the

narrative that UNCLOS impinges on US sovereignty and brings no benefit to the country. The Heritage Foundation continues to disseminate misinformation about UNCLOS.

Friends of the United States cannot understand why the US is not a party to UNCLOS when it is clearly in the national interest of the country to join. The truth is that, under the separation of powers, the power to accede to a treaty belongs to the Senate. It took the Senate 40 years before it consented to joining the Genocide Convention. I am, however, confident that one day, wisdom will prevail and the US Senate will consent to join UNCLOS.



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