THE BROOKINGS INSTITUTION

"SHOULD THE UNITED STATES RATIFY THE LAW OF THE SEA TREATY?"

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(TRANSCRIPT PREPARED FROM A TAPE RECORDING.)

Opening Remarks:
Senator Richard G. Lugar (R-Ind.)
Chairman, Senate Foreign Relations Committee

Moderator:
David Sandalow
Guest Scholar, Foreign Policy Studies, Brookings; Former Assistant Secretary of State for Oceans, Environment, and Science

Panelists:

David Balton
Deputy Assistant Secretary for Oceans and Fisheries, U.S. Department of State

Frank Gaffney
President, Center for Security Policy

Rear Admiral William L. Schachte, Jr.
JAGC, U.S. Navy (Ret.); Counsel, Blank Rome, LLP

Genevieve L. Murphy
Senior Manager, American Petroleum Institute

Clifton Curtis
Director, Global Toxics Program, World Wildlife Fund

Peter M. Leitner
Author, Former Observer to U.S. Law of the Sea Delegation (1977-82)

Discussion

THIS IS AN UNCORRECTED TRANSCRIPT.

P R O C E E D I N G S

MR. TALBOTT: Good morning, everybody. If those of you who would like to take seats, even if you've got some of the delicious Brookings breakfast, go ahead and find some seats. There are plenty around.

Welcome to all of you. We're very appreciative that you would come out this morning for a discussion of an important issue and one that has not gotten anywhere near the attention that it deserves. It's also an issue that has been around for a very long time and seems just not to want to go away.

When my colleagues David Sandalow and Nigel Purvis suggest that we have a conference here this morning on the subject of the Law of the Sea, I felt a little bit like the Bill Murray character in that movie "Groundhog Day," which is to say an alarm had gone off, but it just didn't seem exactly like a new day.

The question of how to regulate the global common of the Earth's oceans has been an issue literally for centuries. A majority of the countries on Earth are stakeholders in this issue since two-thirds of the Earth's surface is water and two-thirds of the world's population lives within 50 miles of a coastline.

Negotiations on a treaty on the law of the sea began in the early 1970s. The treaty was adopted 22 years ago, in 1982, in Ronald Reagan's first term. It entered into force a decade ago, in 1994, in Bill Clinton's first term. More than 140 nations are party to it, yet only two months ago did the Foreign Relations Committee of the United States Senate unanimously recommend that the full Senate give its advice and consent to ratification.

The Bush administration has stated its support for ratification, but objections have been raised concerning the treaty's implications for the sovereignty of our country, of you that will be represented in today's discussion.

Speaking of the way in which this discussion and debate are playing in Washington today, in this morning's Washington Times, one of our panelists, Frank Gaffney, recognizes Brookings as an important forum for bringing together different viewpoints, and we appreciate that.

I cannot imagine a more appropriate way to begin that discussion than to have our session opened by Senator Dick Lugar, the Chairman of the Senate Foreign Relations Committee. It's a special honor and pleasure to welcome him back to Brookings. He was here just a few weeks ago to deliver a thoughtful address that contained some fresh ideas on American policy towards the greater Middle East. Senator Lugar is a true public servant. He's a statesman of the legislative branch. He's a champion of bipartisanship in a season when that commodity is not too prevalent. And he's a problem solver who takes on the often unglamorous but essential work of building consensus on complex and important issues in the national interest. And he has welcomed the opportunity to present his views in front of a diverse audience today. His work on the Treaty on the Law of the Sea I think exemplifies one of the many ways that he has provided such leadership to this country.

Senator Lugar, I'm about to turn the podium over to you. I know that "Hoosiers" is your own favorite movie. I've seen that from the posters in your office. But the question of the hour is: Is there a tomorrow in the Law of the Sea version of "Groundhog Day" or are we permanently stuck in yesterday?

Over to you, sir.

[Applause.]

SENATOR LUGAR: Well, thank you very much, Strobe. It's a genuine pleasure to return to the Brookings Institution today to open this conference on a discussion of the Law of the Sea. As Chairman of the Senate Foreign Relations Committee, I've followed developments related to the Law of the Sea for almost two decades. On February the 25th of this year, almost ten years after the convention was submitted to the Senate for advice and consent, the Foreign Relations Committee unanimously approved the resolution of ratification of the convention, thereby placing it on the Senate calendar.

The Law of the Sea Convention establishes a comprehensive set of rules governing the uses of the world's oceans, including the airspace above and the seabed and subsoil below. It carefully balances the interests of states in controlling activities off their own coasts and the interests of all states in protecting the freedom to use the oceans without undue interference. Among the central issues addressed by the convention are navigation and overflight of the oceans, exploitation and conservation of ocean resources, protection of the marine environment, and marine scientific research.

Admiral James Watkins, former Chief of Naval Operations and Chairman of the United States Commission on Ocean Policy, has called the convention "the foundation of public order of the oceans." As the world's preeminent maritime power, the largest importer and exporter, the leader in the war on terrorism, and the owner of the largest Exclusive Economic Zone off our shores, the United States has more to gain than any other country from the establishment of order and predictability with respect to the oceans.

Senate passage of the Law of the Sea Convention should be straightforward. The Bush administration has asked for ratification. In fact, the Law of the Sea was one of only five treaties that the Bush administration placed in its "urgent" category on their most recent list of treaty priorities presented to our committee. Representatives from the Department of State, the Office of the Secretary of Defense, the United States Navy, the United States Coast Guard, and the Commerce Department have testified in support of the convention at various congressional hearings. Representatives from six Bush administration Cabinet Departments participated in the interagency group that helped write the resolution of advice and consent accompanying the treaty. And the U.S. Commission on Ocean Policy, appointed by President Bush, strongly endorsed United States accession to the Law of the Sea.

In the private sector, every major ocean industry, including shipping, fishing, oil and natural gas, drilling contractors, ship builders, and telecommunications companies that use underwater cables, support U.S. accession to the Law of the Sea and are lobbying in favor of it. The National Foreign Trade Council, representing hundreds of exporting companies, also supports ratification. Moreover, this is an issue on which industry and environmentalists agree. A long list of environmental and ocean groups have endorsed the treaty because it would protect and preserve the marine environment and establish a framework for further international action to combat pollution.

The Law of the Sea Convention did not always enjoy such strong support. When it was first concluded in 1982, the convention contained a seabed mining provision that clearly was not in the best interest of the United States. President Reagan's decision not to sign the treaty was the right decision at that time. He stated that "while most provisions of the draft convention are acceptable and consistent with United

States interests, some major elements of the deep seabed mining regime are not acceptable." And President Reagan's statement specified his particular objections to the deep seabed mining regime, which included lack of adequate United States representation and decision-making about deep seabed mining, requirements for industrialized states to transfer technology related to deep seabed mining, rules providing for artificial limits on production of deep seabed minerals, and rules providing for burdensome regulations and financial costs on private companies seeking to conduct deep seabed mining. Along with many industrialized nations, the United States insisted on a renegotiation of this provision.

In a 1983 proclamation of United States ocean policy, President Reagan stated that while the United States would not become party to the convention, the United States accepted and would act in accordance with the provisions of the convention except for those relating to deep seabed mining. Presidents Bush, Clinton, and the current President Bush continued this policy.

In 1990, President George H.W. Bush initiated further negotiations to resolve U.S. objections to the deep seabed mining regime. These talks culminated in a 1994 agreement that comprehensively revised the regime and resolved each of the problems President Reagan identified in 1982.

In response to the Bush administration's request for Senate approval of the Law of the Sea, the Senate Foreign Relations Committee took up the convention under my chairmanship in October of 2003. The committee held two extensive public hearings on the convention at which administration and private witnesses testified. Between October and February, the Senate Foreign Relations Committee held four briefings on the Law of the Sea for committee staff and staff of all committee members.

Two of these briefings were headlined by an administration interagency team. In February, the committee met to vote on the Law of the Sea, and the resolution of ratification, which had been drafted with the administration's full participation, was approved 19-0.

During the four months between the first hearing on the Law of the Sea and the committee vote to report out the convention, the committee received just one inquiry voicing opposition to the measure, and that was from an individual representing himself. Staff offered to receive written testimony from this individual, but none was sent.

Despite this seeming unanimity of informed opinion, Senate consideration of the treaty has been held up for more than two months by vague and sometimes fantastical concerns about the convention's effects. These concerns have been expressed primarily by those who oppose virtually any multilateral agreement. Many of the arguments that have been made are patently untrue. Others are obsolete in that they attack the convention as it existed in 1982--as if the renegotiation of the convention had never occurred.

For example, critics have contended that the Law of the Sea will give the United Nations controls over oceans when the convention provides no decision-making role for the United Nations. They have said that the convention contains production limits one seabed minerals and mandatory technology transfers, both of which were eliminated in the 1994 renegotiation of the treaty. They have suggested that U.S. intelligence gathering will be hindered even though the Bush administration and the U.S. military, which conducts all the intelligence operations in question, say that the convention will have no effect on intelligence activities. They assert that the President's

Proliferation Security Initiative, the PSI, which aims to impede shipments of weapons of mass destruction and related materials, will be hindered by the convention, even though the Chairman of the Joint Chiefs of Staff and the Chief of Naval Operations say unequivocally that U.S. ratification of the Law of the Sea would help the PSI.

In fact, most of the articles and statements opposing the convention have avoided mentioning the military's longstanding and vocal support of the Law of the Sea. This is because to oppose the convention on national security grounds requires one to say that the Chairman of the Joint Chiefs of Staff, the Chief of Naval Operations, the Office of the Secretary of Defense, and, indeed, the President of the United States are wrong about the security benefits of the treat.

General Richard Myers, Chairman of the Joint Chiefs of Staff, has written, and I quote, "The convention remains a top national security priority....It supports efforts in the War on Terrorism by providing much needed stability and operational maneuver space, codifying essential navigational and overflight freedoms."

Admiral Vern Clark, the Chief of Naval Operations, has stated: "The convention supports U.S. efforts in the war on terrorism...while leaving unaffected intelligence collection activities. Future threats will likely emerge in places and ways that are not yet known. For these and other as yet unknown operational challenges, we must be able to take maximum advantage of the established navigational rights codified in the Law of the Sea Convention to get us to the fight rapidly." Admiral Clark also delivered impassioned testimony before the Senate Armed Services Committee underscoring that United States accession to the Law of the Sea would reduce the need for dangerous operations in which the Navy threatens the use of force as a means of asserting navigational freedoms.

Opponents are similarly reluctant to mention the unanimous support of affected United States industries. To oppose the treaty on economic grounds requires opponents to say that the oil, natural gas, shipping, fishing, boat manufacturing, exporting, and telecommunications industries do not understand their own bottom lines. It requires opponents to say that this diverse set of industries is spending money and time lobbying on behalf of an outcome that will be disadvantageous to their own interests.

The vast majority of conservative Republicans would support, in prospect, a generic measure that expands the ability of American oil and natural gas companies to drill for resources in new areas, solidifies the Navy's rights to traverse the oceans, enshrines U.S. economic sovereignty over our Exclusive Economic Zone extending 200 miles off our shore, helps our ocean industries create jobs, and reduces the prospects that Russia will be successful in claiming excessive portions of the Arctic. All of these conservative-backed outcomes would result from U.S. ratification of the Law of the Sea Convention. Yet the treaty is being blocked because of ephemeral conservative concerns that boil down to a discomfort with multilateralism.

Multilateral solutions do not always work. Some multilateral agreements that have been brought before the Congress during the last decade were poorly conceived or impossible to verify. But our negotiators won in talks on Law of the Sea. We are hurting no one but ourselves by failing to exploit this hard-earned diplomatic victory.

With respect to the Law of the Sea, the discomfort of multilateralism also fails to recognize the obvious: there is no unilateral option with regard to ocean policy. The high seas are not governed by the national sovereignty of the United States or any

other country. If we are to establish order, predictability, and responsibility over the oceans--an outcome that is very much in the interest of the United States--we must engage with other countries.

International cooperation also is required if our companies are to have a chance to safely exploit the resources of the seabed beyond our 200-mile Exclusive Economic Zone. Without the ability to secure property rights to mining sites, companies will be unlikely to invest the substantial capital necessary to conduct such mining. They would not want to risk having their claims disputes or having competitors free ride off their exploration investments. Given that no nation has sovereignty beyond its national jurisdiction, the only way to establish property rights in the open ocean is through an international regime. This is one of the reasons why companies with an interest in deep seabed mining supported the treaty. Failing to ratify simply shuts our companies out of the process.

Contrary to some characterizations, the International Seabed Authority is not a highly politicized bureaucracy, nor would it be disposed to act against United States interests. If the United States joined the convention, it would be able to veto the ISA's adoption of any rules or regulations relating to the deep seabed mining regime.

The debate on the convention would be just an interesting political science case if it were not for the fact that there are serious consequences to not ratifying it. The convention comes open for amendment for the first time in November of this year. If the United States is not a party to the convention at that time, we will not have a seat at the table to protect against proposed amendments that would roll back convention rights we fought hard to achieve.

Some nations may press for restrictions on the movement of naval or commercial vessels near their coastlines. Others may pursue the right to exclude nuclear-powered vessels from their territorial waters. Under the convention, a ship's propulsion system cannot be used as an argument to restrict its movements. As a party, we will be in a very strong position to prevent harmful amendments if we are there at the table.

In addition, the convention's Commission on the Limits of the Continental Shelf will soon begin making decisions on claims to continental shelf areas that could impact the United States' own claims to the area and resources of our broad continental margin. Russia is already making excessive claims in the Arctic. Unless we are party to the convention, we will not be able to protect our national interest in these discussions.

Opponents seem to think that if the United States declines to ratify the Law of the Sea, it will evaporate into the ocean mists. They seem to think that the multilateral responsibilities in this case can be avoided if we stay out of the convention. Unlike some treaties, such as the often discussed Kyoto Agreement or the Comprehensive Test Ban Treaty, where United States non-participation effectively renders the treaty irrelevant or inoperable, the Law of the Sea will continue to form the basis of maritime law regardless of whether the United States is a party. International decisions related to national claims on continental shelves beyond 200 miles from our shore, resource exploitation in the open ocean, navigation rights, and other matters will be made in the context of the treaty whether we join or not.

Consequently, the United States cannot insulate itself from the convention merely by declining to ratify. There are 145 parties now to the convention,

including every major industrialized country. The convention is the accepted standard in international maritime law. Americans who use the ocean and interact with other nations on the ocean, including the Navy, shipping interests, and fishermen, have told me that they already have to contend with provisions of the Law of the Sea on a daily basis. They want the United States to participate in the structures of the Law of the Sea to defend their interests and to make sure that other nations respect our rights and claims.

We should also remember that the United States already has been abiding by the Law of the Sea Convention since President Reagan's 1983 Statement of Oceans Policy. In addition, the United States is a party to the 1958 Convention on the Territorial Sea and Contiguous Zone, a predecessor to the Law of the Sea Convention. Many of the provisions of the 1958 convention are less advantageous to the United States than comparable provisions in the Law of the Sea Convention.

Given that the United States has been abiding by all but one provision of the treaty for the last 21 years and that we are already a party to a less advantageous international agreement on ocean law, dire predictions about the hazards to our sovereignty of joining the Law of the Sea Convention ring particularly hollow.

The fact that these concerns have been allowed to sideline the treaty for ten years is a bad sign for United States foreign policy in an age of terrorism. If we cannot get beyond political paralysis in a case where the coalition of American supporters is so comprehensive, there is little reason to think that any multilateral solution to any international problem is likely to be accepted within the U.S. policymaking structure.

Eventually, however, I believe that the United States will become a party to the convention because events will transpire that will brightly illuminate the costs of not ratifying it. At some point, a foreign nation will seek rule changes to the treaty that restrict passage by United States Navy vessels. At some point, our oil and mining industries will want to prospect beyond the 200-mile Exclusive Economic Zone. They won't do that without the international legal certainty provided by the Law of the Sea that their claims and investments will be respected by other nations. And at some point, Russia or some other country will succeed in having excessive ocean claims recognized because we are not there to stop them.

My message today is that it is irresponsible for us to wait to ratify the Law of the Sea until we feel the negative consequences of our absence from the convention. The Senate should ratify the Law of the Sea Convention now in the interest of United States security, the United States economy, and the American people.

I thank you very much for this forum.

[Applause.]

MR. : Senator Lugar has kindly said he'd have time to take just a couple of questions before we go to the panel discussion, so if anybody has a question for the Senator, now is your chance. Would you be good enough to identify yourself?

MR. : Mike Clausen (ph), the National Journal of Congress Daily. Has the leadership of the Senate told you when they're going to bring up the treaty.

SENATOR LUGAR: No, the leadership, specifically Dr. Frist, has listed the treaty as one of 40 possible things that might come up before the end of the session. Dr. Frist also points out that there are only 67 legislative days, as he sees it, and that we are not making much headway on very many items.

So as a result, the prospects are--unless there is concerted attention to Law of the Sea and prioritization evident from parties that are heard, it's very likely that along with most of the other 40 items, the Law of the Sea will not be heard. I will attend again today a committee chairmen's meeting, as I do each week, and emphasize to Dr. Frist and to others the importance of the Law of the Sea Convention. And he will tell me, I suspect, that he is listening carefully, notes my interest, and I also note the number of days that we have to go and the number of items with which he has to wrestle, including all the appropriation bills and a good number of other important items.

Yes, sir?

MR. GAFFNEY: Senator Lugar, I'm Frank Gaffney. I'll be speaking shortly. I was hoping you might be able to stick around, but I know you have a day job. So let me just ask one question, if I may, not to respond substantively, though we'll do that shortly, but procedurally.

You indicated that you were frustrated--I think I interpreted that correctly--that you didn't hear more from critics about the treaty until after you acted. And I take some responsibility for that because I was caught flat-footed.

Would you be willing to have a formal or informal session of the committee to take testimony from critics like myself and Dr. Leitner who are here as simply an opportunity to round out your understanding and your committee's understanding of what the criticisms are beyond the exchanges that have been had so far in sort of unsatisfactory ways through the press and otherwise?

SENATOR LUGAR: Well, let me just say that that's always possible. I don't rule that out, Frank. But I would say that, obviously, you have encouraged other committees to have hearings. They have been having hearings. You have been

testifying on some of those occasions and may testify on some more. So as the thing has progressed, why, your views have been heard. I think they've been noted by our members who are not blind to the testimony occurring elsewhere.

So I don't categorically rule it out. I'm not sure that it is necessary to complete our understanding, but it may be, and if it is helpful in terms of ratification of the treat, why, we probably would want to do that.

Yes, sir?

MR. NORQUIST: Myron Norquist. Senator Roberts indicated publicly several weeks ago that he would make an expedited decision on whether or not to hold a hearing. Will you ask him today if it's been long enough for him to decide?

SENATOR LUGAR: Well, I may work up the courage to ask Pat Roberts. He has a lot on his plate reforming the intelligence community and various other things.

No, seriously, I will. I will probably see him at the committee chairmen's meeting, see how he's proceeding.

MR. : Senator, thank you very much, not only for addressing the substance of this issue but for giving us in this last couple rounds of exchanges a glimpse into real Washington statesmanship at work.

David, now over to you, and you'll get the panel started, and I hope you'll all join me in thanking Senator Lugar once again.

[Applause.]

MR. SANDALOW: Hi, everyone. Is this on? My name is David Sandalow. I'm a guest scholar here at the Brookings Institution. Thank you very much for coming to this event.

We have one objective for the rest of this session, and that's to identify the issues for and against ratification of the Law of the Sea Treaty and to subject those arguments to critical analysis.

We have an extraordinarily distinguished and expert panel to discuss that topic, and let me just run down quickly the backgrounds of our panelists. They're detailed biographies are out back, and so I won't get into detail about their backgrounds. But we have on my far right, your left, David Balton, who is Deputy Assistant Secretary of State for Oceans and Fisheries. David has had a distinguished career at the U.S. State Department, including six years as Director of the Office of Marine Conservation before this position and 12 years in the Office of the Legal Adviser. He holds degrees from Harvard and Georgetown University Law Center.

We have Retired Admiral Bill Schachte of the U.S. Navy, a decorated Vietnam War veteran, a distinguished 20-year career in the JAG Corps, culminating in service as the Acting Judge Advocate General of the Navy, and many of those years spent on U.S. delegations on maritime issues. He was the DOD representative for Ocean Policy Affairs, was also the DOD representative to the Law of the Sea Treaty in various different fora.

We have Genevieve Murphy from the American Petroleum Institute. Genevieve is senior manager at API, a veteran of API since 1978, has held many positions there and holds degrees from the George Washington University.

We have on my left here Cliff Curtis, who is director of the Global Toxics Program at the World Wildlife Fund. For 20 years prior to joining WWF to work on toxics issues, Cliff worked extensively on oceans-related issues. From 1978 to 1997,

Mr. Curtis coordinated the environmental community's position in support of the Law of the Sea Treaty.

We have, next to Cliff, Frank Gaffney, who is founder and president of the Center for Security Policy in Washington, D.C. He is a prolific writer and speaker. As I was driving my kids to school this morning, I started to listen to Frank on C-SPAN. I can report that they prefer rap music, but that's no insult to you, Frank. That's held for anyone of any political persuasion. And Frank holds degrees from Johns Hopkins and Georgetown and is well known in this town and is an outspoken advocate for his cause.

We have then on my far left Dr. Peter Leitner, who is a veteran of the Law of the Sea negotiations, served as an observer to the original Law of the Sea negotiations from 1978 to 1982, a visiting lecturer at the George C. Marshall Institute, and holds degrees from the University of Southern California.

If I have left out any material part of your biographies, I apologize. As I said, the detailed biographies are out back.

We're going to mix up--we're going to start with Dave Balton, who is going to give us a short presentation on the background of the Law of the Sea and why the State Department supports it, and then just to tell the panel, I'm going to mix it up a little from the order I told you right beforehand. I'm going to go to Frank Gaffney, who asked me during Senator Lugar's speech and right before whether he could have the opportunity to come in early in this conversation and offer his views as to why the Law of the Sea Treaty is ill-advised. And then we're going to go to Admiral Schachte, Ms. Murphy, Cliff Curtis, and then wrap up with Peter Leitner.

Anybody who wants to use the podium is more than welcome to do it. We're going to hold the panelists to five minutes each, and then when the conversation is

done, we're going to throw it open for discussion from the crowd and questions from the audience.

So, Dave Balton?

MR. BALTON: Good morning. I want to thank Brookings Institution for holding this event and for asking me to speak. I have been asked to provide some general background on the Law of the Sea Convention and to summarize why the State Department and the administration as a whole feel so strongly that we should become party to this treaty at this time. That's a tall order for a very short presentation. I'll do my best.

On April 20th, the U.S. Commission on Ocean Policy, an eminent body created by Congress whose members were appointed by President Bush, issued its preliminary report after three years of study. In it the commission reaffirms the one recommendation they made in advance of issuing the report on a unanimous basis: that the United States should become party to the Law of the Sea Convention and should do so expeditiously.

The commission gives a number of sound reasons why the United States should become a party, but perhaps the most important reason they give is one they may not have intended. On page 23 of this preliminary report, they refer to the treaty in question as "the U.S. Law of the Sea Convention."

Now, some may think that's a typographical error. I think it's a Freudian slip, because in many ways this treaty is the United States Convention on the Law of the Sea.

Why do I say that? As negotiations on the convention were unfolding in the 1970s, the United States had two overriding goals:

The first was to secure for U.S. military and commercial vessels the right and ability to sail wherever they wanted to sail, free from undue interference of coastal states.

The second goal was to secure for the United States exclusive authority with respect to economic activities in all waters out to 200 miles off our shore and, with respect to the sea floor, out to the very edge of our wide continental margin, which extends even beyond 200 miles in a number of areas.

We succeeded. The provisions of the convention on freedom of navigation give our military and commercial vessels what they need. That is why the U.S. Navy is such a strong advocate of the convention.

The provisions of the convention on the Exclusive Economic Zone and the continental shelf, as Senator Lugar mentioned, also benefit the United States more than any other nation. Under this treaty we have the largest and most resource-rich Exclusive Economic Zone in the world, an area significantly larger than the continental U.S. And we have a continental shelf that is the envy of most every other nation, along with a mechanism, the Continental Shelf Commission, that will help us gain legal certainty on and international recognition of the outer limit of that shelf.

So back in the 1970s, what were we, the United States, willing to give up in exchange for such value? We were willing to give the developing countries of the world a regime for governing the mining of the sea floor beyond national jurisdiction, Part 11 of the convention, modeled on principles of the new international economic order that was all the rage at that time. That was the package deal that the treaty represented when negotiations were drawing to a close as the 1980s began.

The Reagan administration came to office and decided that the United States should not accept the deep seabed mining provisions after all and, thus, we refused to sign the treaty at that time.

Despite this, as Senator Lugar mentioned, President Reagan adopted the policy, which we have followed ever since, to act in accordance with all provisions of the treaty other than those in Part 11.

We persuaded other developed countries not to ratify the treaty such that its fate remained in limbo throughout the 1980s. But the collapse of the Soviet Union at the end of that decade opened a window that allowed the United States and our allies to renegotiate Part 11. The 1994 implementing agreement transformed Part 11 along free market lines. It created legally binding changes to those original provisions that meet each one of the U.S. objections. Thus, the Part 11 agreement satisfactorily overhauls the one part of the treaty that we thought we would have to swallow in exchange for the extraordinary benefits on freedom of navigation and exclusive economic control over vast areas off our coasts.

Today, there is a new package deal: the original convention, as modified by the Part 11 agreement. But unlike the original package deal, this new one is a win-win-win. That's why more than two years ago the Bush administration announced its support for U.S. accession. That's why this administration has placed it in the very highest category of treaties in need of ratification. That's why this administration has testified ardently in several Senate hearings in support of U.S. accession at this time. In our view, the Senate should vote on the convention and should do so now.

Now, some argue that since most other nations already accept the convention as reflecting customary international law, the United States does not need to

become a party. I would offer four reasons why I think this argument is misplaced, some of which we've already heard this morning.

First, the United States would be in a much stronger position invoking the favorable provisions of the convention as a party.

Second, while we have been relying on operational and diplomatic challenges to coastal state infringements on freedom of navigation, as a party to the convention we would have another very useful tool in defending these interests peacefully.

Third, while the regime of the convention is very favorable to U.S. interests, it is subject to erosion, in part because the most important country has not yet signed up to it. Pressures are building on some coastal state governments to extend their control over waters off their shores in ways that would undermine our interests. As a party to the convention, the United States would be in the best position to protect those interests.

And there are a variety of other actions that the United States and its nationals could only undertake if we are a party to the treaty.

Only as a party can we nominate individuals to serve on the tribunal of the Law of the Sea and participate in those elections.

Only as a party can we nominate U.S. nationals to serve on the Continental Shelf Commission and vote for those commissioners.

Only as a party can we establish the outer limits of the U.S. continental shelf, which would be necessary for the oil and gas industry to maximize its opportunities, as well as influence the outer limits of other countries' claims.

Only as a party can U.S. nationals engage in deep seabed mining. That's right. With the U.S. as a non-party, U.S. companies are effectively foreclosed from this activity.

Only as a party could we assume our seat on the International Seabed Authority and a guaranteed seat on the Executive Council of that body, where we can use our veto to ensure that rules relating to seabed mining are to our liking.

And only as a party can we invoke the dispute settlement provisions against cases that are--rather, parties that are violating the convention.

This is too good a deal to pass up.

Thank you very much.

[Applause.]

MR. SANDALOW: Thank you, David, both for your clarity and punctuality. We do have a timer down here, by the way. Carolyn is helping to make sure that our speakers keep to our pretty tough time limits.

Frank Gaffney, why do you think these folks are wrong?

MR. GAFFNEY: I hope the timer will be as generous with my time as the previous speakers.

Thank you, David, very much for having me on your panel and able to represent what is evidently an extraordinarily small, narrow, and unsubstantiated view about the Law of the Sea Treaty. I happen to think that as more people learn more about this treaty, they will come to the same conclusion that I have, which is that it is defective. And the question is: Will that happen before we ratify the treaty, or will it happen after the treaty?

I have a disclaimer at the outset. I am not an expert on the treaty. My colleague Peter Leitner I think genuinely is, and I'm delighted that you were able to accommodate him as well, and I look forward to him addressing some of the more technical points here.

I want to just approach this from the point of view that I try to approach everything with, which is common sense. And what Senator Lugar said explicitly, and I think what we've all heard implicitly acknowledged, is what Ronald Reagan rejected in this treaty 22 years ago was defective. Article 11 was defective as originally drafted. Hence, the proponents of the treaty now tell us that the '94 agreement which fixed the things that were defective, according to Ronald Reagan, should allow this thing, this convention, as amended, to be ratified.

Well, I'm not so sure that the treaty is amended by the 1994 agreement. In fact, you can't amend the treaty until later this year, as was mentioned by the previous speaker, something that Senator Lugar and others are telling us is likely to make this treaty uglier from the American point of view.

Well, why is that? The reason is for the same reason that the first version of Article 11 was defective to begin with, and that is that the deck has been stacked against the United States by the parties that were far more numerous than we, and with whom we sometimes, I'm afraid, made common cause in the fashioning of this treaty; parties who do not share, generally speaking, our view of the importance of freedom of the seas and the ability of the United States, particularly its Navy, to exercise power on the seas and under the seas and from the seas, in the interest not only of this country but of freedom and the free world more generally. So fixing the 1994--the 1994 agreement,

fixing the provisions of Article 11 would not, in fact, I believe, take care of all of the problems, even if it did fix the problems of Article 11.

And we may wish to discuss this. It is often stipulated, including by speakers here this morning, that that's done, even though we can't amend the treaty until later this year. And yet some 28 countries who are party to the convention are not party to the agreement. That's almost 20 percent.

So, again, applying common sense, ask yourself what happens when the international tribunal, which is supposed to adjudicate, among others, adjudicate interpretational differences and other questions before the International Seabed Authority, and other parts of this treaty, what happens when there is this question of, Does the '94 agreement apply or not?

My guess is that they're going to revert to the convention agreed by all of the parties and not necessarily to something that purports to amend it but doesn't, but simply imposes some new interpretations that, frankly, eviscerate much of what the people who were dominant forces in the negotiation of this agreement wanted in that convention in the first place, and at least some 28 of whom to this day think should be the way that treaty is read and operates.

The larger question, though, ladies and gentlemen, at the risk of sounding as though I am not a multilateralist, is: Does the attitude expressed in what is generally agreed to be a defective Article 11 contaminate the rest of this treaty in important respects? Not all respects, but in some important respects.

Do, in short, the folks who brought you Article 11 as first drafted have the same kind of attitude and effect on other provisions of this treaty which would be, I

would argue, detrimental, yes, to American sovereignty and American security and quite possibly to our economic well-being as well?

I believe, in short, that if it interferes with the principle that Ronald Reagan used to call peace through strength, that American sovereignty and international security are inextricably tied, I think this will prove not to be in our interest, no matter how many admirals, serving and former, how many generals, serving and former, attest to it being otherwise.

Let me just read you three or four provisions of this treaty that trouble me in that regard. They remind me of the old Groucho Marx line: "Who are you going to believe, me or your own eyes?"

Well, here are four provisions.

Article 88, the high seas are reserved for peaceful purposes.

Article 301, parties have an obligation to refrain from the threat or use of force against the territorial integrity or political independence of any state.

Article 19, no use of territorial waters may be made to collect intelligence and to do other operations--that we do every day, ladies and gentlemen, and that we have to do in the war on terror.

Article 20, similarly, submarines may not operate submerged in territorial waters--something we do every day and that we have to do especially in the environment of the war on terror.

Article 110 does not recognize the concerns that the Proliferation Security Initiative recognizes we must have today, combating terror and preventing the movement on the high seas and territorial waters of weapons of mass destruction.

In fact, those are not among the bases upon which ships can be intercepted and boarded under this treaty. And don't take my word for it. How about the Chinese and the Russians and the Indians who have made it pretty clear that's their view?

Finally, there's Article 144 in which, despite the changes that we often hear about under the agreement of 1994, we are still obligated to facilitate the transfer of, yes, militarily relevant technology that could be used for any submarine warfare purposes or for submarine warfare purposes, to the considerable detriment of our security.

Now, those are not my interpretation. Those are what's in this treaty, unaffected by the '94 agreement. I submit to you they reflect the same attitude, disposition, agenda that brought us the defective Article 11.

I submit to you that those who tell us don't worry about these things either because we're going to ignore them, as we currently would be doing by collecting intelligence and operating submerged in territorial waters, or because we don't think that people will take advantage of the numerical majorities that will in many respects operate were we to become a party to this treaty despite our objections.

There may be instances in which we can veto some things, but not everything, for the same reason that we couldn't get this treaty right the first time and that it is not the U.S. Law of the Sea Treaty by a long shot.

In conclusion, let me simply say if we become a party to this treaty, we can bet on being outvoted, on being outmaneuvered, and on being disserved by an international arrangement--and Peter will talk more about some of the particulars of things like the International Seabed Authority, I'm sure, but an international arrangement

that it is one example of that we allowed in the process of negotiating this agreement in the first place to become defective, inconsistent with America's security, sovereignty, and I think economic interests, and reflecting the view of its principal authors, which was that under the new international economic order these kinds of institutions and international agreements ought to be fashioned for one reason and one reason alone: to facilitate the redistribution of wealth and, yes, power from unworthy, undeserving nations like the United States of America. And I hope the Senate will not agree to its ratification any time soon.

Thank you.

[Applause.]

MR. SANDALOW: Admiral Schachte?

ADMIRAL SCHACHTE: Well, good morning, Frank. I want to thank the Brookings Institution for affording us this opportunity to debate this very important convention. I'll have a number of specific things to mention to my dear colleague and a person whom I respect very much, Frank Gaffney, for his insightful knowledge of defense issues, but on this one, Frank, you're flat wrong.

What you are saying today is what we heard in the late 1970s and early 1980s, before things were changed, dramatically and legally bindingly, if I may coin a phrase. But I'd like to make just a couple of comments because I have been reading a lot of what has been said about the convention by those who do not favor the convention.

I could briefly point to several things that Frank has just said, one of them being Article 302, wherein it specifically states we're not required, under meeting our obligations to the convention, to provide anything that would be detrimental to our national security. Article 110, going back to the preamble of the convention, which talks

to the fact directly that matters not addressed by the convention themselves are subject to general principles of international law, and here I would clearly state that that means and was understood by the negotiators--and I had the incredible privilege of being there--national security issues, self-defense, law of armed conflict, and those matters.

But what we're seeing today--and I admire--I mean, this is America. We all have the opportunity to present our views. But what I have been seeing is this constant drumbeat of ill-founded criticism predicting near apocalyptic doom for the United States if it accedes to the Law of the Sea Convention.

The opponents constantly argue that the Law of the Sea Convention will cripple the United States Navy's ability to perform maritime missions necessary for national security, including collecting intelligence, conducting submerged transits with submarines, and preventing actions by terrorists.

I am compelled to speak out against these misguided and incorrect assertions to set the record straight. I have a paper--I'm just getting my first time notification. I have a paper that incorporates all of these points in some detail.

Now, I certainly respect honest, deliberate scrutiny of this complex convention. But given the repeated misstatements of fact, it is hard not to conclude that there are some who are engaged in a deliberate, concerted effort to mislead the public and our government leaders on this important -- [tape ends].

-- for our nation. It is bad enough to be wrong. But there is something, I submit, more serious going on when people ignore facts and consciously and purposely produce statements, make assertions that are wrong. I thus again thank the Brookings Institute for this opportunity to communicate the truth of the convention.

Today's military operations--from Operation Enduring Freedom, Operation Iraqi Freedom, the Global War on Terrorism--place a premium on our naval and air forces' strategic mobility and operational maneuverability. The convention enhances access and transit rights for our ships, aircraft, and submarines and reinforces and enhances our nation's ability to conduct these operations. We cannot continue simply to rely on customary international law for our navigational rights and freedoms. As we've heard from Mr. Gaffney and also from Mr. Lugar, the convention will be open for amendment and possible change this November. The United States should accede to the convention immediately as a means to assure access to the oceans and to take a leading role in the future developments of the law to ensure they continue to further our national security.

The United States' interests as a global maritime nation was a prime impetus for the negotiations of the convention from 1973 to 1982, as well as later to obtain fundamental and legally binding changes to the deep seabed mining provisions to which President Reagan correctly objected. President Reagan did not reject the convention in its entirety as has been misstated by the naysayers. In fact, in his Oceans Policy Settlement in 1983--and it was my privilege to have had the opportunity to work on that document--that required the United States to operate in a manner consistent with the convention's provisions except for deep seabed mining, and the United States has conducted its activities in accordance with the convention since 1983. It is, thus, a very hollow argument to state that if we were to become a party to the convention, we would somehow be saddled with some implication of regimes or impediments to our ability to do these operations or these works.

In fact, if you look at it as an international lawyer, what we did by the 1983 Oceans Policy Statement, we went one step beyond ratification. We went immediately into implementation of the convention by fleshing out its terms by our operational practice.

I had asked this morning to give copies of volumes of two books that are used by our operating naval and air forces that reflect our complete adherence to the provisions of the convention in the peacetime environment, NWP 9--and Joe ought to remember--NWP successor volume 1-14. Hopefully I'll have just the cover sheet with the summary of those items. We've also shared those and they're used by many of our allies.

I had a lot of other things I was going to say and they are in my paper, but, in conclusion, I would like to stress that this convention has nothing to do with the United Nations or with weighted voting or with other things that are being stressed by the naysayers, but has everything to do with the protection and preservation of our sovereignty, our national security, and our navigational rights. If we decide to walk now in view of everything that is going on, we will be relegating the fate of our essential navigational rights to the hands of others. And you can take your pick on who those others may be: the European Union, for an enclosed or semi-enclosed sea approach to keeping us out of the Mediterranean or running a Bosporus kind of arrangement to the Dardenelles; or the Chinese who, as Mr. Gaffney indicated, are at the forefront of some of these other measures--and I'm speaking in my own capacity so I can name countries--trying to exclude military activities from the Exclusive Economic Zone.

But, bottom line, our national security is enhanced, our Proliferation Security Initiative is enhanced, our maritime interception operations are enhanced, and

we need the stability and predictability that this convention gives us. Ambiguity is a disaster in any kind of an international situation.

Thank you very much.

[Applause.]

MR. SANDALOW: Thank you, Admiral.

Genevieve Murphy, what are the views of the oil and gas industry?

MS. MURPHY: Good morning, and thanks to Brookings for inviting us to present our views.

The American Petroleum Institute and the U.S. oil and gas companies that it represents support Senate ratification of the convention. Our 400-plus companies are involved in all phases of oil and natural gas exploration and development in the oceans of the world, as well as the marine transportation of petroleum. Besides activities in the U.S., we have substantial interests in offshore oil and gas development globally, given our reliance on imported oil.

The U.S. oil and natural gas companies, as well as drilling, equipment, and service companies, are important players in the global competition to locate and develop offshore natural gas and oil resources. There are a number of people who could have been here to address this issue today from the oil and gas industry, but to give you some perspective, there's an offshore technology conference that's occurring in Houston this week that has attracted over 2,000 companies, 660 of which are from outside the United States exhibiting in the U.S., and it's expected to attract 750,000 visitors to this offshore technology conference. What it's showing is that the pace of technological advancement has not abated since the treaty negotiations began. Technology is taking

us to greater and greater water depths and rekindling interest in areas that once were considered out of reach and uneconomic.

To give you some more perspective, back in 1947 the first well was drilled in the Gulf of Mexico, ten miles off the coast of Louisiana, in a water depth of 18 feet. That well is still producing today. And just in November of 2003, we set a new world deep-water drilling record in the Gulf of Mexico, the United States, over 10,000 feet. And to give you some idea of how deep that is, if you would take the ten tallest--or the five tallest buildings in the world, stack them one on top of the other, you would still be about 500 feet short of the actual depth of this new well.

So today, API supports ratification of the treaty for several reasons:

First, we believe it serves our national energy security interests.

Second, it sets criteria and procedures for determining the outer limits of the continental shelf, a certainty that's needed for leases and the investments that will be required.

The treaty also provides a predictable framework for mineral development and revenue sharing in exchange for certainty and stability.

The treaty promotes unimpeded maritime rights of passage, and given that 44 percent of the U.S. maritime commerce concerns petroleum and petroleum products, that's of great interest to our companies.

And, fifth, it maintains the U.S. role in shaping and directing international maritime policy.

Now, from the national energy security interests, a key challenge faced by the U.S. today is how to enhance our energy security and to meet expected future

demand for oil and gas. The key challenge for our companies is to provide consumers with reliable, affordable energy.

Now, today, the world consumes about 80 million barrels of oil per day. The U.S. consumes about a quarter of that. Over 60 percent of the oil that we use is imported from 57 countries, and no country provides us with more than 17 percent of the oil that we consume. Gas demand is projected to increase by over 50 percent. Total petroleum demand is projected to increase by 47 percent. Renewable energy supplies are projected to increase by 65 percent. And efficiency of energy also is projected to improve.

But despite all this, massive volumes of new global production capacity are going to have to be developed in the next two decades to sustain the world economy. So the bulk of these remaining resources are concentrated in the Middle East, Africa, Russia, the former Soviet Union, and potentially the world's oceans.

API supports ratification of the treaty because it sets the criteria and procedures for determining the outer continental shelf and the certainty that's needed for ocean investment.

Today, exploration and production takes place within 200 miles of the U.S. continental shelf. We obtain about 28 percent of the natural gas that we use today from our shelf and almost as much in oil production. That's occurring today from about 4,300 platforms in the Gulf of Mexico that are operating each and every day.

The technology, as I said, is taking us further and further offshore, and it's a matter of time before demand for energy will call for development beyond our Exclusive Economic Zone.

The U.S. is fortunate in that it's one of the few countries that has a continental shelf that extends beyond 200 miles. U.S. companies are interested in setting international precedent by being the first to operate in areas beyond 200 miles, and leasing beyond that 200 miles will require more legal certainty to attract large investments. Today, deep-water wells cost anywhere from $25 million to $40 million and up to $100 million per well, so there are large investments that require legal certainty.

Third, we support ratification because it provides a predictable framework for mineral development and revenue sharing. The revenue sharing calls for a payment of 1 percent beginning in the sixth year of production, and then the increase--it will increase at a rate of 1 percent per year to a maximum of 7 percent in year 12. Now, for comparison, U.S. royalty offshore today we pay about 16 percent of production, while onshore production royalty is 12 percent.

Fourth, we support ratification because it promotes unimpeded maritime rights of passage, and that's very important given the amount of oil and natural gas that will be transported in the world's oceans.

And, finally, we support ratification because we believe it maintains the U.S.'s role in shaping and directing international maritime policy.

Thank you.

[Applause.]

MR. SANDALOW: Thank you.

Cliff Curtis, what are the environmental implications of this treaty?

MR. CURTIS: I'll just stay here. The microphone is working.

I really appreciate the opportunity to participate in this forum, especially to be associated with the extremely thoughtful, prescient, on-target remarks of Senate Foreign Relations Committee Chairman Richard Lugar.

For WWF and for myself in prior positions while working on ocean issues, the Law of the Sea Convention serves as a flagship for addressing a diverse mix of marine issues within one legally binding, effective, multilateral framework. Representatives of WWF and other environmental and conservation groups have engaged U.S. and other decisionmakers on the Law of the Sea Convention going back to the 1970s, involved in the negotiations in the period leading up to the Part 11 renegotiation, and in a continuing sort of drumbeat of support, if you will, for U.S. ratification or accession.

The convention is not perfect. Substantial further developments are needed. Nonetheless, for the environmental and conservation community, there is unanimity in strongly supporting U.S. accession to the treaty now.

The benefits from an environmental sustainable use perspective are substantial. The basic obligations for all states to protect and preserve the marine environment and to conserve marine living species are significant steps forward internationally. Part 12 of the convention is the first comprehensive statement of international law on this subject, setting unqualified obligations for all states to protect and preserve the marine environment, subject to compulsory binding dispute settlement. All states are also obliged to prevent, reduce, and control marine pollution from all sources, including the release of toxic and harmful substances.

At the same time, the convention provides a solid foundation for further development and implementation of sustainable ocean uses. Among other features,

there's a special relationship between the convention and other international marine agreements whereby the convention leverages the continual development and upgrading of international rules and standards to issue specific agreements like those involving vessel-source pollution, ocean dumping, fisheries issues, which then in turn provide the basis for national law reform. It's a symbiotic relationship where the convention provides the floor and requires parties, the 140-plus parties that are members of the convention, to adhere to advances in issue-specific forums even in situations where those countries are not parties to those other agreements.

Parts 5 and 7 of the convention address conservation, protection and management of marine species, establishing fundamental conservation obligations. As with marine environmental protection, for example, the fisheries provisions establish important principles for further development of regional and global agreements, as exemplified by the 1995 UN Fisheries Agreement that David Balton and others from the State Department were intimately involved in, addressing a precautionary approach, laying down strong compliance and enforcement measures on the high seas, provisions such as that that link closely with the Law of the Sea Convention.

Clearly, the convention does not, from WWF's view and from the conservation community's view, adequately address all ocean uses. For matters such as the precautionary approach, fisheries conservation, protection against invasive species, land-based sources of marine pollution, to liability and other initiatives, there is a clear need for more focused and more effective requirements.

On balance, though, my organization and other like-minded organizations believe that overall U.S. support for and accession to the treaty is merited, serving as a

foundation for the progressive development of ocean-related international law and policy.

As we've seen from the dialogue that's occurred thus far today, the issue of environmental protection, conservation of living marine resources, is not at the heart of the dispute. Nonetheless, it is an important area of focus and one extremely critical reason for supporting the Law of the Sea Convention. We believe that the reasons in support of ratification as presented by Admiral Schachte, David Balton, and by the oil and gas perspective are ones which, based on our informed understanding of those issues, likewise inform and provide the basis for strong support among the diverse stakeholders in the U.S. And it is our hope that accession by the U.S. Senate through floor action in the near future will allow for the U.S. to be a party at the table very soon.

Thank you.

[Applause.]

MR. SANDALOW: Thank you.

Our last speaker is Dr. Peter Leitner, already touted as an expert on this topic. Peter?

DR. LEITNER: Thank you. It's really an honor to be here today speaking at the Brookings Institution on this topic, which as far as I feel has gotten very little attention given the magnitude of the importance which it has for American foreign policy and how we're going to be living throughout the rest of the century.

I'd just like to make one comment, though, in terms of one of the interesting phenomena that have happened in the last few weeks as we've expressed--oh, I'm sorry.

Sorry about that. Rather than [inaudible] into the chair, I'll electrocute myself.

One of the interesting phenomena we've seen in terms of once you raise issues about the fundamental nature of the treaty, whether it's in the American national interest--and American national interest is a very, very varied concept--is that the opposition to the treaty is meted with flat-out expressions that you're flat-out wrong, you're motives are questioned, as we saw this morning with Admiral Schachte, you know, questioning the motives of people who are--that there might be some larger conspiracy here.

There's basically a difference of opinion about a treaty that's been sitting out there for a couple of decades now and a very strong basis of concern as to whether or not the treaty was actually modified in any substantive way that can't be jettisoned by the majority at the Law of the Sea Tribunal and other places once the treaty--once we accede to the treaty.

That being said, I'd just like to go into my presentation.

American foreign policy suffered a self-inflicted wound by trying to buy off the spiraling demands of the new international economic order in 1970 by proposing the creation of an International Seabed Authority, a concept that has since mutated into a global government or the seeds of a global government that is now composed of a legislature, an executive, a judiciary, a secretariat, and several powerful commissions. The existence of such a new force, dominated by nations hostile to U.S. interests, is a fact that America must consciously reckon with and not capitulate to.

The U.S. Senate, the President of the United States, and the American people are the targets of a disinformation campaign being waged by a coalition of

nations and organizations united behind a redistributive philosophy that has the wealth, power, freedoms, and successes of the United States in its cross hairs.

Contrary to the disinformation pumped out by supporters of the treaty, the new international economic order is not dead. It's simply less vocal than in the 1970s and 1980s. In my opinion, the reason why it's much quieter is that it's collectively holding its breath to see whether the United States errs in joining this treaty and becomes party to the crowning achievement of the NIEO, which is the Law of the Sea Treaty.

As with other profound diplomatic and intelligence failures, which we're living with today, the United States suffers here from the need for instant gratification, a blinding failure to recognize that major adversaries have a longer-term world view and are willing to accept incremental victories and absorb losses on the way toward their overall objectives. The paralyzing State Department mindset still considers a bad agreement preferable to no agreement, upholding a "through the looking glass" notion that defines leadership within the International Seabed Authority as casting vetoes while trying to constrain anti-America excesses. This is the politics of defeat that will add more problems to the national survival to the long list being cowardly bequeathed to the next generation of Americans.

The current slogan being echoed by treaty supporters that we need to have a seat at the table to influence developments, somehow supporters ignore the math of one seat among approximately 150 seats, the power of the one-nation/one-vote principle and the overwhelmingly anti-American agenda of at least 120 of the 150 seats that we are going to be sitting with. Having a seat at the table of a kangaroo court is not the U.S. national interest. It will not buy security. It will not buy good government. It would not dissuade enemies from choosing yet another international forum and court

system to weaken America further. And it will not make the noose any less deadly in the long run.

The future of the American people will be better served by keeping the United States outside of this absurd arrangement. By not lending the political, technological, and financial support of the world's greatest democracy, greatest maritime and naval power, and greatest economy, the legitimacy of this potential super-government will be severely handicapped. It won't be killed. It will still be there. But it will be handicapped.

To quote my second favorite U.S. Ambassador to the United Nations, Daniel Patrick Moynihan, "In Washington, three"--and I'd change it to "five"--"decades of habit and incentive have created patterns of appeasement so profound as to seem wholly normal. Delegations to international conferences return from devastating results proclaiming victory. In truth, these have never been thought especially important. Taking seriously a Third World speech about, say, the right of commodity producers to market their products in concert and to raise the prices in the process would have been the mark of the quixotic or the failed."

The Law of the Sea Treaty is a political document that is being promoted in legal terms. Treaty supporters deliberately distort and minimize the depth of the treaty's political core. We heard that today, saying, that, you know, where did this come from, that the ISA and the International Seabed Authority would be politicized?

The American body politic is ill-served by one-sided opposition-free hearings, as we had in the Foreign Relations Committee, and by bureaucrats and elected officials willing to bind this country to the support of a super-government that could

severely undermine U.S. sovereignty. The American people need to view this treaty and its implications in full and refuse ratification.

In response to the question, What then does the United States do?, Ambassador Moynihan declared, "The United States goes into opposition, and we simply live with our obligations and our power."

[Applause.]

MR. SANDALOW: Thank you very much to all the panel.

I have two questions, and then I'm going to throw it open to the floor, and I just wanted to start with a question to both David Balton and Admiral Schachte.

Both Mr. Gaffney and Dr. Leitner have talked about the ineffectiveness of the amendments in 1994 with regard to seabed authority and raised questions about the ability of countries to amend the Law of the Sea Treaty against our interests in the future, should we become a party. Are those fair and accurate criticisms, in your view? And if not, why not?

MR. : I'll go first. No, they're not fair and accurate criticisms. For one thing, Mr. Gaffney, it's not Article 11 I think you're objecting to. It's Part 11. Article 11 deals with courts and is two sentences long.

I was the lawyer on the U.S. delegation that negotiated the Part 11 agreement, and my primary mission was to ensure that all the changes to the Part 11 regime that we were negotiating were made legally effective. And it's hard not to take it somewhat personally when someone says that we failed or I failed at that mission. But it's not just me. Every legal adviser at the State Department has concurred that we got what we needed. The changes wrought by the Part 11 agreement do create legally binding changes, all the things we needed to meet the objections we had to Part 11.

Yes, it is true that further amendments to the convention may be made starting in November, and yes, it is true that only as a party to the treaty will we have the opportunity to participate in negotiation of those amendments and ensure that none are adopted that we do not like. But the notion that the Part 11 agreement somehow is ineffective or could be overturned or overruled is something not true.

MR. SANDALOW: Comments on this point?

MR. GAFFNEY: If I could just reinforce my earlier point, I don't hold myself out as an expert on this. I thank you for correcting me on the Part 11 rather than Article 11.

I think the criticism stands, and that is that by its own terms, this is not an amendment to the treaty. It affects the interpretation of the treaty. And I would welcome an explication as to what happens when presumably the international tribunal interprets the treaty and finds itself confronted, perhaps, with states like Egypt and Brazil, who have not ratified Part 11. What do they do then? Is it binding or isn't it binding? Does it change everything or doesn't it change everything?

I mean no disrespect to those who worked hard on this treaty. I think it's possible still to have come up with a treaty that is defective despite hard work. Indeed, you could argue--in fact, it's really the premise that I'm making my criticism based upon. It was a rigged game. The deck was stacked against you simply because in the negotiating forum, the Group of 77 and its like-minded participants--and, it must be said, some people who were more interested, I think, in getting an agreement than in getting it right--produced an agreement that, in fact, it would appear you would agree was defective, at least until 1994, and may or may not have been fixed by what came after that.

MR. : May I? Thank you. I would just maybe mention one thing that David referred to. Every living legal adviser who served in the State Department has confirmed the view that this is, in fact, a legally binding agreement that directly affects the convention and its outcome. One can hypothesize anything one may wish to hypothesize about that, but that is a legally binding fact as asserted by the number of those who signed in.

And, you know, I got to hand it to the naysayers, though. What a clever ploy. If the heart of the Reagan objection was Part 11 and that has been fixed and it has been recognized by the industrialized countries who immediately signed up to it and it is off and running, what is the only vulnerability that you have to try to vitiate that argument, try to claim it's not legally binding, in spite of everything that has been said by those most knowledgeable with, A, the negotiations, B, the history of the convention, and, C, who are committed to simply expressing an opinion predicated on their own intellectual and academic and legal background.

Secondly, I would like to mention, of course, we negotiated this convention from the backdrop of the bipolar world. The new international economic order--and as you know, Frank, this really came about in 1967 when the Soviets approached us with the idea of a treaty limiting the territorial sea to 12 miles because we were looking at 100-and-something straits that were going to be overlapped and you couldn't fly over, submerge, transit, so on and so forth.

We then met and there was a meeting, and we went to NATO in 1968. There was a meeting. We submitted an article, a second article which would provide for some kind of high seas arrangement through straits so overlapped by this extension.

Then others got involved in it. At the time fishery issues were run by the Department of the Interior. They insisted on some resource element on fish conservation and management, and then it was off and running.

The common heritage of mankind actually goes--that concept goes back to the turn of the century, last century, during some negotiations on the issue of tea when a negotiator, interestingly, by the name of Carter, representing the United States in some arbitration referred to a commodity that was so important to the rest of the world that whoever had that commodity had some kind of a requirement to take care of all the world with this issue.

Johnson picked up on that in 1967 at the commissioning of the Oceanographer, saying we were not going to colonize the oceans. (?) Pardeau came forward and then the convention and conference was off and running.

Some of our former Soviet colleagues, now Russian colleagues, are very eloquent in explaining how this capitalist father and socialist mother produced this horrible Part 11. And as the world--the South American countries turned to a more market-oriented economy, everybody realized that this damn controlled economy was not working.

So everything you said was true and accurate, Frank, in 1981, 1982. But that whole thing has changed, and it changed with the collapse of the Soviet Union and so on and so forth and the amendments. And I would like to ask your colleague, Dr. Leitner, to expound a little bit on this super-government. Super-government to do what? What is the super-government that you referred to?

DR. LEITNER: Well, first I'd like to just add my two cents on the issue of the various legal advisers at the State Department, you know, interpreting the '94

agreement, you know, to be a modification of the treaty. I have no doubt that the State Department will interpret it that way. But we're living in a world of 150 other countries and not all will interpret it that way. And some of the primary, the largest countries--as a matter of fact, if you just take China and India alone, you have about half the world's population--will not interpret it the way we will interpret it, will hold ourselves to the rules or we will hold ourselves to.

And on a great many issues today, you know, before any U.S. accession to the treaty, we see a great deal of potential for conflict. We see the Chinese drawing baselines as they want to draw baselines around their coast, according to our interpretation of the treaty, in violation of the treaty. They're insisting on prior notification of warships entering their territorial seas and the economic zones in violation of the concepts we say we interpret within the treaty. And they also announced quite directly, as did the Indian Government, as Frank said, and some other governments, that the treaty does not allow for the type of interdiction activities that the Proliferation Security Initiative is based on.

So, you know, taken in isolation, if we sit here and engage in a group-think colloquium on how the United States is going to interpret this treaty, it's a meaningless exercise. It has to be done from the outside, from what will the rest of the world, what would key players, key potential adversaries in the future, how would they interpret the treaty. And so far we don't hear a lot of that.

MR. : With apologies for interrupting, both Senator Lugar and Dave Balton and to some extent Admiral Schachte used that point in part as an argument in favor of U.S. accession to the treaty, arguing that in order for the U.S. to effectively

influence the actions of a body which exists, which is in force and participating with 140 nations now, we need to be at the table.

What's your response on that?

DR. LEITNER: It's that being at the table limits our options. Being at the table will give a false sense of security to all of us in terms of our ability to express anything.

In a debate we had or a conversation we had last week that was hosted by the Heritage Foundation, Professor Moore, John Norton Moore, expressed our role at the table would be one of casting vetoes, casting vetoes here, casting vetoes there, trying to stop an overwhelming tide that will sweep over us. And that was the expression of U.S. leadership we've seen so far, you know, in terms of what our actual leadership role will be within this convention.

It's basically being a--you know, waging a rear guard action, trying to throw chairs in front of people who are making a concerted effort, you know, to engage in things contrary to our own national interests.

MR. GAFFNEY: Can I just pick up on the point that Peter made in his remarks? Because it may seem counterintuitive to people who are really immersed in or adhere to this notion of process, what I like to call "process uber alles." You may, in fact, exercise more influence and restraining influence on some of this agenda by not being part of the treaty, by having people who are part of the treaty think maybe you will become part of the treaty at some point and refrain from making it worse.

Look, we may find out, come November if this treaty has not been ratified in the meantime, without--let's face it, without the possibility of an informed debate in the Senate. Senator Lugar admitted as much in response to somebody's

question. There will, at best, be a rubber-stamp ratification of this thing at this point. And if that happens, we'll have the opportunity to see whether we can stop the bad things that are going to be in the offing.

If it doesn't happen, we'll have an opportunity to see whether some of the bad things that are now in the offing, which even the proponents acknowledge, I think, can be expected from the Chinese and from perhaps the Russians and others, will not, in fact, materialize in the hopes that after November you all will have another bite at this apple.

But here's the point, and I just go back to that common-sense approach that I'm trying to take to this thing. If you are playing a rigged game, if, by and large, there is an anti-American dynamic--arguably, even more pronounced dynamic today, at least if my friends at Brookings and others are to be credited with how bad people feel towards the United States these days in the world--this is not going to get better. And then the vetoes which we can exercise only in certain circumstances, because under other circumstances it's very clear, the votes are taken on a one-country/one-vote basis. This isn't weighted voting, Admiral. This is just plain one-country/one-vote, like the UN General Assembly. You may have noticed how well that works out. Most votes, we will be outvoted in much the same way we were outvoted--again, no disrespect to David and his colleagues. We were outvoted with regularity.

MR. SANDALOW: We could do this for a while, and I want to be sure to give the audience a chance to ask some questions. I know that, Frank, you've got to leave after about ten minutes.

MR. : May I? A point of personal privilege. May I ask Peter to please tell me about the super-government that he referred to?

DR. LEITNER: Sure. You know, supra-national government basically. It's the bestowing upon the International Seabed Authority of duties and powers that have always been traditionally reserved for nation states. And we heard a little bit of that from the representative from the American Petroleum Institute. It was kind of interesting when she was talking about, you know, it's a pretty good deal, we only have to pay a 6- or 7-percent royalty to the International Seabed Authority as opposed to a 16-percent tax to the United States Government.

Well, you're paying your tax to another government. You may not recognize it as a tax, but the royalty is a tax. It's a direct tax. But this time it's not a tax by a government. It's a tax by an international organization who, for the first time in history, will have the ability to levy a tax on private enterprise operating in areas of the high seas beyond national jurisdiction.

This is a major, major sovereignty issue. It's a major issue of nation state versus international organizations.

MR. SANDALOW: We have a few questions from the floor I want to recognize, starting with Nigel.

MR. PURVIS: Nigel Purvis, the Brookings Institution. I'd like to direct a question to Mr. Gaffney.

You emphasized that your approach is a common-sense approach, and I'd like to ask you to apply that to an imaginary debate that we might be having about joining the United Nations today if it were being created today. The arguments that you suggest for not joining the Law of the Sea Convention appear to me to be equally applicable to the United Nations generally. Would it not be the case that we would often find ourselves balking action by other nations? Would it not be the case that we would

often find ourselves in the midst of a debate where other countries have very different interests than our own? Would we not exercise this greater power that you suggest by staying outside of the system?

You said you very much didn't want to be interpreted as against multilateralism. What is it about participation in the United Nations and in many of the actions that occur under the umbrella of the General Assembly, very popular programs that are run by UNICEF, by the United Nations High Commission on Refugees, a variety of areas where the United States has played real leadership on human rights and the development of treaties? What is it about that process that has such a very different dynamic where you would support that but not this process?

MR. GAFFNEY: Well, I guess my view of the UN is it does some things usefully, and where it is a vehicle for political agendas, particularly in the General Assembly, it does things that are not useful, certainly not consistent with our interests. And we can't do anything about it.

And what I'm suggesting here is I think based on how this treaty came about--and Admiral Schachte more or less acknowledged that it came about through a birthing process of political character. It certainly retains a lot of that political freight. Some of the parties are very much keen on advancing a political agenda at our expense. And certainly the original Part 11 was all about that. And it may or may not be different today, but I suggest--and I still have not had an answer to my question. How does it get interpreted when some of the parties to the convention don't subscribe to the 1994 agreement? Almost 20 percent don't subscribe to it.

And you have an international tribunal which will presumably be the ultimate arbiter of this on which we may or may not be seated. And in any event, it will,

like the General Assembly, work one-nation or one-representative/one-vote. And we are unlikely, I think, to prevail very often.

My beef is not that multilateralism doesn't have its place, why I didn't want to be pigeonholed as somebody who is reflexively opposed to multilateral action, let alone an anti-internationalist, which some of us have been called recently.

I am very much in favor of American engagement in the world. I just don't think we should confuse engagement with being engaged in structures or regimes or arms control treaties or other things that, on their face, disserve our interests in at least some respects.

And I just want to say I have been involved in a lot of debates over the years. Senator Lugar paid me a--I guess it was a compliment, by suggesting that on most of these issues I've been involved in one way or the other. I'm sorry I'm late to this one. But what I do think is, having witnessed representatives of industry supporting treaties in the past, sometimes they don't work out the way the representatives of industry think they will, notably the Chemical Weapons Convention.

I have never seen a treaty in which it works out to industry's way of thinking, where they also are--the treaty is also being supported by people who generally hate everything they're proposing to do. And that's what you've been treated to here today.

I suggest to you that one of these industries or interests will be correct. I don't think both of them will be. And I leave it to them to figure out which it is going to be. But the bigger point is even if they're both correct, we still have larger national interests than one industry's or on interest group's. And I think they come under the

rubric ultimately of sovereignty and national security as well as economic, and, generally speaking, those are not advanced by politicized multilateral institutions.

MR. SANDALOW: This is a very rich discussion. Frank has told me he needs to leave in about five minutes, which is our principal constraint here. We have some very distinguished people in the audience I want to be sure to recognize. Let me just collect a few questions and then have our panelists give a final round of comments, and then we'll close--starting with Myron Norquist had his hand up.

MR. NORQUIST: Yes. Frank, I wanted to refer to your article in the morning paper. You say, for example, Article 301's obligation, refrain from "any threat or use of force against the territorial integrity or political independence of any state." And then you pose the question: Do we really want to commit formally to this?

Even the dullest student in International Law 101 knows about Article 2(4) of the UN Charter, which reads, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."

What's inherent in your question is that somehow or another the UN Charter doesn't exist anymore or you didn't know that the language was identical. But it is--I could nitpick your whole article, but it's an example of the kind of disinformation campaign that's going on.

And my question actually is: Is there some political agenda that has to do with the right wing and the conservative outlook and the upcoming November elections motivating all of this activity to avoid a vote in the Senate where, frankly, you're going to be about 95-5, with the 5 being the point of view you've got. And I'd like to ask you to be candid, as I know you often are.

Thank you.

MR. SANDALOW: I know that was specifically directed at Frank, but let me just get one or two other questions, here and then here, and then we'll close.

MR. SNYDER: I'm Kent Snyder with the Liberty Committee. I have two questions, please. One, of Ms. Murphy, what will your response be, your organization's response be if the International Seabed Authority ever rules against the interest of any of the companies that you represent? What will your recourse be?

And second of all, to the Admiral, what is it that the U.S. military and intelligence agencies are not doing today and haven't done for the last 20 years that they would do if this Law of the Sea Treaty became effective?

MR. SANDALOW: And the last question.

MS. : Thank you. I'm Sue [inaudible] with the State department. This isn't really a question. It's more of a comment, following up on what Myron Norquist said.

Mr. Gaffney has cited several articles of the convention repeatedly in his article as somehow problematic. Myron already commented on the fact that 301 is basically verbatim from the UN Charter. Article 110 on the right of [inaudible] is basically verbatim from the 1958 convention to which the U.S. is already a party, and Articles 19 and 20 having to do with submerged transit and intelligence activities are basically verbatim from the 1958 convention. And any student of the Law of the Sea know that those are conditions of the right of innocent passage. They are not obligations under the convention. So I hope you won't persist in citing articles.

Thank you.

MR. SANDALOW: All right. Thank you very much. Why don't I suggest we close by having Frank respond, then Admiral Schachte, and any other--and Genevieve for the question directed to her, and then we'll close.

MR. GAFFNEY: Well, thank you very much for the opportunity to address suspicions. I approach this, as I say, from the point of view of common sense, and it seems to me that every time the United States Government assumes obligations that are inconsistent with its practice, one of two things happens: either we look as though we are lying, or we are discrediting the whole process by which we're engaged in such negotiations.

Now, I think it's relevant that, as I said earlier, we are doing things today and we must continue to do things for the foreseeable future that are incompatible with these provisions right now. We can call it not innocent passage when we're doing them, but it does create a problem when, for the first time--for the first time--that I know of, at least--we are going to have a tribunal that is empowered to rule against those activities, that may have been assumed as hortatory, perhaps, language in previous agreements, or even as solemn obligations under certain sets of circumstances, but now have the potential not only to be rendered into findings or advisory opinions or edicts from the tribunal, but also at least there's an implication here that they could be enforced at some point, that it's the obligation of member states or that there may be, as I think the Center for Naval Analysis once suggested, blue halts that are put into play to enforce provisions, maybe even from our own Navy, if you can believe that.

But here, if I may just take one more second about this, because this is really important, what I worry about and it's relevant as we talk about today's news, about individuals in the United States military who are charged with having done

unspeakable things to prisoners, things that none of us would support. I don't want to see the skipper of ships of the United States Navy threatened with prosecution or penalties of some kind under one of these courts or another because he's doing his job and that job is contrary to assumed commitments under this treaty.

If that skipper, for example, is being told you need to collect intelligence underwater within the territorial waters of a coastal state, maybe Admiral Schachte's current successors in place will tell him it's okay, military activities aren't defined by this treaty, and in any event, we're going to determine them under our own authority. Though it must be said the U.S. Government has suggested that be a reservation or at least a statement, a declaration, a condition of adopting this treaty. And since we're not allowed to institute reservations, I'm not quite sure how that happens.

But my point here is I think you could very well see practice developing in which we're told we're not going to do some of the things that we have to do because they're incompatible--not with old obligations or obligations that were taken in a different context, but new obligations and obligations taken in the context where people could theoretically find against us and enforce those findings.

This is not about a secret agenda. This is about a genuine concern about American sovereignty. We didn't ask to have this treaty come up before the election, and I hope it won't. But if it is, we hope to have a debate, and my hope is that we'll have a good, honest debate and that there will be more than five people who have the same concerns I do.

MR. SANDALOW: Admiral Schachte, Genevieve Murphy, and Dave Balton will have the last word.

ADMIRAL SCHACHTE: Okay. Thank you. What a great segue. Thank you, Frank.

First and foremost, you know about the law of espionage and all these customary international legal principles. We have been operating under this convention since President Reagan said we would in 1983. There's not a--I don't want to say "damn." There's not one new--

MR. : You said it.

[Laughter.]

ADMIRAL SCHACHTE: --undertaking under this convention that we have not done in the past, are not doing now, and will not do in the future. It's irrelevant to what this convention is about. And I mentioned that in my comment on the preamble, on the opt-out that we have, which further protects our sovereignty, along with sovereignty, warships, and error, a number of articles that enhance our sovereignty as the military exemptions. And we're not the only ones--and we're required to state that. I've seen it cast by the naysayers as this is something so bad we had to even say we were going to do it. The convention requires it. If you're going to exercise this, you've got to tell us. The Brits have told them. The Russians have told them. There are a number of people who have opted out of that. Some have opted out of any kind of dispute resolution.

So, you know, that's just a non sequitur. It's a red herring, and it's inaccurate.

If you look at this factor of our CEOs being brought--you know, these--we can't discuss these things. These--well, just leave it at we will never be prohibited from doing anything that we need to do as far as our national security. And to your

colleague, I would say talking about what will the rest of the world think, we're not going in to veto things or whatnot. We're going in to help define what the situation is. In the Exclusive Economic Zone, the Chinese' biggest stick that they used against us, how can you tell us what this thing says when you're not even a party to it? And we're going to get down with our pals and tell you what we think it is. We don't have a role of leadership. And in my judgment--I'm surprised to hear conservatives say something that would intimate that the United States would ever leave any national security matter in the hands of anybody but the United States. And we would certainly--it doesn't matter what the rest of the world does. When our national security is at stake, you can count on us to do what we have to do. That would not be an issue. We would be playing in the game. We would be defining these things and receiving the benefits that come from the convention as every living former Chief of Naval Operations has said in a letter that was sent in 1998, as all the people who have worked on this conference during the negotiations and so on and so forth. And I'm sorry for saying "damn."

MR. SANDALOW: Genevieve?

MS. MURPHY: I was going to say, it's difficult to answer your question about what recourse our companies could have. We don't have all the facts right now. Number one, we haven't ratified the treaty. Number two is would this be operating a company looking to explore outside the 200-mile Exclusive Economic Zone, off our continental shelf, off the continental shelf of another country. I mean, there are a lot of different variables.

So if you want, we can talk about this afterwards, but it's a pretty wide open question.

MR. SANDALOW: Dave Balton?

MR. BALTON: Thanks. I have about four points to make.

The first is on this question of global governance and a super-government and whether our seat at the table is only one of 145. First, we need to look at what that table is. The table is the International Seabed Authority. What is that organization? It is an organization whose mandate is limited to regulating mining of the deep seabed. It has no other authority. No other authority. And with respect to seabed mining, deep seabed mining, an industry that now does not even yet exist, we have a veto over all important decisions due to our guaranteed seat on the council.

Second, about the tribunal ruling against us, one of the things about the Law of the Sea Convention is that state parties get to choose which dispute settlement fora they would like to appear before. The last administration and this current administration recommended to the Senate and the Senate draft resolution of advice and consent contains a choice not for the tribunal. The United States would not be subject to the jurisdiction of the Law of the Sea Tribunal. We would be arbitrating any case.

The third is a point that has already been brought out, most eloquently, I think, by Senator Lugar. The opponents of the treaty seem to think that if we just stay out of the treaty, we can continue to enjoy all the benefits without any of the obligations. I submit it's exactly the reverse. Most of the things they are worried about we are already bound to, either because they appear in previous treaties that we've already ratified--the UN Charter, the 1958 conventions--or because we have already said repeatedly since 1983 that they are reflective of customary international law already binding on us. That's true of Article 110. It's true of 19 and 20. It's true of 301. It's true of 88. All of those, it's true of that.

What we lack by not being a party is the ability to exercise our rights to gain the benefits. We can't get our people onto the bodies. We can't exercise our veto at the Seabed Authority. We can't establish the outer limit of our continental shelf or prevent others from unjustly claiming areas of the continental shelf. We are foreclosed from exercising our rights from obtaining the benefits.

I'll stop there. Thank you very much.

MR. SANDALOW: Thank you very much.

We're over time so I'll be very brief. I'll just start by thanking Strobe Talbott for his remarkable leadership here at Brookings and thank the Brookings staff for helping put this together.

I want to thank our panelists for their very insightful remarks.

Thank you all for being here.

[Applause.]

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