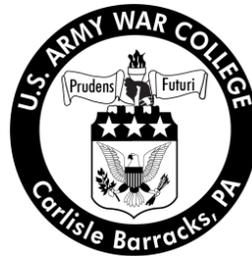


Strategy Research Project

Securing U.S. Arctic Interests and the Role of UNCLOS

by

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United States Marine Corps



United States Army War College
Class of 2014

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REPORT DOCUMENTATION PAGE

Form Approved--OMB No. 0704-0188

The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. **PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.**

1. REPORT DATE (DD-MM-YYYY) 15-04-2014		2. REPORT TYPE STRATEGY RESEARCH PROJECT		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE Securing U.S. Arctic Interests and the Role of UNCLOS				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Lieutenant Colonel Matthew Reiley United States Marine Corps				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Captain Jim Kitzmiller United States Navy				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) U.S. Army War College, 122 Forbes Avenue, Carlisle, PA 17013				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution A: Approved for Public Release. Distribution is Unlimited.					
13. SUPPLEMENTARY NOTES Word Count: 6817					
14. ABSTRACT The Arctic's receding ice offers potentially great benefits to the U.S. resulting from access to Arctic natural resources and an expanded global commons. These economic opportunities however are not uncontested. Russia and other Arctic nations have parallel interests and have made resource claims under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS), to which the U.S. is not a signatory. This leaves the U.S. mute and on the sideline to influence the outcome of Arctic resource claims, particularly those of Russia who stands to gain the most if the U.S. is not engaged. In addition to securing resources, UNCLOS provides legal certainty for operations at sea that are vital to securing the global commons and assuring freedom of navigation. The U.S. should ratify UNCLOS as a critical component of policy to peacefully achieve U.S. interests while facing an assertive and regionally powerful Russia.					
15. SUBJECT TERMS Soft Power, Global Commons, U.S. Economic Interests					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 41	19a. NAME OF RESPONSIBLE PERSON
a. REPORT UU	b. ABSTRACT UU	c. THIS PAGE UU			19b. TELEPHONE NUMBER (w/ area code)

USAWC STRATEGY RESEARCH PROJECT

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Abstract

Title: Securing U.S. Arctic Interests and the Role of UNCLOS
Report Date: 15 April 2014
Page Count: 41
Word Count: 6817
Key Terms: Soft Power, Global Commons, U.S. Economic Interests
Classification: Unclassified

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Securing U.S. Arctic Interests and the Role of UNCLOS

The Arctic is one of our planet's last great frontiers. Our pioneering spirit is naturally drawn to this region, for the economic opportunities it presents and in recognition of the need to protect and conserve this unique, valuable, and changing environment.

—President Barack Obama

The Arctic's receding ice offers potentially great benefits to the U.S. resulting from access to Arctic natural resources and an expanded global commons. These economic opportunities however are not uncontested. Russia and other Arctic nations have parallel interests and have made resource claims under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS), to which the U.S. is not a signatory. This leaves the U.S. mute and on the sideline to influence the outcome of Arctic resource claims, particularly those of Russia who stands to gain the most if the U.S. is not engaged. In addition to securing resources, UNCLOS provides legal certainty for operations at sea that are vital to securing the global commons and assuring freedom of navigation. The U.S. should ratify UNCLOS as a critical component of policy to peacefully achieve U.S. interests while facing an assertive and regionally powerful Russia.

Framing the Problem

Climate change is having a sweeping effect around the world, but nowhere are these changes more economically significant than in the Arctic. The Arctic is the smallest and most shallow ocean, roughly one-sixth the size of the Indian Ocean,¹ with an average depth of 987 m due to one-third of the ocean being "underlain by continental shelf."² The receding polar ice cap (figure 1) is exposing vast resource wealth in these shallow waters. According to the U.S. Geological Survey's 2008 Circum-Arctic

Resource Appraisal (CARA), 90 billion barrels of oil, 1669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids are potentially available for energy exploration.³ The preponderance of these natural resources are located offshore with multiple competing claims on who has sovereign rights for exploration. Control of unexplored energy reserves will be increasingly valuable as global energy demands continue to rise, and it is in U.S. interests to secure a piece of these resources quickly and peacefully. The most prominent obstacles to realizing these resources is the U.S. lack of conformance to UNCLOS and an assertive Russia pursuing parallel interests.

The receding ice also exposes a potential alternate maritime route linking the Atlantic and Pacific Oceans. Maritime shipping accounts for 80 per cent of global trade in volume and 70 per cent in value.⁴ Shaving up to 5000 miles off maritime routes enhances global trade by making it faster and cheaper. While the fabled Northwest Passage and the Northern Sea Route are unlikely to be accessible year round, all industrialized nations have an interest in using these emerging global commons provided the region is stable and the route is secure. The U.S., more than any other nation, has reaped the benefits of an interconnected and globalized world, and stands to be a major beneficiary of Arctic routes linking the Atlantic and Pacific Oceans. Since WWII, the U.S. has been the primary contributor to security of the global commons, but doing so for the Arctic will demand a cooperative approach. Securing the Arctic commons will be challenging due to a lack of supporting infrastructure, extreme weather conditions, and unresolved territorial disputes that have potential to grow into military conflict.

The Arctic more than any other region lends itself to involuntary tension between states. As the U.S. Coast Guard Commandant Admiral Papp points out, there are more hurricane force storms in the Arctic than in the Caribbean each year; the sub-zero environment makes metal brittle, industrial fluids freeze, and electronics fail; while simultaneously putting intense stress on the people operating under those conditions.⁵ These dangerous conditions emphasize the need to have stable and reliable rule sets that all countries abide by while operating within the Arctic.

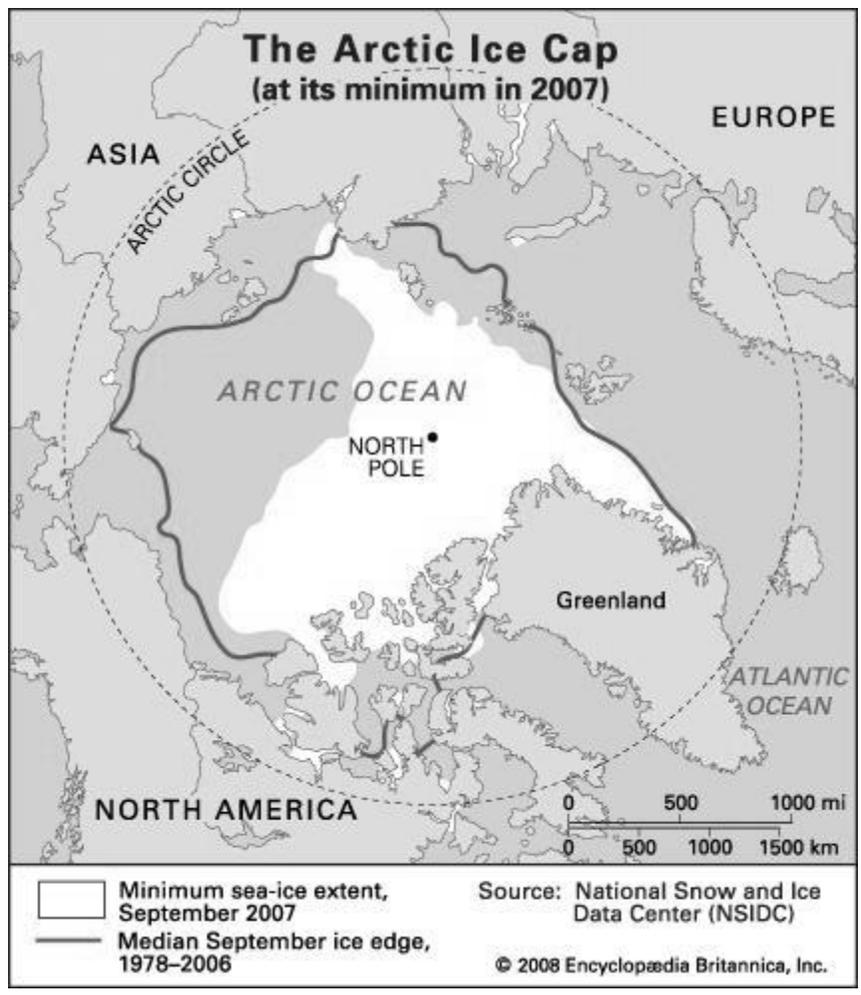


Figure 1: Receding Ice Trend from 1978-2007⁶

While not intuitive, securing U.S. territorial claims, and safeguarding an Arctic global commons, are at odds with one another despite both serving economic interests. The surest way to stake territorial claims is through military power, however exploiting seabed resources or providing a secure global commons demand cooperative and peaceful solutions as a precursor for industry to operate with confidence. Military clashes would distract from realizing the economic benefits the Arctic has to offer.

Russia has been extremely focused on securing its Arctic interests and, under the provisions of Article 76 within UNCLOS, has made claims (as yet unrecognized) to extend its Economic Exclusion Zone (EEZ) to encompass nearly half of the Arctic region.⁷ UNCLOS Article 76 allows a coastal state benefits from an extended continental shelf and exclusive rights to seabed resources and Russia has sought to claim these rights under UNCLOS.⁸ Russia has also been the most aggressive Arctic nation in enhancing its naval capacity within the region. Russia maintains a fleet of 37 icebreaking vessels, dwarfing the next closest Arctic state of Sweden who possess 7,⁹ and have also indicated they will grow a deployable Arctic combined arms capability by 2020.¹⁰

Russia is not the only state to make Arctic claims under Article 76. Iceland, Norway, Denmark, and Canada have all either submitted, or are in the process of submitting, claims to extend their EEZ. The U.S., however, is restricted from taking similar action. It has no international legal authority to make seabed claims beyond 200 nm because it is not a party to UNCLOS. Lack of membership also constrains U.S. ability to formally dispute the resource claims made by other Arctic nations.

Ratifying UNCLOS would serve both U.S. economic and security interests. UNCLOS membership subjects U.S. interests to international regulations, but more importantly, provides a direct and powerful voice at the negotiations table to influence those regulations. The U.S. also gains the opportunity to rally other Arctic nations to resolve territorial disputes peacefully. Without strong Arctic partnerships and UNCLOS membership, the U.S. and Russia stand to be at odds with one another. Given Russia's geopolitical history and its security exposure, Russian militarization of the Arctic is almost assured as a result of this friction given the economic and security implications (figure 2 depicts the expanse of exposed Russian coastline). Military confrontation in the Arctic puts the U.S. at a significant disadvantage. Readily available defense resources are dwindling due to burgeoning debt and U.S. strategic priorities are focused toward Asia. Aggressive military postures would also disincentive using the Arctic as a global commons for maritime commerce, and put all Arctic parties perilously close to inadvertent escalation of a conflict from friction associated with Arctic operations. Ratifying UNCLOS is a crucial step in developing an effective strategy built on soft power principles. Joseph Nye, a renowned political scientist, defines soft power as "the ability to affect others through the co-optive means of framing the agenda, persuading, and eliciting positive attraction in order to obtain preferred outcomes."¹¹ A soft power approach is most likely to advance U.S. security and economic interests in the Arctic and build the necessary Arctic partnerships to counter-balance Russia.

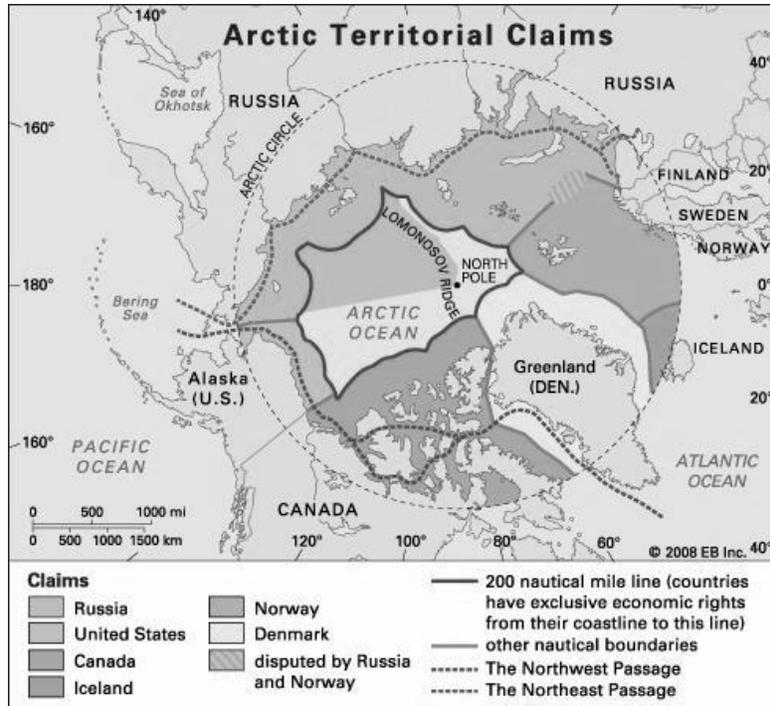


Figure 2: Arctic Territorial Claims¹²

UNCLOS and its Key Tenets

Internationally accepted guidelines for “freedom of the seas” have routinely acknowledged coastal states jurisdiction of the sea immediately adjacent to its shores. Toward the end of the 18th century, three miles, the range of a cannon, was considered the sovereign control extended to the coastal state.¹³ However, this model left the overwhelming majority of the ocean without a central body of international rules to govern pollution, overfishing, transiting straits, and staking claims to resources in the seabed. In 1945, President Truman, under pressure from the oil industry, announced jurisdiction over all resources on the continental shelves of the U.S.¹⁴ Over the coming decades, a number of other nations followed suit leading to a “multitude of claims, counterclaims, and sovereignty disputes.”¹⁵ In an effort to provide structure for travel on the high seas, and responsible exploration and exploitation of ocean resources, the

United Nations (UN) convened three conferences between 1958 and 1982 to codify international law governing the seas. UNCLOS III, the most recent conference, lasted nine years, involved over 160 nations, and culminated with the UNCLOS agreement commonly acknowledged as the law of the sea today.¹⁶ At the time of signing, the UN Secretary General referred to the document as “possibly the most significant legal instrument of this century.”¹⁷ At the conclusion of the 1982 conference it was agreed that any nation who signed the treaty was legally bound by all its statutes—a “package deal” as described by the UN.¹⁸ The agreement went into effect November 1994, one year after Guyana became the sixtieth nation to ratify the agreement.¹⁹

It is worth noting that a significant portion of UNCLOS’s provisions have grown to be seen as customary international law (CIL). CIL is organized from “consistent general practices of states out of a sense of legal obligation, as confided in the Vienna Convention on the Law of Treaties, and holds unless it conflicts with the obligations of a a member state under the United Nations Charter.”²⁰ By its nature, CIL is constantly changing in response to international norms and precedents and does not guarantee a stable and predictable legal framework to conduct economic initiatives or execute security related activities.

UNCLOS categorizes the Ocean into four zones: territorial sea, contiguous zone, EEZ, and high seas (figure 3). Each category has different legal features regarding sovereign control, international regulation, and most relevant to this thesis, economic opportunities.

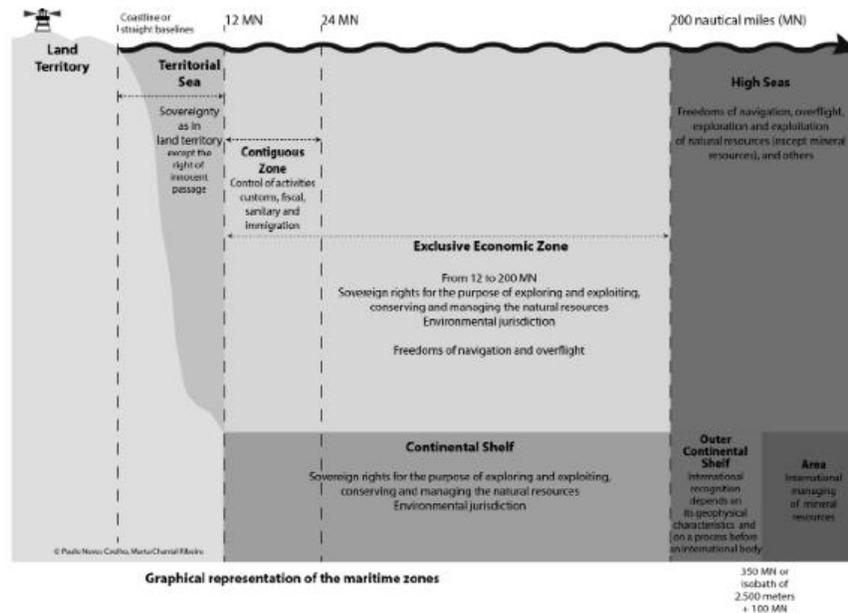


Figure 3: Overview of UNCLOS Territorial Categories²¹

The territorial sea comprises the 12 nautical miles (nm) from a coastal nation's shore at low tide or commensurate baseline outward toward the high seas.²² The territorial sea is considered the sovereign territory of the coastal state which has the authority to establish and enforce rules and laws within this area. But as prescribed in UNCLOS, the coastal state must allow innocent passage of foreign ships. Underwater vehicles and submarines are expected to surface, and show their flag while traversing a nation's territorial waters.²³ Within territorial seas, the coastal nation is allowed criminal jurisdiction over vessels conducting illicit activities or if their conduct is detrimental to good order at sea.

The contiguous zone extends 12 nm beyond the territorial sea and was created to allow the state to "prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea."²⁴ The contiguous zone does

not allow the coastal state to exercise full sovereign rights and submarines are not required to surface in this zone.

Under certain circumstances, territorial seas and contiguous zones are superseded when they overlap straits critical for international transit. Ships and aircraft are allowed what is referred to as “transit passage,” which is freedom of navigation for the purpose of “continuous and expeditious transit...between one part of the high seas or an exclusive economic zone, and another part of the high seas.”²⁵ When entering a strait, the ship or aircraft is expected to comply with generally accepted regulations. Most important among these regulations is the provision allowing ships to transit in their normal mode of operations.²⁶ This provision is crucial to assuring U.S. freedom of navigation through maritime choke points that could otherwise be construed as a coastal state’s territorial waters.

The UN assessment of archipelagic States is also very relevant to U.S. security and economic interests under the same rationale regarding transiting international straits. UNCLOS defines an archipelagic state as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical economic and political entity.”²⁷ It is also worth noting that UNCLOS defines an island as an area that can sustain human habitation or economic life and is above water at high tide.²⁸ Marking territorial waters for archipelagic States is complicated, but right of innocent passage within territorial waters remains. In addition, it is expected the Archipelagic State establish appropriate sea-lanes to allow ships to

transit the area in their normal mode of operations (i.e. submarines can remain submerged).²⁹

Determination of a coastal state's EEZ is one of the most crucial components of UNCLOS. Each coastal state is allowed an EEZ extending out to 200 nm from their shore (or baseline) where they are allowed sovereign rights for the purposes of exploring and exploiting natural resources.³⁰ These resources consist of marine wildlife, as well as energy and mineral resources in the seabed. In the event a coastal state chooses not to explore or exploit resources, no other state may do so without express consent of that coastal state.³¹

Harvesting of marine wildlife within an EEZ is governed by the coastal state. The coastal state is expected to use the best scientific data available to discern what the maximum sustainable catch is for each species.³² The coastal state will ensure the stock is not overexploited and is expected to cooperate with both other coastal states and appropriate international organizations to ensure migratory marine wildlife, or wildlife that extends across EEZs or the high seas are not over-exploited.³³ Provisions within UNCLOS also allow coastal states, or appropriate international organizations, to regulate marine mammals more strictly than other marine wildlife.³⁴

Critical to the discussion at hand, continental shelves may extend beyond the 200 nm EEZ. Under the provisions of UNCLOS, an EEZ can extend out to 350 nm or 100 nm outward from a depth of 2500 m.³⁵ In the case of the Arctic, U.S. extended continental shelf claims could extend out 600 nm.³⁶ However, coastal states that do not participate in UNCLOS cannot invoke this benefit. To realize these expanded EEZ benefits, the coastal state must provide scientific analysis that substantiates the claim

that the territory is in fact, an extension of the continental shelf. Coastal state extended EEZ claims are submitted to the Secretary General of the UN and deliberated upon by the Commission on the Limits of the Continental Shelf (CLCS).³⁷

The coastal state has complete control to authorize and regulate any mining on its continental shelf within its EEZ out to 200 nm.³⁸ Mining in an EEZ area beyond 200 nm, however, is not as straightforward. UNCLOS mandates that any coastal state mining in an EEZ beyond 200 nm will share revenue with other member states.³⁹ Taxes are imposed annually after the sixth year of production at an exploitation site at a rate of one per cent initially, and increasing one per cent each year thereafter until year twelve. After year twelve the tax remains at seven per cent until mining operation are concluded.⁴⁰ Developing countries considered net importers of the minerals being mined are exempt from this tax and payments are made through the International Seabed Authority (ISA). The ISA is responsible for distributing tax revenue equally to states party to UNCLOS.⁴¹

The ISA has a very strong role to play in the high seas region of the ocean. On the high seas, all states are permitted freedom of navigation; freedom to lay pipeline and submarine cables; freedom to conduct scientific research; and freedom to fish in compliance with international guidelines.⁴² UNCLOS refers to the seabed in the high sea region as the "Area."⁴³ The Area is considered "the common heritage of mankind," and no state is allowed to exercise rights over resources without the express permission of the ISA.⁴⁴

Corporations sponsored by states party to UNCLOS can petition the ISA for permission to exploit Area resources.⁴⁵ The ISA will receive the plan of work, and the

requesting entity will only be granted production authority if it intends to begin operations within 5 years of approval.⁴⁶ The ISA reserves the right to limit production, and the ISA is the regulatory authority for any mining activities in the Area.⁴⁷

Article 140 highlights an interesting philosophy within the treaty, emphasizing that the exploitation of resources in the Area should provide a benefit to all mankind. It specifically appeals to “taking into particular consideration the interests and needs of developing States...[t]he authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism.”⁴⁸ The two primary means from which UNCLOS provides benefits to developing nations (a theme throughout the convention) is through taxing mining initiatives in the Area, and mandating technology transfer from developed nations conducting mining operations in the Area. Technology transfer is intended for both international organizations and developing nations for the end purpose of enhancing the means for developing nations to benefit from resources within the Area.

Mining in the Area is expensive. An application to mine incurs a \$500,000 application fee and a minimum annual \$1 million fee once a contract is entered.⁴⁹ The mining organization can pay their ISA taxes through either a production charge, or a combination of production charge and share of the net profits. The production option consists of 5 per cent of the market value of assets mined in years 1-10, and 12 per cent of assets from year 11 through conclusion of production.⁵⁰ To date, the ISA has entered into 15-year mining contracts with 15 different states or organizations, primarily mining polymetallic nodules located in the Northeast Pacific Basin.⁵¹

Mining in the Area is also technically difficult. In keeping with the UNCLOS tenet of expanding benefits of the high seas to “all mankind,” UNCLOS empowers ISA to mandate the transfer of mining technologies and scientific knowledge to developing states.⁵² States or Corporations mining the Area are required to provide a description of the equipment and the methods they will employ while carrying out activities in the Area.⁵³ Further, UNCLOS mandates under Article 5, Annex III, that the applicant is legally required to make any technology available to the enterprise on “fair and reasonable commercial terms and conditions, whenever the Authority requests.”⁵⁴

UNCLOS provides several obvious benefits to signatories. First is a framework for cooperative and mediated conflict resolution when, as often happens, coastal state EEZ claims overlap for adjacent or opposite coasts. Under these circumstances it is preferred that the disputing states resolve disagreements based on international conventions, international customs, and the general principle of law. If the states come to an impasse in negotiating an amicable solution, any state can request mediation through a number of venues. The four options include the International Tribunal of the Law of the Sea (ITLOS) established under Part XV of UNCLOS, The International Court of Justice (ICJ), arbitration under Annex VII criteria, or special arbitration under Annex VIII.⁵⁵ The default option is Annex VII arbitration and the Permanent Court of Arbitration has handled nine cases since UNCLOS came into effect in 1994.⁵⁶

Perhaps the primary benefit of UNCLOS is that signatories have 10 years to submit an extended EEZ claim to the ISA. This provides long-term boundary assurances contributing to consistent expectations regarding resource claims. It also has potential downside if a state lacks the scientific expertise to back up a claim. Of the

166 nations that have ratified the convention,⁵⁷ 72 have made extended continental shelf claims to the ISA. With regard to the nations able to make Arctic extended continental shelf claims, Russia submitted a claim in 2001 (subsequently returned due to lack of scientific evidence), Norway in 2006, Iceland in 2009, and Denmark in 2013. Canada is the lone Arctic UNCLOS member to have failed to submit an Arctic claim, but they have made extended continental shelf claims in the Atlantic.⁵⁸

National Security Strategy and the Arctic

It was not until recently that U.S. Presidents took the time to articulate a strategic approach toward achieving U.S. interests in the Arctic. The first to do so in depth was President Bush in January 2009, when he released National Security Presidential Directive (NSPD) -- 66/ Homeland Presidential Directive (HSPD) – 25 on *Arctic Region Policy*.⁵⁹ President Obama followed suit in May 2013 when he released his *National Strategy for the Arctic Region*.⁶⁰ Both President Bush and Obama's executive guidance overtly endorse ratifying UNCLOS as a key aspect to achieving the respective Presidential Arctic objectives. President Bush's directive is particularly unambiguous toward the Senate and his desire to ratify UNCLOS stating, "[t]he most effective way to achieve international recognition and legal certainty for our extended continental shelf is through the procedure available to States Parties to the U.N. Convention on the Law of the Sea."⁶¹

Many of the rules contained within UNCLOS directly effect both U.S. economic and security interests. President Reagan initially chose not to sign the UNCLOS agreement in 1982 primarily because he believed it failed to protect seabed-mining rights to U.S. businesses, hindering U.S. economic interests.⁶² President Clinton's administration renegotiated aspects of UNCLOS leading to modifications in 1994 that

resolved President Reagan's initial objections. These changes entailed: a market oriented approach to seabed mineral management; reducing the deep seabed mining organizational structure; a guaranteed U.S. seat on the seabed council; a veto on amendments to the deep seabed charter; veto authority over any decisions on shared benefits; and assured access for qualified U.S. mining organizations.⁶³ The executive branch is mandated to negotiate treaties and President Clinton signed this agreement once these modifications were made. However, the Senate retains the constitutional authority to ratify treaties with a 2/3 majority, and refused to endorse the treaty.⁶⁴ The Senate continues to debate whether to ratify UNCLOS, the most recent vote occurring in 2012.⁶⁵ The primary reason the Senate does not ratify this agreement is fear of conveying too much maritime authority to the UN over U.S. actions at sea.

Support for Ratifying UNCLOS

It is rare that Presidential administrations from both sides of the aisle are aligned on a foreign policy topic. In the case of UNCLOS, there has been resounding support from the administrations of both former President Bush and President Obama. President Bush directed that all U.S. agencies comply with UNCLOS as CIL. In May 2012, Under the Obama administration, the Secretary of Defense, Secretary of State, and chairman of the Joint Chiefs of Staff all testified before the Senate Committee on Foreign Relations in favor of ratifying UNCLOS claiming it was in the U.S.'s best interests.⁶⁶ In a separate forum, General Jacoby, Commander U.S. Northern Command stated:

[O]ur accession to the Convention is important to encouraging cooperative relationships among Arctic states and securing continental shelf limits and natural resources in the Arctic as human activity increases...with the overwhelming majority of countries being party to the Convention, it is the internationally recognized legal framework that will formalize our nation's

standing and leadership where our vital interests are at stake, secure U.S. rights over extensive marine resources, promote freedom of navigation and overflight, and support our national security interests in the maritime domain.⁶⁷

Clearly, the unwavering support of two presidential administrations and every senior U.S. military advisor warrants the Senate reassessing the merits of UNCLOS and its role in securing U.S. national interests.

The reservations the oil and business industries voiced during the Reagan era have also faded. In 2012, the Senate Foreign Relations Committee requested the President of the U.S. Chamber of Commerce, Mr. Thomas Donahue, testify regarding industry support for or against UNCLOS. The U.S. Chamber of Commerce is the world's largest business federation consisting of over three million business members.⁶⁸ In his remarks, Donahue explicitly stated endorsing UNCLOS was in U.S. national interests because it provides U.S. companies legal certainty to hire and invest; provides the U.S. a voice in resolving mineral claims and distribution of ISA collected funds; and enhances U.S. sovereignty by reinforcing authority to protect property claims.⁶⁹ On behalf of the oil industry, he highlighted offshore mining operations require "significant financing and insurance" which oil companies are reluctant to assume in lease sites potentially subject to territorial disputes.⁷⁰ On behalf of the maritime shipping industry, he also endorsed UNCLOS, stating, "customary international law is not well-suited to the needs of business...it is hard to find and apply customary law because it does not exist in one place...and will shift over time."⁷¹ Finally, speaking for the telecommunications industry, Donahue stressed the critical role seabed cables played in global telecommunications, carrying 95 per cent of overseas voice and data

communications, and the fundamental role they play in U.S. primacy within the global information system.⁷²

It may be the first time in history when the oil industry and environmentalists have found themselves on common ground, but their respective support for UNCLOS (albeit for vastly different reasons) has done precisely that. Under UNCLOS, states have legal means to challenge the environmental policies of other states in certain areas. UNCLOS also presents domestic environmental organizations an international venue to voice dissent when they perceive either the U.S. or other states mishandling or ignoring environmental issues.⁷³ Environmental organizations are clearly behind UNCLOS, particularly with regard to pollution and wildlife preservation statutes.

It is also reasonable to conclude that the lack of U.S. formal commitment to UNCLOS emboldens other powerful states to selectively ignore provisions of the agreement. Two noteworthy examples include China's increasing encroachment upon other state EEZ's in the South China Sea (SCS),⁷⁴ and Russia's actions to control access to the Northern Sea Route in waterways UNCLOS defines as outside territorial waters.⁷⁵ The U.S., as a non-member, is mute to address these issues in the established legal forum. Further, expressing concerns outside of UNCLOS forums lacks credibility due to the U.S.'s demonstrated lack of commitment to formally conform to UNCLOS rules.

Arguments against Ratifying UNCLOS

One of the frequent arguments against ratifying UNCLOS is that its primary tenets have come to define CIL with regard to maritime issues. Therefore, the U.S. does not stand to gain anything by formally subjecting itself to UNCLOS' tenets.⁷⁶ Following this model, it would presume the U.S. could simply follow the rules it likes and ignore

the rules it does not like because CIL is often ambiguous. This argument starts to break down however when scrutinizing what would occur if the 166 nations bound by UNCLOS followed the U.S. leadership position to gain similar benefit. Would there still be CIL to guide maritime claims; interactions at sea; maintain flow of maritime traffic through international straits; or regulations regarding fishing, pollution, piracy etc.? It is reasonable to conclude that if the U.S. persists in using CIL as the sole basis for maritime authority it cedes much of its ability to lead the international community regarding maritime issues. Membership within UNCLOS and an enduring voice within the ISA are critical to legitimizing U.S. efforts to build a stable, peaceful, and prosperous Arctic.

Another argument against UNCLOS is that it would “prevent the U.S. Navy from undertaking unilateral action, such as collecting intelligence in the Asia Pacific region, because permission to do so is not explicitly granted in the text.”⁷⁷ It is not surprising that the final UNCLOS language failed to explicitly provide for the authority to gather intelligence considering the UN preamble proclaims the organization was assembled to:

practice tolerance and live together in peace with one another as good neighbours...unite our strength to maintain international peace and security...ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and employ international machinery for the promotion of the economic and social advancement of all peoples.⁷⁸

It goes without saying that the U.S. will gather intelligence in support of national security interests. Interestingly enough, the Chief of Naval Operations recently stated the ability to “deter aggression, contain conflict, and fight and win our nation’s wars depends upon our ability to freely navigate the world’s oceans.”⁷⁹ He went on to say that UNCLOS

reinforces the authority to execute these activities, and is therefore in the U.S. best interests to ratify the agreement.

Technology transfer is a very real and reasonable concern with ratifying UNCLOS. A great contributor to U.S. economic power has historically been the ability to harness technology to gain a competitive advantage over other states. Forcing U.S. corporations to share technology in order to do business flies in the face of a market system and the capitalistic underpinnings of the U.S. business model. The challenge with this argument is that failure to conform to UNCLOS assures U.S. corporations will not be granted access by the ISA. No business will risk conducting exploration at the high seas without express permission due to the substantial investment and risk involved. However, technology transfer risks can be mitigated. Conducting mining operations primarily with legacy or well-established technologies, while potentially less efficient, preserves sensitive and proprietary mining technologies for areas within the EEZ where the U.S. is under no obligation to share with developing nations.

Subjecting the U.S. to international litigation from environmental special interest groups is a serious concern. In 1985, the U.S. withdrew from the ICJ,⁸⁰ which was the last venue in which the U.S. was subject to international litigation. Ratifying UNCLOS does make the U.S. susceptible to suits brought by environmental special interest groups, but considering the U.S. has one lawyer for every three hundred citizens, it is well postured to assume this risk.⁸¹

While this paper focuses on ratifying UNCLOS to secure U.S. interests in the Arctic, the ramifications of signing UNCLOS are global, and clearly need to factor into the discussion. Current interactions with China provide examples where ratifying

UNCLOS could place the U.S. at a disadvantage by subjecting it to international mediation in areas that directly challenge U.S. security interests. China has demonstrated a loose interpretation of UNCLOS provisions in a number of areas. Its submission of the “Nine-Dash Line” graphic (figure 4), staking EEZ claims to most of the SCS,⁸² was in complete disregard to established UNCLOS rules, and the U.S. was wise to denounce the claim. In addition, China’s 1992 law on the *Territorial Sea and the Contiguous Zone* includes all the UNCLOS provisions for a contiguous zone, but China added the word “security” as well⁸³—implying that reconnaissance aircraft and warships would be subject to Chinese laws and regulations while executing scientific and reconnaissance missions in China’s contiguous zone. The risk in both these examples is that U.S. security interests are potentially deliberated in international forums and decided by an international arbiter—an area historically avoided by the U.S.

Another example of China’s select disregard of UNCLOS is its mandate that any nation must first seek permission before laying or repairing submarine cables within its EEZ. Article 58 indicates that conducting these activities outside of territorial waters are not subject to regulation by the coastal state.⁸⁴ Were the U.S. to be a party to UNCLOS, resolution of this issue would potentially lie with an international arbiter.

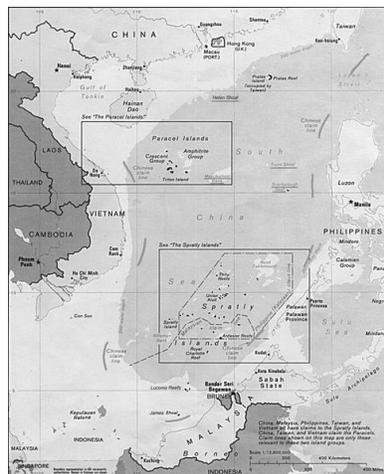


Figure 4: China's Nine-Dash Line Maritime Claim⁸⁵

While there are many examples that highlight Chinese discordant compliance with UNCLOS, the most ominous indicator they intend to selectively abide by UNCLOS is their 2006 declaration to the UN Secretary General. In 2006, China indicated it would not accept the “binding dispute settlement provisions” in UNCLOS for any dispute involving U.S. military activities.⁸⁶ This “opt-out” declaration is significant because resolving the Nine-Dash Line is at its essence, a security dispute with SCS neighbors. This posture implies UNCLOS will have little to no influence on resolving the most complex territorial dispute in the Pacific. However, part of China’s audacious behavior could be attributable to lack of U.S. commitment to the institution, but it does give pause as to whether subjecting U.S. activities to international oversight is in U.S. interests if the U.S. is the only one committed to the rules.

Integrating UNCLOS as a Component within an Arctic Soft Power Approach

Geopolitical and international relations (IR) theory are fundamental contributors to framing a sound U.S. Arctic strategy. The U.S., due to lack of Arctic infrastructure, global military commitments, and limited Arctic naval capacity, is unable to achieve economic and security interests without strong international partnerships. The U.S. will be reliant upon international organizations, international laws, and partner nations to secure these interests. These conditions demand the U.S. approach rely heavily on information and diplomacy in an Arctic strategy that embraces liberalism IR tenets, as well as select aspects of realpolitik to assemble a balance of power as a counterweight against Russia. Theory also plays a vital role in framing both the Arctic operating environment and the most prominent obstacle to achieving U.S. ends —Russia.

Russian interests are remarkably similar to those of the U.S. According to a summation of Russia's 2008 Arctic Strategy, Russia intends to extract natural resources, set conditions for the Northern Sea Route, and ensure necessary combat power is resident to provide for national security.⁸⁷ Russia has historically embraced a foreign policy that embraces realism IR theory. Realism theory presumes the international system is predicated on anarchy and states are "the principal actors in world politics and no higher authority sits above them."⁸⁸ Moreover, a realism approach assumes states will have competing interests and these interests will be resolved in a zero-sum environment. Russia's foreign policy may also be viewed through a *realpolitik* lens. Its politics are based on "objectives rather than ideals...a pragmatic, no-nonsense view and a disregard for ethical considerations."⁸⁹ The Russian approach under this model assumes there will be winners and losers in the pursuit of Arctic resources and they are already taking steps to ensure they are sufficiently strong to bend other nations to their will.

While Russia participates in international forums, it is fixated on national interests without regard to international censure. Russia's annexation of Crimea, a Ukrainian province, is the most recent and ostentatious example of the Russian approach to foreign policy. This aggression is certainly not isolated and is reminiscent of the heavy-handed approach Russia took against Georgia in 2008.⁹⁰ Russia's hard power foreign policy approach was also on display in 2009 when Russia cut off natural gas to Ukraine due to a siphoning dispute. Western Europe is heavily reliant on Russia for their energy and this hard power approach had a debilitating impact on many European nations.⁹¹

Fortunately, Russia's approach to the Arctic has not taken on the bellicose tone used toward its former satellite states. On the contrary, Russia has demonstrated it is amenable to peacefully settling Arctic disputes through diplomatic solutions. In 2010, Russia resolved a 40-year maritime dispute with Norway involving the Svalbard Islands. This dispute started about fishing rights, and evolved to include access to seabed resources.⁹² In addition, the Arctic Council recently brokered an Arctic search and rescue agreement that calls for each Arctic state to be assigned responsibility for a search and rescue sector, and is expected to enhance responsiveness throughout the region.⁹³ The Arctic Council is an intergovernmental organization formed to promote cooperation between Arctic states to address issues of common Arctic concern, principally involving sustainable development and environmental protection.⁹⁴ The membership includes Arctic states, but provides an observer status category allowing non-Arctic states, intergovernmental organizations and non-governmental organizations to participate.⁹⁵ The Council is increasingly recognized as the most capable intergovernmental organization to resolve Arctic issues. This organization, when paired with ratifying UNCLOS, will be a key component in peacefully securing U.S. interests.

Russia's reliance on U.S. industry to exploit natural resources may also temper their Arctic toward cooperation. Russian energy exploration lacks the advanced technology to realize its full energy potential and is actively soliciting U.S. oil industry partners to help in this effort.⁹⁶ Reliance on partnerships similar to the 2012 agreement between Exxon Mobil and Rosneft, the Russian state owned oil company, to explore and exploit natural resources should contribute to peaceful Arctic cooperation.⁹⁷ Access

to U.S. industry can be influenced by U.S. policy makers and should be considered a tool to encourage peaceful bilateral relations with Russia.

Information as an Element of National Power

Contemporary interpretation of Clausewitz's trinity equates "primordial rage" to public support; "chance and uncertainty" with effective military leadership and capable armed forces; and "reason" with military force being employed to achieve politically defined objectives. What is noticeably absent when applying this model to the Arctic is the overwhelming lack of interest the average American has in assertively securing Arctic interests. This could be attributable to environmental disasters such as the BP oil well or the Exxon Valdez spill in Alaska, or simply lack of understanding of the stakes. Some of the other Arctic states do not have this same dilemma. A recent survey indicated that 34 per cent of Russians strongly supported exercising sovereign rights to protect Arctic claims and 33 per cent thought international compromise was the appropriate approach.⁹⁸ Canadians had similar views; with 42 per cent preferring asserting sovereign rights and 43 per cent believing an international cooperative approach was in order.⁹⁹ Astonishingly, only 10 per cent of Americans preferred an assertive approach, and 25 per cent thought the Arctic should be international domain altogether!¹⁰⁰

A U.S. strategy that peacefully resolves Arctic claims is contingent on Canada's support. But, as highlighted in NSPD-66, the U.S. and Canada have an unresolved boundary dispute involving the Beaufort Sea effecting fishing rights and access to seabed resources.¹⁰¹ In addition, the U.S. and Canada have dissonant positions regarding access to the Northwest Passage and whether it constitutes territorial waters. The U.S. (as well as many European countries) believes Canada's archipelago

constitutes an international strait thus allowing freedom of navigation. The Canadians on the other hand are on record stating the Northwest Passage comprises sovereign territory thereby requiring those transiting to request permission for access, as well as reserving the right to deny access.¹⁰² Resolving these issues can be achieved under the rubric of UNCLOS but will demand U.S. compromise, potentially under the auspices of an international arbiter. In return, the U.S. is likely to benefit from strong Canadian support. The Canadian people are demonstrably eager to secure their share of the Arctic, and the U.S. can employ this fervor to bolster a strong Arctic partnership that potentially serves as a counterweight to Russia.

With a potential struggle for resources on the horizon, the U.S. population lacks the stomach for aggressively pursuing Arctic resources. This not only reduces the credibility of military threats, but also is a cue from which the Senate will make its decisions. An information strategy focused towards galvanizing the U.S. population toward claiming Arctic resources is a critical component for the Senate to ratify UNCLOS.

Information is a key ingredient to ratifying UNCLOS and securing U.S. Arctic interests. The application of information has a handful of targets. Information must be used to mobilize American sentiment toward securing U.S. economic interests and allay underlying concerns about environmental disasters associated with deep-sea mining. It also has a role to play in leveraging the Senate directly, and is fundamental to building a coalition committed to stable and peaceful Arctic. Information strategies toward Russia are also relevant, and should convey U.S. willingness to use all forms of national power in defense of rightful economic claims and those of U.S. allies.

Conclusion

Ratifying UNCLOS is crucial to securing U.S. Arctic interests. The arguments against UNCLOS are outweighed by the numerous and immediate benefits it provides. Foremost among them is that it allows the U.S. to extend its EEZ and claim seabed resources on the Alaskan continental shelf, while simultaneously providing a legitimate voice within the UN to influence competing claims. The treaty solidifies U.S. authority to police fishing activities in its EEZ, regulate pollution, and protect indigenous species. From a security standpoint, it assures freedom of navigation for military and scientific vessels, and strengthens U.S. posture to challenge states selectively complying with UNCLOS tenets. Beyond the Arctic, UNCLOS provides U.S. industry additional economic opportunity within the high seas region of the ocean. Finally, it solidifies a rule set for all Arctic nations, an essential ingredient for the Arctic to be employed as a global commons to realize an alternate maritime commerce route.

Ratifying UNCLOS must be integrated into a broader strategy to achieve U.S. objectives. Soft power employed through international cooperation and a united Arctic Council is fundamental to achieving U.S. interests. While prone to aggression, Russia also needs a peaceful Arctic to achieve economic benefits in the form of maritime commerce and access to seabed resources. Resolving claims with Canada and harnessing its spirited desire to realize its Arctic interests provides a solid core for other Arctic nations to rally around. Intergovernmental organizations like the Arctic Council have demonstrated value in striking compromise with Russia and provide an ideal venue to facilitate the U.S. strategy.

The Arctic presents immense economic opportunities for the U.S., but collaborating with other Arctic States and formally complying with UNCLOS are the only

way these benefits can come to fruition. The U.S. cannot lead or influence maritime issues if it does not ratify UNCLOS. Remaining on the sideline out of nationalistic fears relinquishes U.S. influence to other competitors and provides Russia unimpeded access to securing the preponderance of Arctic resources. The changing situation in the Arctic demands U.S. leadership, which can only be achieved through participating in UNCLOS.

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