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## The House of Representatives and the U.N. Convention on the Law of the Sea (UNCLOS)

UNCLOS, which has passed the Senate Foreign Relations Committee, regulates "military" and "peaceful" activities on the high seas, restricts industrial activity on land that could contribute to pollution in the oceans, and determines who gets access to vast deposits of oil and gas and precious minerals.

UNCLOS gives the International Seabed Authority (ISA) jurisdiction over exploration and exploitation of potentially billions of dollars worth of oil, gas and mineral resources in the "area" beyond 200 miles of a nation's territorial seas. UNCLOS also gives the ISA the power to charge application "fees" to companies or countries to gain access to those resources.

Alluding to this function, a 1995 report by the United Nations Association on "Sharing the Burden of Financing the United Nations" noted that "only" the ISA "has authority today to directly collect international revenues to finance its activities." Under various provisions of UNCLOS, the ISA can distribute some of these funds to Third World countries and "national liberation movements," which are designated in Article 140 as "peoples who have not attained full independence or other self-governing status..."

One such movement, identified in the current 2007 International Seabed Authority Handbook, is the Palestine Liberation Organization, now identified simply as "Palestine." The handbook lists "Palestine" under the category of "National liberation movements which in their respective regions are recognized by the Organization of African Unity or by the League of Arab States." Records show that the PLO was one of eight official "liberation movements" participating as observers at sessions of the U.N. conferences which produced UNCLOS. Another was the Patriotic Front of Zimbabwe, headed by Robert Mugabe.

Whatever happens to UNCLOS in the Senate, **the Congress still has the ultimate say on whether to fund the ISA.** In the House of Representatives earlier this year, when the fiscal year 2008 State Department spending bill was being considered, Rep. Roy Blunt successfully submitted an amendment prohibiting U.S. funding of the International Seabed Authority.

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If the treaty is ratified, the House also plays another role. Ratification of a treaty can be subject to declarations, reservations, and understandings, including that it requires domestic implementing legislation to take effect. Such legislation, which has to pass the House, could be used to undermine those provisions of UNCLOS which threaten U.S. sovereignty or access to oil, gas and minerals.

**Suggested amendments, declarations and understandings (or reservations) for UNCLOS which could be used to undermine or negate the harmful impact of the treaty:**

- 1) The United Nations Convention on the Law of the Sea shall not in any way affect, infringe upon, or undermine the sovereignty of the United States of America.
- 2) The Government of the United States of America reserves the right to interpret any article of the Convention by taking into account the sovereignty of the United States and its territorial integrity as it applies to the land, space and sea.
- 3) The ratification of the Convention by the United States of America shall not in any manner impair or prejudice the sovereign rights of the United States under and arising from the Constitution of the United States.
- 4) The United States Government is not bound by any declaration or understanding issued by other States upon ratification of this Convention.
- 5) The ratification of the Convention by the United States of America shall not in any manner impair or prejudice the sovereignty of the United States over any territory over which it exercises sovereign authority.
- 6) The United States does not consider itself bound by any provision of the Convention which may be interpreted by the executive or legislative branch of the U.S. Government as undermining the national sovereignty of the United States.
- 7) The United States does not consider the provisions relating to pollution to be enforceable by any entities established by the Convention.
- 8) The United States does not recognize as enforceable against it any foreign or international laws, treaties and regulations alluded to in this Convention.
- 9) United States funding for the implementation of this Convention shall be dependent on establishment by the International Seabed Authority, the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf of ethics offices for each entity and the submission of

financial disclosure forms by employees and officials working for the entities to these offices.

10) United States funding for the implementation of this Convention shall be dependent on establishment by the International Seabed Authority, the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf of Offices of Internal Oversight Services in order to ensure responsible administration of resources and operational transparency.

11) United States funding for the implementation of this Convention shall be dependent on establishment by the International Seabed Authority, the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf providing the U.S. Government Accountability Office access to budgets and financial data in order to be audited and examined on an annual basis.

12) No provision of the Convention shall be interpreted or used to deny the United States access to oil, gas, and minerals in the region around the Earth's North Pole known as the Arctic.

13) No provision of the Convention shall be interpreted or used to deny the validity of any U.S. claims to the Arctic region and its oil, gas and mineral resources based on U.S. exploration of the North Pole in 1908 and 1909 and a mission under the Pole in 1958 by the USS Nautilus.

### **Official Declarations and Understandings**

#### **SEC. 2. DECLARATIONS UNDER ARTICLES 287 AND 298.**

The advice and consent of the Senate under section 1 is subject to the following declarations:

(1) The Government of the United States of America declares, in accordance with article 287(1), that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:

(A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping; and

(B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in subparagraph (A).

(2) The Government of the United States of America declares, in accordance with article 298(1), that it does not accept any of the procedures provided for in section 2 of Part XV (including, inter alia, the Sea-Be d Disputes Chamber procedure referred to in article

287(2)) with respect to the categories of disputes set forth in subparagraphs (a), (b), and (c) of article 298(1). The United States further declares that its consent to accession to the Convention is conditioned upon the understanding that, under article 298(1)(b), each State Party has the exclusive right to determine whether its activities are or were "military activities" and that such determinations are not subject to review.

### SEC. 3. OTHER DECLARATIONS AND UNDERSTANDINGS UNDER ARTICLE 310.

The advice and consent of the Senate under section 1 is subject to the following declarations and understandings:

(1) The United States understands that nothing in the Convention, including any provisions referring to "peaceful uses" or "peaceful purposes," impairs the inherent right of individual or collective self-defense or rights during armed conflict.

(2) The United States understands, with respect to the right of innocent passage under the Convention, that -

(A) all ships, including warships, regardless of, for example, cargo, armament, means of propulsion, flag, origin, destination, or purpose, enjoy the right of innocent passage;

(B) article 19(2) contains an exhaustive list of activities that render passage non-innocent;

(C) any determination of non-innocence of passage by a ship must be made on the basis of acts it commits while in the territorial sea, and not on the basis of, for example, cargo, armament, means of propulsion, flag, origin, destination, or purpose; and

(D) the Convention does not authorize a coastal State to condition the exercise of the right of innocent passage by any ships, including warships, on the giving of prior notification to or the receipt of prior permission from the coastal State.

(3) The United States understands, concerning Parts III and IV of the Convention, that-

(A) all ships and aircraft, including warships and military aircraft, regardless of, for example, cargo, armament, means of propulsion, flag, origin, destination, or purpose, are entitled to transit passage and archipelagic sea lanes passage in their "normal mode";

(B) "normal mode" includes, inter alia-

(i) submerged transit of submarines;

(ii) overflight by military aircraft, including in military formation;

(iii) activities necessary for the security of surface warships, such as formation steaming and other force protection measures;

(iv) underway replenishment; and

(v) the launching and recovery of aircraft;

(C) the words "strait" and "straits" are not limited by geographic names or categories and include all waters not subject to Part IV that separate one part of the high seas or exclusive economic zone from another part of the high seas or exclusive economic zone or other areas referred to in article 45;

(D) the term "used for international navigation" includes all straits capable of being used for international navigation; and

(E) the right of archipelagic sea lanes passage is not dependent upon the designation by archipelagic States of specific sea lanes and/or air routes and, in the absence of such designation or if there has been only a partial designation, may be exercised through all routes normally used for international navigation.

(4) The United States understands, with respect to the exclusive economic zone, that-

(A) all States enjoy high seas freedoms of navigation and overflight and all other internationally lawful uses of the sea related to these freedoms, including, inter alia, military activities, such as anchoring, launching and landing of aircraft and other military devices, launching and recovering water-borne craft, operating military devices, intelligence collection, surveillance and reconnaissance activities, exercises, operations, and conducting military surveys; and

(B) coastal State actions pertaining to these freedoms and uses must be in accordance with the Convention.

(5) The United States understands that "marine scientific research" does not include, inter alia-

(A) prospecting and exploration of natural resources;

(B) hydrographic surveys;

(C) military activities, including military surveys;

(D) environmental monitoring and assessment pursuant to section 4 of Part XII; or

(E) activities related to submerged wrecks or objects of an archaeological and historical nature.

(6) The United States understands that any declaration or statement purporting to limit navigation, overflight, or other rights and freedoms of all States in ways not permitted by the Convention contravenes the Convention. Lack of a response by the United States to a particular declaration or statement made under the Convention shall not be interpreted as tacit acceptance by the United States of that declaration or statement.

(7) The United States understands that nothing in the Convention limits the ability of a State to prohibit or restrict imports of goods into its territory in order to, inter alia, promote or require compliance with environmental and conservation laws, norms, and objectives.

(8) The United States understands that articles 220, 228, and 230 apply only to pollution from vessels (as referred to in article 211) and not, for example, to pollution from dumping.

(9) The United States understands, with respect to articles 220 and 226, that the "clear grounds" requirement set forth in those articles is equivalent to the "reasonable suspicion" standard under United States law.

(10) The United States understands, with respect to article 228(2), that-

(A) the "proceedings" referred to in that paragraph are the same as those referred to in article 228(1), namely those proceedings in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State instituting proceedings; and

(B) fraudulent concealment from an officer of the United States of information concerning such pollution would extend the three-year period in which such proceedings may be instituted.

(11) The United States understands, with respect to article 230, that-

(A) it applies only to natural persons aboard the foreign vessels at the time of the act of pollution;

(B) the references to "monetary penalties only" exclude only imprisonment and corporal punishment;

(C) the requirement that an act of pollution be "wilful" in order to impose non-monetary penalties would not constrain the imposition of such penalties for pollution caused by gross negligence;

(D) in determining what constitutes a "serious" act of pollution, a State may consider, as appropriate, the cumulative or aggregate impact on the marine environment of repeated acts of pollution over time; and

(E) among the factors relevant to the determination whether an act of pollution is "serious," a significant factor is non-compliance with a generally accepted international rule or standard.

(12) The United States understands that sections 6 and 7 of Part XII do not limit the authority of a State to impose penalties, monetary or nonmonetary, for, inter alia -

(A) non-pollution offenses, such as false statements, obstruction of justice, and obstruction of government or judicial proceedings, wherever they occur; or

(B) any violation of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment that occurs while a foreign vessel is in any of its ports, rivers, harbors, or offshore terminals.

(13) The United States understands that the Convention recognizes and does not constrain the long-standing sovereign right of a State to impose and enforce conditions for the entry of foreign vessels into its ports, rivers, harbors, or offshore terminals, such as a requirement that ships exchange ballast water beyond 200 nautical miles from shore or a requirement that tank vessels carrying oil be constructed with double hulls.

(14) The United States understands, with respect to article 21(2), that measures applying to the "design, construction, equipment or manning" do not include, inter alia, measures such as traffic separation schemes, ship routing measures, speed limits, quantitative restrictions on discharge of substances, restrictions on the discharge and/or uptake of ballast water, reporting requirements, and record-keeping requirements.

(15) The United States understands that the Convention supports a coastal State's exercise of its domestic authority to regulate discharges into the marine environment resulting from industrial operations on board a foreign vessel.

(16) The United States understands that the Convention supports a coastal State's exercise of its domestic authority to regulate the introduction into the marine environment of alien or new species.

(17) The United States understands that, with respect to articles 61 and 62, a coastal State has the exclusive right to determine the allowable catch of the living resources in its exclusive economic zone, whether it has the capacity to harvest the entire allowable catch, whether any surplus exists for allocation to other States, and to establish the terms and conditions under which access may be granted. The United States further understands that such determinations are, by virtue of article 297(3)(a), not subject to binding dispute resolution under the Convention.

(18) The United States understands that article 65 of the Convention lent direct support to the establishment of the moratorium on commercial whaling, supports the creation of sanctuaries and other conservation measures, and requires States to cooperate not only with respect to large whales, but with respect to all cetaceans.

(19) The United States understands that, with respect to article 33, the term "sanitary laws and regulations" includes laws and regulations to protect human health from, inter alia, pathogens being introduced into the territorial sea.

(20) The United States understands that decisions of the Council pursuant to procedures other than those set forth in article 161(8)(d) will involve administrative, institutional, or procedural matters and will not result in substantive obligations on the United States.

(21) The United States understands that decisions of the Assembly under article 160(2)(e) to assess the contributions of members are to be taken pursuant to section 3(7) of the Annex to the Agreement and that the United States will, pursuant to section 9(3) of the Annex to the Agreement, be guaranteed a seat on the Finance Committee established by section 9(1) of the Annex to the Agreement, so long as the Authority supports itself through assessed contributions.

(22) The United States declares, pursuant to article 39 of Annex VI, that decisions of the Seabed Disputes Chamber shall be enforceable in the territory of the United States only in accordance with procedures established by implementing legislation and that such

decisions shall be subject to such legal and factual review as is constitutionally required and without precedential effect in any court of the United States.

(23) The United States-

(A) understands that article 161(8)(f) applies to the Council's approval of amendments to section 4 of Annex VI;

(B) declares that, under that article, it intends to accept only a procedure that requires consensus for the adoption of amendments to section 4 of Annex VI; and

(C) in the case of an amendment to section 4 of Annex VI that is adopted contrary to this understanding, that is, by a procedure other than consensus, will consider itself bound by such an amendment only if it subsequently ratifies such amendment pursuant to the advice and consent of the Senate.

(24) The United States declares that, with the exception of articles 177-183, article 13 of Annex IV, and article 10 of Annex VI, the provisions of the Convention and the Agreement, including amendments thereto and rules, regulations, and procedures thereunder, are not self-executing.