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LOST in the Arctic: The U.S. Need Not Ratify the Law of the Sea Treaty to Get a Seat at the Table

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Last month at the Arctic Ocean Conference (AOC) in Ilulissat, Greenland, high-level diplomats from the United States and the other four nations that border the Arctic region—Canada, Denmark, Norway, and Russia—met to discuss territorial claims regarding the Arctic Circle. At the conclusion of the meeting, the five countries issued a joint statement declaring that, “[b]y virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean,” each nation was in a unique position to address the exploitation of natural resources in the Arctic.¹

The AOC was conceived in response to controversial actions undertaken by the Russian Federation. In August 2007, one of Russia’s deep-water submersibles planted a flag on the sea floor beneath the North Pole.² Several U.S. politicians and media outlets seized on the Russian stunt as an opportunity to push for Senate ratification of the contentious United Nations Convention on the Law of the Sea (LOST). They adopted the mantra that the United States, if it fails to ratify LOST, “will not have a seat at the table” to resolve territorial claims such as those in dispute in the Arctic. For example:

- Senator Richard Lugar (R-IN), at a September 27, 2007, Senate Foreign Relations Committee hearing regarding LOST, lamented that “Russia is already making excessive claims in the Arctic. Until we become a party to the Convention, we will be in a weakened position to protect our national interests in these discussions.”³

- Deputy Secretary of State John Negroponte, at that same hearing, echoed Senator Lugar’s sentiment: “Setting aside its recent flag planting... Russia’s continuing data collection in the Arctic reflects its commitment to maximizing its sovereign rights under the Convention over energy resources in that region. Currently, as a non-party, the United States is not in a position to maximize its sovereign rights in the Arctic or elsewhere. We do not have access to the [U.N.] Commission [on the Limits of the Continental Shelf]’s procedures for according international recognition and legal certainty to our extended shelf.”⁴
- In October 2007, *The New York Times*, after dismissing opponents of LOST as “cranky right-wingers,” editorialized that “[t]he steady retreat of the sea ice in the Arctic Ocean... has touched off a scramble among nations to determine who owns what on the ocean floor. Unless the United States ratifies the treaty, it will not have a seat at the table when it comes time to sort out competing claims.”⁵
- A March 2008 *New York Times* editorial repeated the “seat at the table” theme: “[President Bush] must keep the pressure on Congress to approve,

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finally, the Law of the Sea. Without that approval, the United States will have no voice when decisions are made about rights of passage, exploring the ocean floor and fishing.”⁶

- An August 2007 editorial in *The Christian Science Monitor* opined that the United States “may not have a good seat at the table to decide [the Arctic’s] future” because it is not a party to LOST.⁷

Senator Lugar, Ambassador Negroponte, and *The New York Times* are merely repeating an argument previously asserted by the White House. For example, in May 2007, President Bush issued a statement on “advancing U.S. interests in the world’s oceans” that declared: “I urge the Senate to act favorably on U.S. accession to the United Nations Convention on the Law of the Sea during this session of Congress.... [I]t will give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted.”⁸

However, the United States was still invited to and attended the AOC despite the fact that it is not a party to LOST. Such active participation in the debate over Arctic territorial claims disproves any contentions that the United States’ “seat at the table” is contingent upon its ratification of LOST.

A Valid Assertion of Rights. By attending the Ilulissat conference, the United States acted as an

independent, sovereign nation should act. The U.S. has interests in the Arctic that are worthy of protection,⁹ and meeting with other interested nations in a multilateral setting was the proper protocol for securing such interests.

Yet even if the government of Denmark had decided not to invite the United States to the Ilulissat meeting—thereby depriving it of a “seat at the table”—U.S. interests would not have been negated. Denmark, Russia, Canada, Norway, or any other nations are unable to assert credible claims on U.S. territory in the Arctic or anywhere else in the world. Indeed, the United States secured its rights to the resources on its continental shelf when, in Presidential Proclamation No. 2667, President Harry S. Truman declared:

I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United

1. “The Ilulissat Declaration,” Arctic Ocean Conference, May 27–29, 2008, at <http://www.cop15.dk/NR/rdonlyres/BE00B850-D278-4489-A6BE-6AE230415546/0/ArcticOceanConference.pdf> (June 13, 2008).
2. Doug Struck, “Russia’s Deep-Sea Flag-Planting at North Pole Strikes a Chill in Canada,” *The Washington Post*, August 7, 2007, at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/06/AR2007080601369.html> (June 13, 2008).
3. Senator Richard Lugar, “Opening Statement for Hearing on the UN Law of the Sea Convention,” Committee on Foreign Relations, U.S. Senate, September 27, 2007, at <http://lugar.senate.gov/press/record.cfm?id=284357&e> (June 13, 2008).
4. John D. Negroponte, “The UN Convention on the Law of the Sea,” written testimony before Committee on Foreign Relations, U.S. Senate, September 27, 2007, at <http://www.state.gov/s/d/2007/92921.htm> (June 13, 2008).
5. Editorial, “Twenty-Five Years and Counting,” *The New York Times*, October 31, 2007, at http://www.nytimes.com/2007/10/31/opinion/31wed3.html?_r=1&oref=slogin (June 13, 2008). A previous *New York Times* editorial described opponents of LOST as “a tiny but noisy group of xenophobic activists.” Editorial, “Rescuing the Law of the Sea,” *The New York Times*, August 22, 2004, at <http://query.nytimes.com/gst/fullpage.html?res=9C07E1D6163EF931A1575BC0A9629C8B63> (June 13, 2008).
6. Editorial, “Oceans at Risk,” *The New York Times*, March 9, 2008, at <http://www.nytimes.com/2008/03/09/opinion/09sun2.html> (June 13, 2008).
7. Editorial, “Scramble for the Arctic,” *The Christian Science Monitor*, August 21, 2007, at <http://www.csmonitor.com/2007/0821/p08s01-comv.html> (June 13, 2008).
8. Press release, “President’s Statement on Advancing U.S. Interests in the World’s Oceans,” The White House, May 15, 2007, at <http://www.whitehouse.gov/news/releases/2007/05/20070515-2.html> (June 13, 2008).
9. See the forthcoming Heritage Foundation *Backgrounder* by Ariel Cohen, Ph.D., regarding U.S. Arctic policy.

States as appertaining to the United States, subject to its jurisdiction and control.¹⁰

In making this declaration, President Truman ensured that any crude oil, natural gas, minerals, and any other resources discovered beneath the U.S. continental shelf were the property of the United States. Such resources belong to the United States because fate or Providence placed them beneath the U.S. continental shelf; the matter was no longer open to debate.

A Sovereign and Independent Nation. President Truman, acting as the leader of a sovereign and independent nation—and without the permission of the United Nations or the “international community”—did not believe that the U.S. needed to be party to an international treaty such as LOST before he declared U.S. rights over its own resources. Rather, the only “seat at the table” President Truman required when he made Presidential Proclamation

No. 2667 was the chair behind his desk in the Oval Office.

The “seat at the table” argument has been thoroughly debunked by U.S. participation in the Arctic Ocean Conference. Membership in an international treaty is clearly not required to secure and protect sovereign rights to a nation’s own territory, whether such land is located in the Arctic or anywhere else in the world.

The United States should continue to behave in the international arena as a sovereign and independent nation and not as a country that looks to the United Nations or the “international community” to determine its own rights.

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10. Presidential Proclamation No. 2667, “Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf,” September 28, 1945, at <http://www.presidency.ucsb.edu/ws/index.php?pid=12332> (June 13, 2008). Subsequent legislation further defined the U.S. continental shelf; see, for example, the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. § 1331.