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Bush's Decision to Accede to UNCLOS
Why it is Important for Asia

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ON 15 MAY 2007, President George W. Bush issued a statement from the White House urging the Senate to act favorably on United States accession to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) during its current session. President Bush stated that joining UNCLOS will serve the national security interests of the US, including the maritime mobility of its armed forces worldwide. He stated that it would also secure US sovereign rights over extensive marine areas, promote US interests in the environmental health of the oceans, and give the US a seat at the table when the rights that are vital to its interests are debated and interpreted.

Why the US stayed out

Given that it has now been 25 years since UNCLOS was adopted, and 153 states are parties to it, why did the US stay out? What are the possible implications of the US becoming a party, both for itself and for Asia?

The US played a leading role in the nine years of negotiations leading to the adoption of UNCLOS in 1982. However, when the administration of President Ronald Reagan came to power in 1980, it replaced the US negotiators at the UN Conference and undertook a complete review of the draft convention. The Reagan administration was adamantly opposed to Part XI of UNCLOS on deep seabed mining, mostly on ideological grounds. They forced many changes to the draft before it was finally adopted in 1982, but then they refused to sign it because the final text did not go far enough to meet their concerns. Nevertheless, the Reagan Administration announced that although it was refusing to sign UNCLOS, Washington intended to abide by almost all of its provisions other than Part XI on deep seabed mining. Subsequent US administrations have followed this practice.

UNCLOS has been drafted as an attempt to establish a universally accepted convention that

would govern relations among all states on ocean matters. However, during the first ten years after it was adopted, almost all of the states that deposited instruments of ratification were developing countries. The US and its allies refused to ratify it because of opposition to the deep seabed mining regime.

1994 Compromise on Deep Seabed Mining

During the early 1990s a series of events and circumstances made it possible for the international community to negotiate an agreement relating to the implementation of Part XI on deep seabed mining. The agreement in effect amended Part XI to deal with almost all of the concerns of the US and its allies on the deep seabed mining regime. The Implementation Agreement was adopted on 28 July 1994, and a few months later, on 16 November 1994, UNCLOS entered into force. The Implementation Agreement paved the way for the developed countries to ratify UNCLOS so that it could become universally accepted. A large number of states, including most states in Asia and most OECD countries, ratified UNCLOS between 1994 and 1998.

US Change of Heart

Despite having played an instrumental role in the drafting of the 1994 Implementation Agreement, the US failed to become a party to UNCLOS. President Clinton signed the Convention in 1994 and transferred it to the Senate for ratification, as the US Constitution requires that treaties be approved by two-thirds of the Senate. The Senate was unable to act on the Convention due primarily to the efforts of Senator Jesse Helms, the chairman of the Senate Foreign Relations Committee. Senator Helms was opposed to UNCLOS on principle because it was a multilateral convention that created international institutions, and would thus, in his view, infringe American sovereignty.

Prospects for US ratification finally changed in 2003 when Senator Richard Lugar, a long proponent of US ratification of UNCLOS, became Chairman of the Senate Foreign Relations Committee. Under Senator Lugar's leadership, UNCLOS received overwhelming support from the Bush Administration, the military, the oil and gas industries, and environmental groups. The Foreign Relations Committee voted unanimously to have UNCLOS reported to the full Senate for the necessary two-thirds approval. However, ultra-conservatives in the Senate leadership refused to allow the Convention to come to the floor for a vote because 2004 was an election year and they feared ratification might cause the Republican Party to lose some support from its conservative base. Therefore, they killed the chance for ratification.

It appears that after 25 years, the US may finally become a party to UNCLOS. President Bush has urged ratification, influential Republican Senators have spoken in favour of ratification, the Democrats are now in control of the Senate, and the Chair of the Senate Foreign Relations Committee is internationalist Senator Joseph Biden. Reports from Washington indicate that Senator Biden will be holding hearings on UNCLOS soon, and that UNCLOS is likely to be taken to the floor for a vote in the current session. The chances of obtaining the necessary two-thirds approval seem quite high, given that the ultra-conservatives, who have argued against US participation in almost all international institutions and all multilateral treaties, are finally in retreat.

Implications for US and Asia

If the US ratifies UNCLOS, what will the US gain, and what impact will it have on ocean law and policy issues in Asia? By becoming a party to UNCLOS, the US will be better able to protect its national interests in the oceans. First, it will gain the right to participate as a full member in the annual meetings of the State Parties, and to participate in meetings and debates on the possible amendment of UNCLOS. Second, it will be able have representatives on the international institutions created by UNCLOS, including the International Tribunal for the Law of the Sea (ITLOS), the Commission on the Continental Shelf (CLCS) and the Council of the Seabed Authority (ISA). Third, US mining companies will be able to participate in the exploration and exploitation of deep seabed resources once it becomes commercially viable to do so.

As a party to UNCLOS the US will also be able to use its power and influence to ensure that the rights and freedoms essential to its navy and to international trade are not eroded. This includes the freedoms of navigation and overflight on the high seas and in the exclusive economic zone, the right of transit passage through straits used for international navigation, and the right of archipelagic sea lanes passage through archipelagic States. The US will have access to the compulsory dispute settlement mechanisms in Part XV, and will be able to legally challenge coastal states which take unilateral actions of questionable legality under UNCLOS.

At the same time, the US will be able to conduct military activities in ocean space in the same manner as in the past, without fear that states will be able to challenge the legality of its military activities under Part XV of UNCLOS. This is because UNCLOS allows states to "opt out" of the compulsory binding dispute settlement system in UNCLOS for disputes relating to military activities. As the world's foremost naval power, the US is almost certain

to follow the lead of other naval powers and exercise this option.

By becoming a party to UNCLOS the US will also be better able to assert leadership in combating maritime terrorism and the proliferation of weapons of mass destruction by sea. The US-led Proliferation Security Initiative (PSI) has been regarded with suspicion by several states in Asia because it has not been clear to them what limits the US regards itself as bound by when interdicting and boarding suspect ships under the PSI. If the US becomes a party to UNCLOS, there will no longer be any room for doubt or suspicion on this issue.

No more a Lone Ranger or Arrogant Bully?

There is another intangible but extremely important benefit for the US. By finally becoming a party to UNCLOS, the US will be sending a message to the international community that its days as an arrogant superpower that has little or no respect for international law and international institutions may be drawing to an end. This problem has been recognized by Senator Lugar, who in his speech of 15 May 2007 in support of US ratification of UNCLOS, made the following statement:

> "At a time when the United States is being criticized by friends and foes alike as either a Lone Ranger or worse, an arrogant bully, we can demonstrate that we believe international cooperation, done right, can serve America's interests. By embracing a treaty that we championed and that improves our national security, we can help counter the prejudices that America is an unreliable partner or a threat to world order."

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