

US Ratification of UNCLOS III?

Written by Michael Corgan

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MICHAEL CORGAN, MAY 31 2012

Once again in a US presidential election campaign the prospect of a ratification by the US Senate of the UNCLOS III treaty has briefly surfaced. And it is as likely to sink again out of sight as has happened in all previous attempts to have it ratified. On May 23rd the Senate Foreign Relations Committee held hearings on ratification and called on a trio of most distinguished proponents to testify: Secretary of State Hilary Clinton, Secretary of Defense Leon Panetta, and Chairman of the Joint Chiefs of Staff General Martin Dempsey.

Clinton argued that “whatever arguments may have existed for delaying US accession no longer exist” and scoffed at the opponents fears that the UN’s “black helicopters are on their way.” [This is a reference to extreme nationalist fears that the UN is marshaling military forces secretly in order to take over the United States.] The defense officials pointed out that the advantages of joining would include the use of conflict resolution mechanisms that would be critical to handling disputes such as might likely arise in the South China Sea or the Straits of Hormuz. On the other side, Republican senators complained that billions of US dollars would be transferred to the Seabed Authority and thence to developing nations, that ratification would oblige the US to observe greenhouse gas emission standards – [it has] “Kyoto written all over it” – hurting the economy, and one even called the hearings a “Lazarus moment” meaning it was an issue risen from the dead.

Treaties must be ratified by a 2/3 (67 members) vote of the Senate. Foreign Relations Committee Chairman John Kerry (D, MA), himself a failed presidential candidate against George Bush in 2004, promised that any vote would not take place until after this fall’s presidential elections. Perhaps he is hoping for a more favorable balance in the Senate then but this would also have to be coupled with an Obama victory for the Treaty to have chance of passage. The odds seem quite against this. Even if Obama were to win, ratification has not been an issue in this campaign nor is it likely to be. Ratification did appear briefly in the 2008 Obama campaign but was gone from the rhetoric by February of 2008.

As for the Senate, given the strength and even passion of Republican opposition over the decades before and then since the Treaty was enacted in 1994, the necessary 2/3 vote would require about 14 Republicans to vote with their Democrat opposition. Even if the Senate balance were to stay as it is now, 53 Democrats and 47 Republicans, and the Democrats did not lose seats this fall, there is little prospect of this happening. Moreover, if the Treaty did come up for a vote, it would take at least 60 senators to cut off a ‘filibuster’ (unlimited debate by the opposition) that would end the process. No prediction now seriously contemplates the Democrats winning 60 seats as a result of the congressional elections in November. Even worse for Treaty advocates, one senior Republican widely acknowledged to be one of his party’s leading experts on foreign affairs, Senator Richard Lugar of Indiana, lost a primary election bid to a more conservative opponent who almost certainly would vote against the Treaty.

The depth of Republican opposition to the Treaty is hard to overestimate and it has been constant. Writing in a Wall Street Journal Op-ed piece in 2007 (October 8), William P. Clark and Edwin Meese, President Ronald Reagan’s National Security Advisor and Attorney General respectively, undertook to overcome whatever support treaty ratification might arise in the upcoming 2008 presidential election. “What would Reagan do?” they asked. In this article they used what had become the opponents’ common reference to the Law of the Sea Treaty, not the abbreviation UNCLOS, but the more derogatory LOST. They noted that Reagan opposed the Treaty as “dramatic step toward world government,” coming of course at the expense of US sovereignty. Clark and Meese quoted a 1978

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radio address of Reagan, made even before he became a presidential candidate, in which Reagan argued that “no nat[ional] interest of ours could justify handing sovereign control of two-thirds of the earth’s surface over to the Third World.”

These one-time Reaganites also noted the opposition of the US Ambassador to LOS negotiations, James Malone. In 1984 Malone complained that the Treaty aimed to create “global collectivism” through “manipulative central economic planning and bureaucratic coercion.” Later in 1995, Malone reaffirmed to the Convention that the “collectivist and redistributionist provisions” were at the core of the US refusal to sign. Clark and Meese themselves conclude that the “increasingly brazen hostility of the United Nations and other [unnamed] multilateral institutions to the United States and its interests” raises serious questions and of course argues against ratification. Although this was a 2007 piece, it is worth noting that Republican candidates for the party’s nomination this year almost invariably referred to the legacy, not of George Bush, but of Ronald Reagan as they sought the party’s support.

To measure the degree of hostility to the UNCLOS Treaty to be found among staunch Republicans, one need only consider the Resolution of the National Federation of Republican Assemblies regarding UN membership of the US which includes the following observation:

Whereas the majority of United Nations’ member states are classified as socialist nations, tyrannical dictatorships, and authoritarian regimes that use fear to govern their societies, and have cultural and political values opposed to our system of Constitutional self-government.

Needless to say, the Resolution calls for the immediate withdrawal of the US from the United Nations in order to preserve its independence.

The New York Times in an editorial following the Senate Foreign Relations Committee hearings characterized these long-time opponents of Treaty ratification as “a small group of cranky right-wingers and xenophobic activists.” (May 25, 2012, A24) A small group they may be but their effective activism has kept the US from ratifying the treaty for almost three decades. The arguments that seem to resonate most with their adherents are the loss of US sovereignty and damage to the concept of private enterprise that ratification would produce. The Seabed mining Authority was the ‘lightning rod’ for this criticism and this episode contains one of the great ironies of the matter. The Seabed Authority came about because of the supposed treasure of manganese nodules on the bottom of the ocean floor, just waiting to be vacuumed up. Arvid Pardo of Malta defined such wealth as the “common heritage of mankind” and this led ultimately to the Seabed Mining Authority to license mining and redistribute some of the proceeds. But the presumptive presence of these manganese nodules was really a cover story put out by the American intelligence community to hide the fact that what Howard Hughes’s ship, the Glomar Explorer, was really doing in 1974 was trying to recover code books from a Soviet submarine that had sunk in the Pacific.

It may be that a 40-year old US ‘cover story’ concealing an intelligence operation has now become itself a threat to US security. That is, it will if it keeps the United States from ratification of UNCLOS III. Will the US refusal to join last? If there is or will be any compulsion for the US, including present-day opponents, to ratify the Treaty it is likely to come about because of ice melting in the Arctic. As this northernmost sea area becomes more accessible to merchant ships transiting or other ships exploring resources in years to come, the United States will find itself increasingly left out of important decisions in the Arctic that will certainly affect security and economic interests. For now, the US can only sit in on UN Arctic Committee meetings as an observer, speaking after everyone else has, if even then. Thus US ratification will eventually happen, not for any foreseeable political change of heart, but for the all too sadly foreseeable continued disappearance of the Arctic ice that is not only home to polar bears, but an arena in which the United States has no say but will surely need one.

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