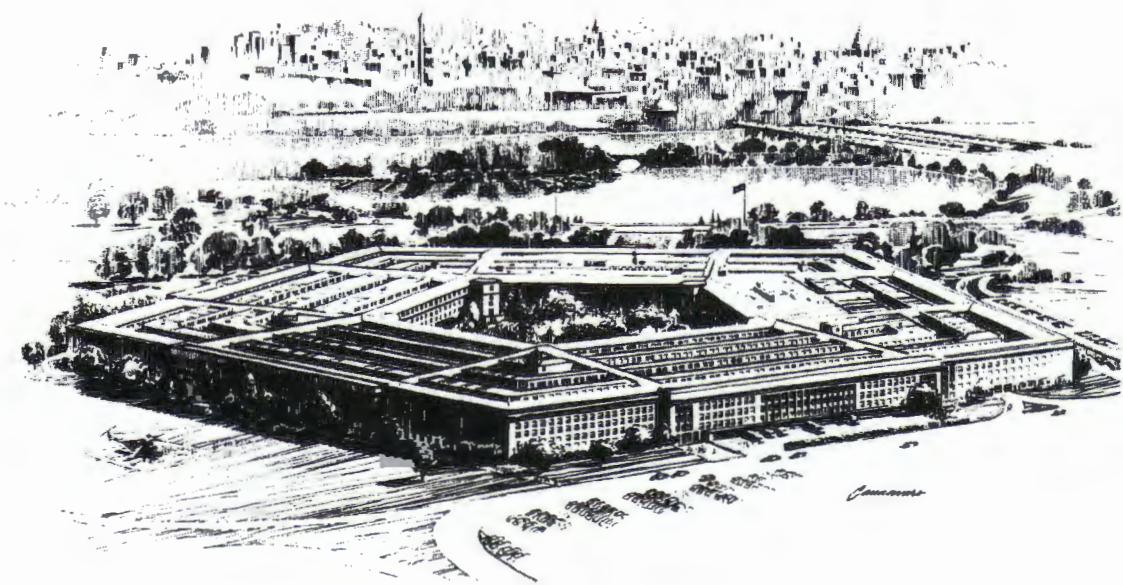


Annual Report

to the President and the Congress



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NATIONAL SECURITY AND THE LAW OF THE SEA CONVENTION

On October 7, 1994, the President transmitted the UN Law of the Sea (LOS) Convention, with its Deep Seabed Mining Implementing Agreement, to the Senate for advice and consent. DoD has long supported the United States becoming a party to the Convention, provided U.S. concerns with deep seabed mining provisions could be adequately addressed. The Deep Seabed Mining Implementing Agreement of July 1994 removed those concerns and cleared the way for U.S. acceptance of the entire Convention, which is of major strategic and economic importance to the United States.

Clearly, the United States is and will continue to be a global power with global interests. Protecting these interests requires U.S. security commitments around the globe and, when U.S. interests are threatened, a willingness to use American military power. Key pillars in the effective use of this power are the mobility, presence, and readiness of U.S. armed forces. This is where the LOS Convention is so important.

First, mobility. To be effective, U.S. armed forces must be where required, when required. They must be capable of moving within and between areas of operations in times of developing crises. To carry out assigned missions, U.S. naval units are continuing to experience a brisk operational tempo. For example, on any given day, about 50 percent of U.S. Navy ships are at sea; about 30 percent are deployed in the Adriatic, Mediterranean, Red Sea, Persian Gulf, and Western Pacific.

As naval and air forces move within and between areas of operations, they must pass through critical choke points. Additionally, U.S. naval forces may have to pass through the territorial seas of one or more coastal States. The Convention plays a crucial role in enabling the United States to achieve the necessary mobility and operational flexibility by providing the assurance that key lines of communication and operating areas will remain open as a matter of international legal right, principally through the rights of transit passage and innocent passage.

Under transit passage, ships and aircraft may transit through international straits freely in the normal mode, without prior notice or authorization. This means that submarines may transit submerged and aircraft may overfly without filing flight plans or obtaining diplomatic clearance. Units also may transit in a manner necessary for the security of the unit or the force, such as formation steaming, launch and recovery of aircraft, and flight operations, consistent with sound navigational practices.

Also important for the Defense Department's operational needs is the right of innocent passage, which provides that all ships, including warships, regardless of cargo, armament or means of propulsion may, as a matter of right, pass through the territorial sea of a foreign sovereign, without prior notice or authorization.

Second, presence. Under the National Security Strategy, a significant portion of U.S. forces are forward deployed or stationed in key overseas regions in peacetime. Their presence deters aggression, demonstrates U.S. commitment to allies and friends, underwrites regional stability, gains familiarity with overseas operating environments, promotes joint and combined training, and provides initial capabilities for timely response to crises. The importance of overseas presence was demonstrated in October 1994 when Iraqi Republican Guard divisions began significant movements towards the border with Kuwait. U.S. forces deployed in the area, augmented by the timely arrival of additional air, naval, and land forces, combined to provide a credible deterrent to the threat of Iraqi aggression. The augmented forces

included the USS George Washington battle group and embarked air wing, deployed in the Mediterranean, which entered the Red Sea enroute the Persian Gulf less than two days after the request for additional forces was made by Commander in Chief, U.S. Central Command. Maritime Prepositioned Ships (MPS) based at Diego Garcia and U.S. Army prepositioning ships located in the Western Pacific and Indian Ocean proceeded to the Gulf as well.

In addition to its provisions on passage, the Convention strengthens U.S. ability to operate in these forward areas by providing agreed rules on delimitation of maritime zones, by preserving high seas freedoms of navigation and overflight seaward of the 12 nautical mile territorial sea, and by recognizing the special nature of military ships and aircraft in reaffirming the doctrine of sovereign immunity.

Third, readiness. The Department's first priority is to maintain U.S. military forces ready to fight. Forces ready to fight means an appropriate force structure, modern equipment, maintenance and logistics support, and trained and motivated personnel. In this regard, the LOS Convention is important because it provides a necessary condition to achieve readiness, that is, the right to conduct military activities, such as task force maneuvering, flight operations, military surveys and exercises, and ordnance testing and firing, in all ocean areas beyond other coastal States' territorial seas. Of course, these activities must be — and are — conducted with due regard for the rights of other nations, the safe conduct and operation of other ships and aircraft, and protecting the ocean environment.

In addition to supporting mobility, presence, and readiness objectives, the Convention addresses other important interests that impact U.S. national security. First, the Convention provides a comprehensive approach to marine environmental protection. Importantly, it recognizes the delicate balance that exists between protecting and preserving the marine environment and other competing interests, and provides a balanced framework for addressing issues essential to promoting improvement in the health of the world's oceans. Second, the Convention recognizes sovereign rights for the purpose of conserving and managing marine resources within the 200 nautical mile Exclusive Economic Zone (EEZs). These provisions result in a most substantial benefit to the United States because the United States has one of the largest and richest EEZs in the world. Thus, the Convention will enable the United States to explore, exploit, conserve, and manage these important resources.

The negotiation of the Convention was a decade-long effort that meets the competing interests of coastal States and maritime States. The United States, having both coastal and maritime interests, has long felt that the balance struck by the Convention is a most favorable one. The Convention will serve as a benchmark for the United States and other maritime powers to convince states to roll back excessive claims, provide an unequivocal basis for U.S. assertion of freedom of navigation rights that could be compromised by such excessive claims and, perhaps more importantly, to keep in check the natural desire by coastal States to extend their sovereignty over offshore areas through the type of increased regulation which would be inimical to U.S. navigation and overflight rights.

The Law of the Sea Convention is gaining more and more importance in maintaining the balance between coastal State and maritime State interests. This presents many opportunities for the United States, if it participates in the process to make sure its interests are protected. More and more work in this arena will be done at international fora, such as the International Maritime Organization, where national delegations will consider proposed international regulations implementing parts of the LOS Convention that impact U.S. security and vital commercial interests. In the past, the United States has been effective in representing and gaining support for policies that are in its best interest. However, the United States risks losing its ability to speak with authority in the international arena if it fails to join the Convention.

FREEDOM OF NAVIGATION

Despite favorable developments in the law of the sea, including the entry into force of the UN Law of the Sea (LOS) Convention, the adoption of the Part XI agreement which reforms the LOS Convention, and the recent negotiation of the 1995 UN Convention on Straddling and Highly Migratory Fish Stocks, a number of states continue to assert excessive maritime claims inconsistent with international law in waters off their coasts. Many of these claims impair the freedoms of navigation and overflight guaranteed in the LOS Convention. Although not yet a party to the Convention, the United States views the navigational provisions of the Convention as reflective of customary international law and, as such, available for all nations to enjoy. The United States also believes that unchallenged excessive maritime claims may, in time, become valid through acquiescence. Accordingly, it is necessary for maritime nations to protest excessive coastal claims through diplomatic channels and to exercise their navigation and overflight rights in disputed regions. The United States has accepted this responsibility by establishing and preserving the Freedom of Navigation Program. Since its inception in 1979, over 100 diplomatic protests have been filed and over 300 operational assertions have been conducted. During FY 1995, operational assertions were conducted by the U.S. armed forces against the following countries that maintained claims contrary to international law:

Country	Excessive Claims Challenged
Bangladesh	Claimed security zone; claimed territorial airspace beyond 12 nautical miles (nm)
Cambodia*	Claimed security zone; claimed territorial airspace beyond 12 nm; prior permission for warship to enter territorial sea
Djibouti*	Excessive straight baselines
Iran	Prior permission to enter territorial sea
Maldives*	Prior permission for warship to enter territorial sea; claimed territorial airspace beyond 12 nm
Oman	Excessive straight baselines; prior permission to enter territorial sea
Philippines*	Excessive straight baselines; claims archipelagic waters as internal waters
Somalia*	200 nm territorial sea; prior permission to enter territorial sea
Sudan*	Prior permission for warship to enter territorial sea
Thailand	Excessive straight baselines
United Arab Emirates	Prior permission for warship to enter territorial sea
Yemen	Prior permission for warship to enter territorial sea

*Denotes that Freedom of Navigation assertion was also conducted in FY 1994.

In addition, military ships and aircraft frequently conducted routine transits on, over, and under international straits, such as the Straits of Gibraltar, Hormuz, and Malacca, and through normal archipelagic routes through Indonesia and the Philippines.