

## **MORAN REPORT 2008: Section 10**

### **Economic Freedom & Prosperity**

**(The Synergy Of The Free Market Place Applied)**

**The Critical & Missing Component Of U.S. Soft Strategy**

### **A Primary Foreign Policy Initiative Blueprint**

***Peace Through Prosperity***

### **Treaties: RSDP's Versus Global Governance**

**The UNCLOS: The Law Of The Sea**

**Bottom-Up Versus Top-Down Governance**

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## INTRODUCTION

**The U. S. National Security interests are predicated on sound and practical treaty negotiations.** Treaties cover a wide range of territory: terrorism, Weapons of Mass Destruction [WMD's], human rights, commerce, environment, trade, tariffs, on-shore and off-shore mining & drilling, military interventions and research. Treaties are essential and critical for the defense and protection of our nation. They directly impact all 4 Elements of our National Power.

### **4 Elements of National Power & National Security**

**"Diplomatic," "Economic," "Information," and "Military" Power**

When signing treaties, there are **5 Areas Of Sound Treaty Negotiations** that are taken in consideration which make the treaty just, fair, equitable and complete for Bottom – Up governance:

- 1) **Transparency:** The treaty's express terms must be clear and understandable. It is critical that they not be ambiguous and subject to broad, and perhaps, contrary interpretation to their original intended meaning. Treaty terms should not be susceptible to misinterpretation and/or manipulation against U.S. national interests, such that, the treaty is rendered misleading, inoperable or otherwise useless to our national leaders.
- 2) **Rule Of Law:** The treaty must follow a Rule Of Law that is: a) **Direct** in application, b) **Sound and consistent** in practice and enforcement, c) **Principled/benchmarked** in approach, d) **Due process-based** and e) Designed with a **specific purpose and intent** in mind.
- 3) **Enforcement:** The treaty must be enforceable to adequately serve U.S. interests. Treaty Parties must abide by the treaty's written words, which should reflect the mutual intent and agreement of the Treaty Parties. Treaties are similar to contracts. They contain agreed upon rules, practices, standards and procedures that must be followed through by sound and consistent enforcement. Treaties usually provide mechanisms to address what specific enforcement steps need to be taken when required or expected practices, standards, procedures or measures are not followed or carried out in whole or in part.

## **5 Areas Of Sound Treaty Negotiations**

- 4) **Property:** The treaty must clearly recognize and respect the *Private Rights to Tangible & Intangible Property* that are held: a) exclusively by the citizens of Treaty Parties, namely its creators / inventors /owner(s), who may be individuals or legal entities; and b) by the users of such property which have been licensed through arms-length negotiations with the creator/inventor/owner on an exclusive or non-exclusive basis. The treaty must clearly address the area of: patents, copyrights, trade secrets, trademarks, tradenames, trade packaging, as well as, other forms of personal & commercial private property holdings.
- 5) **Good Governance:** The treaty must work on sound, transparent, equitable, fair and just principles so that consistent, benchmarked practices, standards, rules and procedures are applied and upheld for the benefit of all Treaty Parties and their citizens.

## **U.S. Treaty Ratification**

The Ratification of a Treaty goes through a 8 Step Process.

### ***8 Step Ratification Treaty Process [simplified version]***

- 1) Secretary of State authorizes negotiation
- 2) U.S. diplomats and representatives negotiate
- 3) Diplomats and representatives agree on terms, and upon authorization of Secretary of State to sign treaty
- 4) President submits treaty to Senate
- 5) Senate Foreign Relations Committee considers treaty and reports to Senate
- 6) Senate considers and approves by 2/3 majority
- 7) President signs bill incorporating resolution of ratification, following Treaty Party review and acceptance.
- 8) President deposits instrument of ratification at international treaty depositary and proclaims its entry into force for U.S.

**There is nothing absurd or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties.**

**Alexander Hamilton, Federalist No. 15, 1787**

The Ratification of the UNCLOS is now at the final 3 steps [6-8] of the approval process. The UNCLOS could be voted on by the full Senate during 2008. The many environmental provisions of the UNCLOS raise a number of important issues and concerns, and arguably pose serious problems for U.S. National Security, particularly, regarding the **4 Elements of National Power** and the **5 Areas of Sound Negotiation** -- with their present and future ramifications.

**END INTRODUCTION**

# **UNCLOS / LAW OF THE SEA TREATY / LOST**

## **The United Nations Convention On The Law Of The Sea**

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**FORMER PRESIDENT GEORGE WASHINGTON’S INSIGHTS  
REMAIN RELEVANT TODAY  
IN ADDRESSING THE UNCLOS DILEMMA**

*“Thus treaties in [George] Washington’s view were of little worth. If the interests of the two nations happened to coincide, the treaty was scarcely necessary to bind them together. If their interests conflicted, no treaty would be sufficient to hold them. At best a treaty could only regularize and expedite friendly relations between two countries. At worst, it might weaken a country misleading unwary statesmen to act on the benefit of an ally without due regard to their own country’s interest.”*

**The Meaning Of Independence, Edmund S. Morgan, Norton & Company (©1978)**

Keeping our first President George Washington’s great insight and wisdom in mind, we must look today with a careful eye at the UNCLOS treaty. The American people need to know: 1) where the UNCLOS leads, 2) how the UNCLOS can or will in the future impact many levels of trade and commerce, the U.S. Constitution, individual rights, U.S. sovereignty and military research and interventions, 3) where, within these many spheres of concern, can the UNCLOS be dangerous and harmful to U.S. national interests, now and in the future, and 4) how and why the UNCLOS is actually two treaties wrapped into one [a) Environmental and b) Navigation of the Seas], that could potentially jeopardize U.S. interests with a sophisticated and cleverly designed, multiple-layered network of by-laws administered through an international bureaucracy unaccountable to the Rule of Law].

*And this should raise questions concerning whether UNCLOS would be better broken down into two separate and distinct parts or divided into two separate treaties which clearly define the Rule of Law.*

Why is this true? The UNCLOS is not your ordinary and customary treaty. The UNCLOS lies in a transcendent realm of broad “outside the box” thinking which hasn’t been seen before. A person working in a U.S. agency

or department would not have the inclination to view UNCLOS' overall high impact given the many constraints and restraints of being bureaucratically sealed within the confines of one's department and position. Questions and concerns have to be raised with great breadth and depth that go all the way up to the White House Cabinet National Security level.

Quite importantly, if you and your colleagues are working in the Senate or House, you may first need to convene several different committee and sub-committee meetings to secure a consensus opinion regarding how to launch and structure an investigation of this highly sophisticated and complex instrument. As of today, there hasn't been any significant movement to undertake an extensive review of the UNCLOS and its many environmental provisions and their potentially adverse or dangerous impact on U.S. national interests. No one has determined that comprehensive multiple Congressional committee hearings are needed to ascertain the UNCLOS' ramifications. The holding of only basic cursory hearings [as opposed to in-depth open hearings under oath] in the Senate Foreign Relations Committee will not reveal very much about the UNCLOS and its effects on the U.S. It is like kissing your sister – giving the UNCLOS a pass when the whole USG football team is off the field not knowing there is a big Super Bowl game in play.

### **UNCLOS: The Mother Of All Treaties**

The UNCLOS should not be viewed in isolation from other treaties. To the contrary, it must be considered along with numerous other treaties, protocols and appendices with which it is interrelated, and that together presents us with a serious handful of critical issues that need to be immediately addressed. The UNCLOS was originally drafted, and has been subsequently interpreted, in a fashion that makes it, practically speaking, *the* linchpin and springboard to a very complex set of multiple layered interlocking agreements which collectively lay the groundwork for a Top-down Global Governance System. The UNCLOS challenges all of us to look very closely at what is at stake with our National Security interests. It would serve us all well if the Executive Branch and U.S.

Congress proceeded with the utmost due diligence in researching and investigating the UNCLOS in its entirety, and further deliberated about how far reaching this instrument actually is; i.e., how it extends to other treaties

that are structured with the same intent and purpose. Rest assured, the

## **UNCLOS: The Mother Of All Treaties**

Founding Fathers never envisioned the U.S. falling subject to a Top-down Global Governance System in whole or “in part”. Once U.S. sovereignty is compromised, it can have very serious downstream domestic and international ramifications which will be very hard to undo.

Consequently, a serious UNCLOS review will require the utmost care and self reflection. It will entail broad and deep research and investigation by the U.S. Executive Branch and Congress to tackle the critically important issues and concerns embedded in and surrounding the UNCLOS.

This UNCLOS overview provides readers with the necessary ‘directional finding’ tools for viewing: a) the UNCLOS approval process; b) how the UNCLOS / UN process [top/down power] differs from and conflicts with our U.S. system of governance [bottom/up power]\*\*; c) what the consequences can be if the UNCLOS is approved by the U.S. Senate without adequate review; d) Economic Freedom as a foundation for U.N. policy – The Critical & Missing Component Of the United States Government [USG] Soft Strategy; e) what the ramifications will likely be if we sit idly by, allowing the formation of a Top-down Global Governance System that could subsume not only the U.S., but other countries ill-equipped to handle its burdens, restrictions and costs; f) the dilemmas ordinary Americans, American Scientists and Congress will likely face should U.S. laws, regulations and/or business practices be changed incident to UNCLOS ratification; and g) the various recommended actions that should be taken. As part of this process of discovery, all points and counterpoints would be welcome, including those from U.N., E.U. and NGO\* officials; national political leaders; economic and business experts; and scientific experts from the European, North American and Asian regions, all of whom would be eligible to participate in our Congressional hearings for the purpose of securing a fair and balanced perspective regarding their support for or opposition to the UNCLOS. \*Non-Government Organizations [NGO]

This UNCLOS overview also includes recommendations to counter the Global Governance top/down power process now underway. It calls for setting in place viable cost effective, time sensitive, less bureaucratic

driven *Regional Sustainable Development Programs* [‘RSDPs’ -- bottom/up policy programs]. The RSDPs’ can be run individually or in conjunction

### **UNCLOS: The Mother Of All Treaties**

with *Regional Policing / Strike Force Units [RPSF]* which address matters of political governance, environmental concerns, economic issues and policing/military interventions.

\*\* A simple way to remember bottom/up power or bottom/up strategy is: **“A government of the people, by the people and for the people.”** It is the basis of our Declaration of Independence and Constitution – the transparent system of checks and balances.

The Global Governance top/ down process can be described in the 110<sup>th</sup> Senate Foreign Relations meeting 1<sup>st</sup> Session 110-9, CONVENTION ON THE LAW OF THE SEA, on DECEMBER 19, 2007. That record states very clearly on pages 25 & 26:

In 1995, Commenting on the 1994 Agreement, Ambassador Malone reiterated his earlier criticism: This remains the case today. All the provisions from the past that make such a [new world order] outcome possible, indeed likely, still stand. It is not true, as argued by some, and frequently mentioned, that the U.S. rejected the Convention in 1982 solely because of technical difficulties with Part XI. The collectivist and redistributionist provisions of the treaty were at the core of the U.S. refusal to sign... Further, the United States has demonstrated historically that it takes its treaty obligations seriously. Other nations have not done the same. Why should we bind ourselves to a treaty that will handcuff our economy, while other nations will simply ignore the rules? ...The rest establishes a massive bureaucracy to govern the seas and anything that can be construed to impact the seas—even if the impact is de minimus.”

## **1. UNCLOS: A Highly Sophisticated & Complex Framework that Obscures the Treaty's Ultimate Intent:**

The UNCLOS constitutes one of the most highly sophisticated and complex instruments we have ever come across. It not only relates to numerous *global* (multilateral) treaties, protocols and agreements, but also sets forth a mirror regime of 11 mini-UNCLOS *regional* agreements. Of the 302 separate but overlapping Multilateral Environmental Agreements [MEAs] executed since the 1970's, 197 plus relate to the conservation of the marine environment – more than one could ever imagine.

“UNCLOS establishes the international legal order of the oceans. The variety of subjects dealt with is covered in a total of 320 articles, divided into seventeen parts, each part dealing with a broad subject concerning the sea. In addition, UNCLOS has nineteen Annexes, each dealing with a specific marine issue. The subject of prevention of marine pollution is covered mainly under Part XII of UNCLOS. Some relevant rules are located in other parts, especially Part II, concerning the territorial sea, and Part XI, concerning the deep sea bed.

Part XII of UNCLOS is...entirely dedicated to the protection of the marine environment. The 45 articles apply to seas and oceans forming the territories of parties, and their exclusive economic zones including the seabed and to the high seas, ocean floor and ice-covered areas. It is set out in sections that concern general provisions, global and regional cooperation, technical assistance, monitoring and environmental assessment, international rule formation, enforcement, safeguards against inept enforcement, ice-covered areas, responsibility and liability for pollution damage and sovereign immunity.” See *Training Manual on International Environmental Law*, United Nations Environment Program (2006) at pp. 148-149.

1. The UNCLOS, in many ways, serves as the anchor to an evolving supranational (global/'one-world') system which has great scope and depth. Embedded within the ambitious UNCLOS framework is a complex set of interrelationships between numerous Multilateral Environmental Agreements (MEA's) many of which incorporate one of the most insidious legal and philosophical concepts the world has ever known – the *extra-WTO* Precautionary Principle. The UNCLOS walks step by step with the “precautionary principle” standards that are injected into these U.N. treaty by-laws by the European Union and its 27 member states. The Precautionary Principle can be used to usurp

**1. UNCLOS: A Highly Sophisticated & Complex Framework that Obscures the Treaty's Ultimate Intent:**

**The Dangerous Dimensions Behind the UNCLOS**

U.S. national sovereignty and undermine the U.S. position on the treaty itself.

2. The United Nations General Secretariat and the UN Environmental Program (UNEP) secretariats are surreptitiously administering and managing the development and extension of the UNCLOS legal framework to facilitate the creation of an expansive network of related Precautionary Principle-based multilateral agreements.
3. A complex, dynamic and continually evolving UNCLOS framework of interrelated multilateral environmental agreements has been ingeniously designed and woven with the long-term objective of establishing a supranational environmental organization charged with determining the 'life or death' rules for all businesses, no matter their size and wherever incorporated.
4. The UNCLOS legal framework could be utilized by UN member states against U.S. economic and political interests vis-à-vis an overarching and reformed UNEP organization empowered to curtail economic activities deemed hazardous (rather than risky) to the environment. Such an organization would impair the free exercise of exclusive private property rights and designate new common public property rights in the global oceans and atmosphere commons;
5. The UNCLOS and UN/UNEP would together facilitate the creation of an international regulatory and taxing/user fee ('tollway') regime with assessment authority in the global oceans and atmosphere commons. This could extend far beyond the jurisdiction of the UNCLOS' highly controversial supranational International Seabed Authority which is charged with managing the 'Area', so as to intrude into sovereign coastal state EEZs, and territorial and internal waters;

# **1. UNCLOS: A Highly Sophisticated & Complex Framework that Obscures the Treaty's Ultimate Intent:**

## **Dangerous Dimensions Behind The UNCLOS**

The champions of the UN have long viewed the binding institutional legal framework of the UNCLOS as one day providing the means to redistribute living and nonliving marine environment resources extracted by developed country industries for the benefit of humankind. This would occur not only through international and national enforcement of strict Precautionary Principle hazard-based environmental regulations, but also via international and national assessment and imposition of assorted environmental taxes and user fees. The UNCLOS framework, in other words, is being systematically looked at as a 'cash cow' from which the UN could derive perpetual sources of future funding to 'manage' the oceans and atmosphere above it, as well as, other of its activities.

**[See Section VI.B and Sections V and VI of *UNCLOS 2008: A Critical Review*].**

6. With the ratification of the UNCLOS, the U.S. will be legitimating and furthering a blueprint for a centralized and *un*accountable Top-down international system of European-style *supranational* global governance<sup>i</sup> with mandatory rather than discretionary regulatory and funding mechanisms, based on other than a notion of shared sovereignty,<sup>ii</sup> that is inconsistent with American 'free market, private property and democratic principles' and retained national sovereignty,<sup>iii</sup> *without* full consultation with and the informed consent of our citizens/voters.

**Furthermore:** The UNCLOS was written to be obscure, ambiguous, and confounding with dense legal terminology that is infused with strong philosophical and political leanings [Top/down power shape shifting]. This UNCLOS synopsis also will help foreign country leaders, along with their respective legal, business and scientific experts, to better understand UNCLOS' larger ramifications. In fact, smaller nations and less developed nations are at a big disadvantage, as they cannot fully scrutinize the great breadth and depth of the UNCLOS because such nations lack time, capability and resources -- to vet and cope with treaty provisions and their implications.

**1. UNCLOS: A Highly Sophisticated & Complex Framework that Obscures the Treaty's Ultimate Intent:**

**Dangerous Dimensions Behind The UNCLOS**

Fortunately, the UNCLOS treaty can be directly addressed in all of its intricate parts by the U.S. Executive Branch and Congress so that its hidden meanings and agendas can be deciphered.

**2. Congress and the Executive Branch Are Not Openly Debating UNCLOS Issues – Preparing For A Global Governance System:**

What my colleagues and I discovered is that the United Nations Convention On The Law Of The Sea (UNCLOS or LOST) operates much like magic – there is much more here than meets the eye. It is a treaty driven by big political, economic, environmental and military issues that now poses a much larger problem to the United States, (a problem we created for ourselves.)

We have been actively participating in the UNCLOS' creation by *not* keeping abreast of the evolving roles of and the relationships developing between the United Nations and the European Union. As a result, *Information* technology – *One of the 4 Elements of Power, which is another critical and missing element of our Foreign Policy i.e., Public Diplomacy and Information Services* – has increasingly fallen subject to UN/EU/UNCLOS-defined norms and practices.

Since the end of the Cold War, our complacency and great misunderstanding about the critical need for funding public diplomacy and information services has left the United States behind the 8 – ball. We have not been advancing our cause, i.e., spreading liberty and freedom among national populations abroad. Nor have we fully advanced our national security interests. We are not only failing to get *our* message out; we also are not seeing how *others'* messages -- like those underlying the UNCLOS – can be insinuated and then enshrined into a broad set of supranational [top/down power] policy conventions, protocols and agreements.

## **2. Congress and the Executive Branch Are Not Openly Debating UNCLOS Issues – Preparing For A Global Governance System:**

This raises important questions concerning whether and how the global force of law inherent in a multilateral treaty can be harnessed and used for multiple purposes that effectively place the United States at disadvantaged or compromised positions. A simple yes or no answer to these queries will not suffice. If UNCLOS ratification is to be sought, thorough investigative processes must be undertaken, open public hearings must be conducted, and proof must be provided which shows that we will not be compromised. We cannot, and should not, rely on any one agency, department, or Senate/House committee alone to undertake such a review or to enact a bill like H.R. 21 [H.R. 21: Oceans Conservation, Education, and National Strategy for the 21st Century Act]. We must work collaboratively as a team and also include the American people in our efforts, if we are ever to reach an informed public consensus on the direction that we as a nation are about to take.

Without comprehensive investigative findings, our own myopia or blindness will permit interest groups in the United Nations and the European Union to infiltrate, redirect, and redefine the rules and norms of a stream of international multilayered and interconnected agreements that bring the U.S. ever closer to their predisposed communalism [top/down power]. Altogether these groups are predisposed to formulating, what Czech President Vaclav Klaus would characterize as, a new Global Governance system of ‘soft’ socialism.

Most importantly, the report, *UNCLOS 2008: A Critical Review*, provides a powerful, scholarly discussion and analysis of the types of Global Governance systems that are actually evolving within and around the UNCLOS. It fills in a serious gap by exposing the changing dynamics within UNCLOS that simultaneously underlie the restructuring processes now being contemplated within the United Nations and its U.N. related bodies. Clearly, broader and more intense analyses and assessments of the emerging communal international system are required to ensure that U.S. National Security interests are not undermined. These intellectual and strategic studies will require a new U.S. foreign policy direction accompanied by prompt and sufficient funding.

## **2. Congress and the Executive Branch Are Not Openly Debating UNCLOS Issues – Preparing For A Global Governance System:**

In addition, we, the United States, have not sufficiently communicated our foreign policy message of liberty and freedom [bottom/up strategy] loudly and clearly to the United Nations and foreign country leaders abroad. We continually fail to support and actively advocate Economic Freedom [bottom up] principles -- with sound environmental science-based practices. Who in our Congress and Executive Branch, for instance, engages in thorough and illuminating conversations about elements in the **Index of Economic Freedom** (of the Heritage Foundation and Wall Street Journal)? What U.S. diplomats and representatives talk with foreign policy ministers, finance and economic ministers and ministers of justice and human rights about the dozen elements comprising the Economic Freedom Index?

Over the last 20 years, we have not thoroughly and effectively researched and investigated, and more importantly, have not openly debated in Congress what proper measures and fitting designs are to be established within foreign countries or incorporated within instruments like the UNCLOS. This lack of research, investigation, and open debate, coupled with U.S. failure to clarify and articulate strategic initiatives on critical, interconnected political, environmental, economic, security matters and National Strategy, adds up to a **U.S. foreign policy record that neglects Economic Freedom issues with great National Security import.**

Without articulating and advancing strategic initiatives that conform to and reflect U.S. Constitutional principles and rights essential for the realization of individual liberty and freedom, the United States becomes part and parcel to the formation of the new Global Governance system largely based on European Community law, with its bias towards communal, communitarian ‘group think’.

It is very troubling is that the European Union is projecting its legal principles, soft law and economic norms and cultural (environmental and social) preferences onto the UN global stage via its extensive participation within the myriad secretariats and other related bodies, agencies and offices overseeing, managing or supporting the hundreds of UN multilateral environmental agreements (MEAs). This, in fact, is the most disarming aspect of the UNCLOS...The European regulator’s inclination is to subjugate individual

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## 2. Congress and the Executive Branch Are Not Openly Debating UNCLOS Issues – Preparing For A Global Governance System:

### **Continued:**

rights and freedoms to ‘social obligations’ and ‘socially beneficial’ causes is largely culturally rooted. According to at least one European constitutional law scholar, European (and particularly German) citizens are deemed to enjoy only a positive implied conditional right to private property that is highly subject to ‘collective power’ and the ‘public interest’ – i.e., the ‘general will’.

*[See Section VIII of UNCLOS 2008: A Critical Review].*

The lack of a defined, proactive American Economic Freedom and environmental foreign policy is contrary to our own solidly based good governance practices, with consistent, balanced enforcement of comprehensive U.S. environmental laws. The United States should be advancing highly active Economic Freedom initiatives that inspire “exploratory discussions” and “in-country dialogues” which move citizens in foreign countries closer to building their own protections and defenses for freedom, independence and liberty.

Our goal should be to encourage free citizens in foreign countries to become their own local ‘life forces’ capable of springing into action to counter unfriendly powers, domestic or foreign, which threaten their personal rights and freedoms and the societies upon which they are based. We witnessed this very phenomenon in Anwar Province when Sunnis took up arms against Al-Qaeda who were organizing to control and dominate Iraq. The Sunni chiefs became patriots of their own cause in order to resist the Al-Qaeda terrorist network. Thus, citizens abroad with a taste for freedom have reason to defend themselves against dictators, tyrants, totalitarian regimes, military juntas and terrorists hungry for territory and power. Insurgents turn into patriotic freedom fighters when they sense they have a personal stake in the outcome of battles against bullies. What will U.S. ambassadors do to sponsor initiatives for country nationals who are natural leaders among their peers to travel abroad to countries that score high on the **Index of Economic Freedom**?

## 2. Congress and the Executive Branch Are Not Openly Debating UNCLOS Issues – Preparing For A Global Governance System:

Most unfortunately, we are not only shooting ourselves in the foot when we forego viable feedback communication and information loop links. We are also biting off our noses to spite our faces for thinking and assuming smaller or weaker nations are not being undermined by bigger countries or groups of countries that have banding together to dominate geopolitical, economic and military/industrial space and power positions.

Why won't our U.S. ambassadors sponsor initiatives that send bright young leaders and "productivity teams" abroad to free market countries where they will discover the importance of Rule of Law, Private Property, Free Markets and Transparency that underlie general prosperity and a higher quality of life?

And, why wouldn't our diplomats change course if it can be shown that these travelers and 'productivity teams', upon returning home, actually employed the new and exciting ideas they acquired in their own countries?

European travelers 700 years ago, many of whom were ambassadors, traders, merchants [self-financed], ship captains and sailors, traveled to the Levant where they were immediately exposed to revolutionary ideas about products, markets, and the grounds for prosperity. As history reveals, they subsequently brought these free market ideas back and introduced them in European home countries.

In Summary, the near-absence of a U.S. Economic Freedom and Environmental foreign policy is contrary to our own firmly based system of practices and good governance, where the United States scores high on the **Index of Economic Freedom**. Our foreign policy should reflect America's respect and regard for Economic Freedom under the rule of law, enforced by science-based environmental law and regulation and constitutionally protected property rights -- an imperative for full opportunity and prosperity.

### **3. INSTITUTE ECONOMIC FREEDOM LEADS TO PEACE & PROSPERITY - The Critical And Missing Component Of USG 'Soft' Strategy**

During the Reagan years when George Shultz presided over a business conference at the State Department, he was asked for a brief explanation of American foreign policy. Without hesitation he responded, "Establishing Peace and Prosperity." That's it, in a nutshell.

#### **PURSUE A U.S. POLICY FOR ECONOMIC FREEDOM ABROAD -- AS A VIABLE LONG -TERM ALTERNATIVE TO WAR**

To carry out the Schultz vision, the United States should act forcefully to cultivate champions abroad who will pursue Peace and Prosperity through instituting Economic Freedom. The elements of Economic Freedom are elaborated in the Heritage Foundation/Wall Street Journal Index of Economic Freedom. To this end, the United States should encourage country leaders abroad to institute economic reform conditions in the Index of Economic Freedom that will empower people to earn a living, safeguard life and family, and pursue personal dreams. Given Economic Freedom, platoons of citizen patriots will emerge who will stand up to tyrants, domestic and foreign, who rob them of dignity and the opportunity to prosper on their own. These citizens have the personal motivation to protect their own property, combat terrorists who harm them and their families, and to counter thugs and bullies in the bureaucracy.

The time has come for Americans to discover that there will be no Peace and Prosperity in nation states which deny Economic Freedom to their people. This includes creating and enforcing the rule of law (and *not* the rule of men), protecting private property, opening the nation's official books for public inspection (transparency), and allowing all parties, foreign as well as domestic, to trade and invest under just and equitable tax and regulatory regimes.

Of this we can be sure, war will prevail within and between nations until the full body politic establishes and abides by agreeable and agreed upon modus operandi for producing and distributing property and material goods within country borders. **National systems created around free markets have proven themselves superior at fulfilling the basic needs of modern states**

### **3. INSTITUTING ECONOMIC FREEDOM LEADS TO PEACE & PROSPERITY - The Critical And Missing Component Of USG Soft Strategy**

**whose people actively participate in the global economy.** Citizens who acquire their own mailing addresses and actual title to goods are no longer precluded from engaging in trans-border trade because of their inability to prove ownership of the products they seek to exchange.

As of today, none of the Presidential candidates, and neither the Administration nor the Congress, have offered a clear, practical strategy for promoting Peace and Prosperity within and among the world's many nation states. American officials have not discovered and called for the pursuit of Economic Freedom as a powerful 'soft' policy instrument for promoting Peace and Prosperity. Instead, they tend to rely on more limited, traditional civilian instruments of national security -- political diplomacy, strategic communication, foreign aid, civic action and state-managed economic reconstruction and development.

**American officials and academics** tend to equate the creation of conditions for Economic Freedom with "economic development." Further, they **assume that infrastructure and state-run institutions are sufficient ends in themselves. In U.S. foreign operations, they focus on completing separate "development projects", such as a hospital or credit union, rather than on systemic change which provides laws, practices and enforcement procedures necessary for the separate project to succeed. But the government planners are mistaken. They will never see the hoped-for sustainable economic development materialize until the hard work is done by country nationals to establish the requisite institutions of Economic Freedom needed for projects to succeed.**

However, there are U.S. technical advisers and managers who know how to inspire natural leaders and "productivity teams" in emerging countries to create the friendly business climates and "rules of the game" necessary for Economic Freedom to take hold. But the transformational work to enable country nationals to build country business climates is arduous and requires adept diplomacy, as well as, business organization and management skills and political institution building. It also involves some risk and considerable time.

#### **4. A NEW DIRECTION FOR UNCLOS PLAYERS TO ADVANCE PEACE, PROSPERITY AND HUMAN DIGNITY**

Perhaps America's presidential candidates are in the best position today to call for transformational change in U.S. international economic policy and practices. They should break out of the mindset that binds long-time politicians, bureaucrats and academics, who traditionally rely on the leverage of government foreign aid to induce foreign officials to liberalize economies by introducing economic reforms necessary to create free market economies.

The presidential candidates instead can offer multifaceted strategies to create Economic Freedom country by country -- to offer people everywhere grounds to hope for Prosperity in their neighborhood, Peace in their life time, and realistic prospects for fulfilling their personal dreams.

To counter war and preserve U.S. national security we must reduce hostilities between states and the evil actions of terrorists, radical Islamists and others intent upon destroying our way of life. We must secure Peace and Prosperity so that robust exchanges may take place within and between states, facilitated by open trade and investment conditions that serve the needs of peoples from all walks of life.

Rising prosperity that raises all boats is the best way to alleviate poverty and diminish deprivation. Growing opportunity for youth lures young people away from destructive bedfellows and terrorist cells, and towards self-fulfilling work, independence and happiness.

**Most importantly, to promote sound progress toward Peace and Prosperity, the next President must provide astute economic and political policy leadership from the Oval Office. The aim will be to secure productive responses from and interaction among the various U.S. governmental departments, as well as, informed cooperation between the incoming administration and the members of Congress. In addition, it will be necessary to reach out to multilateral, regional and bilateral institutions, including the World Trade Organization, the World Bank and UN specialized agencies.**

## 5. UNCLOS: Stepping Stone For Global Governance:

By joining those nations that have ratified the UNCLOS, a massive multilateral treaty that espouses values of communalism rather individualism, the United States could unwittingly destroy the societal fabric woven originally by the Founding Fathers following the Revolution, which has since been enshrined in our Constitution.

The UNCLOS/UN General Secretariat coordinates with and is supported by the UNEP and several of the core MEA Secretariats, which follow the CHM and sustainable development doctrines. And, these doctrines, in turn, are reflective of European Union legal, economic and cultural values, which favor communal over individual rights.

*[See Section VIII of UNCLOS 2008: A Critical Review].*

Also, by ratifying the UNCLOS without adequate prior review, the United States could inadvertently end up supporting, albeit indirectly, a system of Precautionary Principle-based Global Regulatory and Tax Governance administered by an unaccountable UN General Secretariat.

During the negotiation of UNCLOS III in the 1970's, it had been hoped that the user fees charged by the UNCLOS' newly created International Seabed Authority to private parties for the right to engage in deep-sea mining in 'the Area' could serve "as a means of raising [much-needed] funds for the UN". However, it was soon realized that market forces were going to prevent this opportunity from materializing into a money-making proposition.

Following the 'efficiency review' of UN programs undertaken during the early 1990's... it was concluded that the traditional "pattern of international assistance and other public financial flows, which relie[d] almost completely on unpredictable voluntary contributions, ha[d] become obsolete and [] woefully inadequate." In order to generate a more steady source of general and special revenues that could be used in the future to respond to what was perceived as "the urgent [environmental] challenges before [them]" (which apparently have still not abated), UN officials and supporters "call[ed] for a new approach to questions of international public finance." Such approach included consideration of *an alternative "system of taxes, user fees and other mechanisms that could generate substantial revenues on an automatic rather than a discretionary basis...[and]...be used to fund general and ocean-related development programmes and also the regulation and conservation of ocean resources."*

*[See Section IV.A of UNCLOS 2008: A Critical Review].*

## 5. UNCLOS: Stepping Stone For Global Governance:

If our sovereignty as a nation is placed at risk, our sovereignty as a people will also be jeopardized.

Quite importantly, if we relinquish our governing authority, in whole or in part, as the result of participating in a multilateral treaty regime like the UNCLOS, we could, in effect, be ceding our sovereign power to an UN-centered Global Governance system. Sovereignty and the question of how to preserve it, is as old as our nation. It is the same issue American patriots faced during the 1770's. The patriots answered this question by launching a rebellion against King George III and his taxation edicts.

**“Historians of the colonial era are virtually unanimous in concluding that the American Revolution was fought over private property and the English refusal to apply to their own colonists the great constitutional principle of England: legitimate taxation of privately owned resources can derive only from the people’s elected representatives. Said John Wilkes, Lord Mayor of London, during this time, ‘If we can tax the Americans without their consent, they have no property, nothing they can call their own’” (emphasis added).**  
**O. Lee Reed, *Exclusive Private Property is Indispensable to Brazil’s Economic Development*, International Journal of Economic Development Volume Eight, Numbers 1-2 (Sept. 2006)**

Similarly, American accession to the extensive UNCLOS legal framework can potentially bestow the international institutions of the United Nations with significant powers that are then redirected by the "imperceptible/invisible hands" of certain European Union member states for purposes that are anathema to American interests. In other words, these guiding hands can be used to put into place a Top-down Global Governance system that enables international institutions to 1) manipulate by-laws, standards and practices at our expense and to the favor of preferred nations; 2) tax and regulate Americans, without the prior approval of the U.S. Congress (or the legislatures of other nations); and 3) compromise and render vulnerable the political, economic and military positions of less powerful and influential nations.

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

The structure of the UNCLOS, its relationship to numerous other international environmental agreements, and the communitarian principles that underlie them all constitute warning flags that arguably provide grounds for concern. Does the UNCLOS pass the litmus test of Economic Freedom? Does it meet rational empirical science-based decision making?

The UNCLOS has not been properly researched and scientifically investigated by the U.S. Executive and Legislative branches. Neither have these organs of U.S. government closely examined whether the UNCLOS' environmental regulatory rules can: 1) advance sound environmental policy; 2) ensure objective, balanced enforcement free from the political influence of special interests having philosophical, political and economic leanings antithetical to free markets and the protection of exclusive private property rights; and 3) guarantee that the Rule *of* Law, **NOT** the Rule *by* Law, is the order of the day - i.e., that Rule *of* Law is NOT undermined, circumvented or usurped by the Rule of Men to support a system of unaccountable supranational power where top-down rather than bottom-up Global Governance reigns.

As a result of inadequate executive and legislative branch review and oversight of the UNCLOS and its relationship to the burgeoning United Nations Environment Program (UNEP), U.S. policymakers have remained largely unaware of or silent about how the U.S. State Department continues to fund and seek future funding for these organizations/institutions - despite the fact that such funding can be, *and* in some cases, is actually being, employed against U.S. national sovereign interests. For one thing, the UNEP is *the* multilateral environmental treaty-making machine of the UN, which the European Union, specifically, France and Germany, aim to enlarge and reform into an International Environmental Organization with vast powers to facilitate global environmental regulatory and economic governance over U.S. affairs, based on *other than* free market, private property, Rule *of* Law and scientific principles.

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

It is therefore surprising that the U.S. State Department has actually funded the UNEP in the neighborhood of \$42 million from 2004-2007 (\$11 – 2004, \$11 – 2005, \$10 – 2006, \$10 – 2007), has estimated 2008 UNEP funding in the amount of \$10.4 million, and has recently requested additional 2009 UNEP funding in the amount of \$9.5 million – for a total of \$20 *more* million! <sup>1</sup> Adding insult to injury, the U.S. State Department has also, on at least two occasions, sought federal budget line funding for the International Tribunal for the Law of the Sea (ITLOS) and the International Seabed Authority (ISBA). These funding requests were submitted FY 2006 (ITLOS - \$1.9 million; ISBA - \$1.2 million) and just recently FY 2009 (ITLOS – \$3.6 million; ISBA \$1.3 million)! <sup>2</sup>

What is the sound rationale justifying the U.S. State Department's appropriation of monies to the UNCLOS [**a treaty not yet ratified**], to the tune of approximately \$5 million dollars? If the monies are being allocated to the UNCLOS, where other treaty parties hostile to U.S. interests are endeavoring to 1) refocus and reshape the UNCLOS into a more communal, centralized legal framework and 2) utilize the UNCLOS' interrelationship with the UNEP to eventually establish a global governance system that would compromise U.S. national sovereignty, will we not undermine ourselves by building a “Bridge That Leads to Nowhere”?

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<sup>1</sup> See U.S. State Department “Summary and Highlights - International Affairs Function 150 Budget Requests”, ‘Contributions to International Organizations’, FY 2009 at p. 92, at: <http://www.state.gov/documents/organization/100014.pdf> ; FY 2008 at p. 109, at: <http://www.state.gov/documents/organization/80151.pdf> ; FY 2007 at p. 88, at: <http://www.state.gov/documents/organization/60297.pdf> ; FY 2006 at p. 90, at: <http://www.state.gov/documents/organization/41913.pdf> .

<sup>2</sup> See U.S. State Department “Summary and Highlights - International Affairs Function 150 Budget Requests”, ‘Contributions to International Organizations’, FY 2006, supra at p. 92; FY 2009, supra at p. 96.

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

...The German proposal called for the expansion and conversion of the UNEP agency into a centralized overarching supranational Earth Alliance (umbrella organization) effectively consisting of three interrelated organizations/chambers/pillars: an International Environmental Organization (IEO), an Earth Commission and an Earth Funding body. It also proposed establishing UN trusteeship over the global commons, which covers not only the oceans, but also the airspace above, as well as, outer space. In addition, all of the MEAs would fall under the auspices of the IEO. Furthermore, funding to maintain the commons would be derived from a combination of ‘user fees’, public funds and private donor funds. And, the scope and extent of the permitted uses as well as their rate of charge would likely be regulated by reference to the assessments of environmental harm triggered by the specific activities in question as determined by one or more of the scientific panels listed or to be created.

The French proposal was politically more ambitious. It called for “the establishment of an international environmental organization” capable of providing “global environmental protection and sustainable development with a clearly audible voice at the United Nations”, to mitigate the negative effects of globalization. The French proposal has three main objectives: 1) “to raise the profile of international environmental agreements [MEAs]; 2) “to build institutional capacity”; and 3) to streamline environmental and other institutional demands”. “France [is] commit[ted] to global governance of the environment and to the...creation [of]...a United Nations Environment Organization. I am pleased to say that there is already growing international support for this, with Rio and Kyoto providing tangible evidence” (emphasis added).

*[See Sec. II A-C of UNCLOS 2008: A Critical Review].*

With Global Governance taking root, the hard fought liberties based on our Founding Fathers’ Economic Freedom principles and structure come under attack. Prospects for establishing the dozen elements of Economic Freedom within developing and emerging countries become problematical. Some emerging countries are making strides toward

Economic Freedom and self sufficiency. However, it is most unfortunate that many smaller countries are less equipped to deal with the sophisticated enforcement of politically, economically driven law. These countries can have their Economic Freedom conditioned, stymied or ground to a halt.

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

Furthermore, it is both negligent and dangerous not to look at and learn from the recent and current enforcement failures of the United Nations, which constitutes evidence of the faulty administration of The Rule of Law. Hence, the intent behind and the workability of the UNCLOS treaty is highly suspect, as is the ability of UNCLOS parties implementing its enforcement measures to alleviate true environmental concerns. It also leaves us wondering why leaders of certain countries are convinced that ‘buying into’ the UNCLOS, the U.N. and its supporting bodies makes things better rather than worse. Why would such persons favor an UNCLOS which can lead to a global governance system that is directly or indirectly formulated around or tied to the extra-WTO “Precautionary Principle”?

It is my opinion that realistic and applicable “regional” economic, environmental, political, and military stewardship must first be forthcoming. Sovereignty, independence and freedom for all countries *must be* the first priority of the U.N. and its supporting bodies where Economic Freedom and Prosperity *should be* firmly rooted. A *top-down, across-the-board Global Governance model* shaped, monitored, controlled and directed through implementation of multilateral treaties like the UNCLOS and its regional progeny would not necessarily solve particular local and regional endemic problems. Top-down Global Governance mandates, whether implemented at the global or regional level, would provide larger, more influential and powerful countries and their allies a larger political and economic piece of the pie. This holds true especially when the environment is the policy issue to be regulated under the UNCLOS and other UN agreements.

Given the current bad practices and ill conceived examples set by the United Nations in other of its programs and initiatives, how will current and past UN governance failures, with their bureaucratic management (administration) mishaps and large political missteps, be overcome in the future? Do the UN General Secretariat and the UN Environment Program treaty secretariats undertake practices that meet the threshold of the Rule of Law, Transparency, Accountability and Good Governance?

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

The International Seabed Authority's (ISBA) record and reputation for transparency and accountability, thus far, has been less than stellar. Recent media reports, for example, have revealed a cover-up of what appear to be internal administrative improprieties. In addition, the UNCLOS expressly provides the ISBA with absolute sovereign immunity. This serves to protect the ISBA and its property and assets, within each UN Member territory, from legal process, search and seizure and "restrictions, regulations, controls and moratoria of any kind". Furthermore, the ISBA's archives, wherever located, are granted the privilege & immunity of nonviolability. And, State Party representatives performing official functions on behalf of their governments in connection with their work in the ISBA Assembly, Council and subsidiary organs, as well as, the ISBA executive and its officers and staff, are all immune from legal process.

Such protection from accountability is consistent with the broad and absolute immunity from prosecution that has been afforded the United Nations and its officials, as has been recognized by U.S. courts, which has more than likely contributed to a number of high-profile UN scandals during the past decade, among them, the UN 'Oil for Food' and UN Peacekeeping Operations scandals.

*[See Section IV.A of UNCLOS 2008: A Critical Review].*

In other words, countries should ensure that governmental interventions first work in their own regions (backyards). This requires that they "work out all of the bugs" before their regulatory instruments are 'rolled out' globally. Upon careful review, they may decide to handle issues differently amongst themselves. These issues may concern the environment, economics, politics, genocide, war crimes, woman and child abuse, poverty, humanitarian aid, self-policing, and military intervention.

As we all know, the United States cannot continue to serve as the world's policeman. Countries must step up and learn to act on their own [from the bottom up] and work with surrounding countries to address regional problems. While the United States can intervene when called upon, if absolutely necessary, regional and national self-sufficiency should be the order of the day.

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

Conversely, at the United Nations, it appears that Global Governance is becoming the fashion of the day, with certain EU countries taking the lead.

It would be far easier to conserve limited UN and national resources if countries were to allocate their time and energy to regional stewardship rather than to supporting a costly Global Governance system. Also, countries would find it far easier to move towards Economic Freedom & Prosperity. No one knows a country's needs better than its citizens, and perhaps, also the peoples of neighboring countries. And who else knows more about a country's troubles than its regional expatriates and Diaspora who, having once fled their country for political or religious reasons, now inhabit the surrounding areas.

Humanity would be much better served if UN and national resources were directed at equipping countries to handle critical and urgent *regional* problems. Such limited resources could then be appropriately applied to address immediate national and local needs. A Global Governance shield is not practical, sound, country-applicable, or regionally viable. Its operation is often impaired by a largely inaccessible bureaucratic system. This is a call for the United Nations to decentralize its power and to reduce its influence; i.e., to give the power and strength back to the local people where it belongs.

Unfortunately, countries not interested in tackling their own endemic national or regional problems can easily secure global assistance by joining and hiding behind the UNCLOS regime. Using the UNCLOS as cloak of invisibility, they may also prey on smaller, often third world, nations as they weaken and become less politically, economically and militarily viable.

It is important to note: This constructive criticism is not directed at the stewardship of the new U.N. Secretary General Ban Ki- Moon. The General Secretary has had his hands full dealing with many critical matters where

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

the U.N. did not sufficiently reach out. This Report calls upon the United Nations to straighten itself out and rally around U.N. Secretary General Ban Ki-Moon, in order to provide him with the opportunity to correct that organization's endemic problems. It also calls for the U.N. and SG Ban to look closely at strategies, tactics and funding for "*Regional Sustainable Development Program [RSDP] soft strategies with natural country leaders and "productivity teams"*", while maintaining U.N. outreach to international and bilateral institutions such as the World Trade Organization, the World Bank and UN specialized agencies.

What a "*Regional Sustainable Development Program*" signifies:

The Regional Sustainable Development Program is launched with broad-based infrastructure and practical education projects in one or more countries having common development interests. The U.N. and USG can encourage countries to work together in these beneficial regional development programs. The Program offers states a political, environmental, economic, public policy and policing/military development-driven Initiative that responds to the interests and needs of the present without compromising the ability of future generations to meet their own needs.

A particular RDSP project offers the opportunity for input (transparency and feedback) by provincial and local officials, natural country leaders and Ordinary People to the selection, design, and execution of the endeavor. The project provides Bottom-Up experience in governance and development.

The RSDP- Project offers citizens a motive and path for breaking out of the informal sector, underground economy and black market. By involving citizens in decision-making from the beginning, RSDP- Projects address the "real factors" that keep Ordinary People operationally working in the "shadow economy."

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

What a “*Regional Sustainable Development Program*” signifies:

Collaborative measures and resources started within a host country, augmented by resources and know-how of each country joining a RSDP, will help instill the idea that a country is not alone when it acts to “reach out” to other countries to remove constraints it cannot handle alone. Simply stated, the resources, manpower and assembled (participatory) knowledge of the RSDP are stronger than any one nation, but each nation stands on its own two feet. Each nation develops and applies its own policies, Rules of Law, Property Rights, court systems, and constitution in accordance with how its citizens are predisposed through their own historic and pragmatic traditions.

What “*Productivity Teams*” signify:

“**P**roductivity Team members can receive the practical, “hands-on” training and experience to see how local/regional free market communities truly interact. Observing the spontaneous interactions of free market entrepreneurs can yield immeasurable results for the Productivity Teams that exceed the sum of their parts. Productivity teams can learn: 1) How free market entrepreneurs lead their daily lives in working with each other; 2) How entrepreneurs mix their talents to move goods and services across the board; 3) How entrepreneurs channel their goods and services through the various points along the supply and distribution chain; and 4) About the private lives of entrepreneurs; namely, how they often work charitably for the benefit of volunteer agencies – “people helping people.”

**T**eam members are composed of natural leaders from enterprise, local government, labor and civil society. Team members, drawn from the productive sectors, are the actual producers, marketers, organizers and administrators who take the risks and do the work of the country. They account for its gross national product. Team members travel to the United States for two week work/study free-market system orientation and familiarization tours. They see first hand how Americans in business, civil society, schools, places of worship, and government work in tandem to produce results and achieve common goals.

## **6. Rule of Law and Proper Empirical Scientific Investigation:**

What “*Productivity Teams*” signify:

While traveling to countries with free markets, Productivity Team members can also discover an array of institutions. They may include competently run state and local governments, banking and financial institutions, Land Grant universities serving farms and agribusinesses, as well as, voluntary associations, civic societies and religious communities actively engaged in changing the lives of neighbors. Unquestionably, The Productivity Team is a “Critical Component of Soft Strategy Implementation.”

However, many countries are incapable of creating such institutions, let alone, of establishing the underlying order and security essential for societal stability. These nations may therefore need to rely on their regional neighbors for policing support. Regional policing/strike forces could be maintained (called into action by neighboring countries) to handle in-country terrorist(s) actions and to halt terrorist(s) activities, where smaller countries or newly formed elected governments lack sufficient resources and means to protect and defend themselves from outside encroachments by small bands of military trained terrorists, militias or insurgents.

In today’s world where Weapon’s Of Mass Destruction can easily proliferate, Regional Policing and Strike Force deployment is a practical and sound way to go. Local and regional state police and military personnel know the lay of the land with the local people, the hiding and storage places, and places that offer offensive and defensive strategic and tactical advantages for asymmetrical guerilla warfare.

In addition, these regional policing/strike forces can also be deployed to handle disaster relief and provide humanitarian assistance, in partnership with Non-Governmental Organizations [NGO’s]. The policing/strike forces can help to ensure that goods (supplies) and services reach their intended destinations so that the people, and *not* the elites, benefit from them. Unfortunately, this did not occur in the Sudan, where supplies and services moved immediately into the hands of the elite. Through strong-arming, the elite then enriched themselves at the expense of the deprived and needy people of the Darfur region. This not only resulted in mass suffering, but also precipitated the destabilization of the region.

## **7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:**

The image of our fearless, dauntless and high spirited ancestors, with their good ol’ “American Know How” and “American Ingenuity”, which continues to inspire us, has arguably served as *the* primary basis of our everlasting freedom, independence, growth and prosperity. Therefore, it is safe to say that America’s strength, courage, power and might stems from these roots of Economic Freedom and Prosperity:

- 1) From the very first days of the tremendous formidable toils and struggles at Jamestown, Virginia (1607), we have come to acknowledge property rights as a means to establish, maintain, and sustain a town;
- 2) From the fearless and dauntless days of the Homestead Act [1862 /Abraham Lincoln], people pursued the American dream of acquiring rights to property, deeds and titles, and embraced themes such as, “Go West Young Man and Find Your Fortune”;
- 3) From the marvels of the great industrial and post industrial era high-technology booms of the 19<sup>th</sup> and 20<sup>th</sup> centuries, which triggered unparalleled economic/environmental viability, sustainability and prosperity in America, Americans have come to recognize the timeless wisdom of former U.S. President Abraham Lincoln and famous American inventor Thomas Edison: President Lincoln once said that the American patent system “adds the fuel of interest to the fire of genius”, while Dr. Edison’s invaluable insight was that, “The value of an idea lies in the *using* of it”.

Indeed, America has a strong and hard-fought rugged history of political and economic successes, struggles and mistakes that has vested itself in Americans’ collective identity. Given the new evolving dynamic of the 21<sup>st</sup> century knowledge economy, Americans are even more likely to rely upon the sustainable power and strength begotten from “American Know How” and “American Ingenuity.” Americans pride themselves [and rightfully so] on their Know How and Ingenuity. This is why the United States has continued to rise in power and strength despite tough economic and political times. We are used to working headlong together,

## **7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:**

and to facing continuing and challenging global forces as we shape and carry out our foreign policy. We work things out for ourselves because we know nobody else can or will do it for us.

In addition, as a world power, America is *the* land of opportunity because "we protect and defend the principles set forth in the U.S. Constitution" -- principles made inoperable by the UNCLOS Treaty. It is our very own separation of powers [Executive, Legislative and Judicial Branches] "that helps assure our individual liberty and freedom."

America is a democratic republic with a pluralistic, egalitarian, libertarian and humanitarian Civil Opportunity Society. It is a nation where we can protect and defend one another's *individual* rights, freedoms, and liberties, which foster and encourage “American Know How” and “American Ingenuity”, for the sake of the American society as a whole.

It is this **Civil Opportunity Society** – comprised of both leaders and a highly spirited, free and independent people – that engages, embraces, protects and defends each other so that our “American Know How” and “American Ingenuity” can benefit us all. The 12 Living Elements of our Civil Opportunity Society can also serve as a good role model for other countries. The Elements are:

### **12 Living Elements Of A Civil Opportunity Society**

1. Constitutions are written with checks and balances;
2. Court systems are developed and supervised with honest judges who fairly and equally uphold the law for all citizens, and an efficient Civil Service system is established;
3. Even handed systems of sheriff and police enforcement are established; and the Professional Military – Security Force is neutral and impartial;
4. All-inclusive titled property rights are protected and defended;

## **7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:**

### **12 Living Elements Of A Civil Opportunity Society con’t**

5. A free independent press reigns;
6. Free elections are held with independent oversight commissions;
7. Transparent governments are formed, an independent Central Bank is established, and a currency is established and stabilized;
8. Standards and practices, with a basis in rule of law, empirical science and economic cost benefit analysis, are adopted, instituted and enforced;
9. Individual ownership and individual enterprise flourish and are respected;
10. Privatization is viewed as a viable alternative;
11. Basic education is deemed essential and honored for all citizens;
12. Religious customs and cultural heritage are fully respected, honored and protected.

**[Source: Moran - Johnson SPI 2005]**

However, these 12 Living Elements can be severely compromised, and America’s unique identity extinguished, if the U.S. Senate hastily ratifies the UNCLOS Treaty without undertaking beforehand an open, publicly transparent and thorough review of its many environmental regulatory provisions. As previously discussed, the UNCLOS sets forth a clear blueprint for a U.N. created Global Governance System of centralized power and influence which directly threatens American interests.

A Top-Down Global Governance model is not a good proposition for the United States and its citizens; nor is it a good proposition for other nations and peoples around the world, especially those looking to establish for themselves, in their own way, a Civil Opportunity Society.

## 7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:

In Washington, D.C., I am a member of a group of very high-spirited Americans who hang their hats at the offices of the Property Rights Alliance (PRA). The PRA is an organization that vigilantly monitors the extent to which our “American Know How” and “American Ingenuity” (i.e., U.S.-owned intellectual property rights) are being safeguarded and/or abused, both here and abroad. The PRA also watches and rates how other countries are progressing or not progressing with their own respective “know how” and “ingenuity.”

The very first comprehensive Property Rights Alliance world report was released early last year. It is called the **International Property Rights Index 2007 Report**. What I witnessed after attending its launch at the National Press Club was, frankly, remarkable. Country nationals were engaged with each other in direct “**exploratory discussions**” and “**in-country dialogues**”! These discussions revealed a high level of interest and curiosity concerning: 1) what other countries are doing to achieve the dozen Elements of Economic Freedom; 2) how countries are individually progressing in their own right; and 3) where countries rate as compared to other countries. These metrics, to the say the least, were deemed very helpful.

The **International Property Rights Index** arguably provides countries with a new extremely useful tool for measuring the impact (direct and indirect) of their governmental interventions (executive, legislative and judicial) on private property ownership and exchange, and by extension, national economic activity. The much broader *World Bank/IFC Doing Business Index* has long recognized, but not focused on, the central role that private property ownership and exchange plays in economic growth. By concentrating on this important relationship in 115 countries (and the list of countries evaluated continues to grow each year), the IPR Index can enable country governments to more effectively gauge their economic performance against those of other countries. The benefits can be significant. IPR Index metrics can help governments and local companies to secure highly sought after foreign direct investment funds from the capital markets. In addition, country leaders can use IPR Index metrics to reform governmental practices

## **7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:**

for purposes of satisfying international institutional financing standards – e.g., the United Nations, IMF and World Bank ‘good governance’ requirements of transparency, responsibility and accountability. The satisfaction of IPR Index metrics, in other words, can facilitate greater competition among countries to establish more market-friendly enabling environments that protect private property rights and foster economic growth. Consequently, the task of satisfying IPR Index metrics is likely to be viewed as preferable to jumping through the needlessly convoluted hoops that are now being designed by *supranational* bureaucrats obsessed with maintaining a high-cost, top-down Global Governance system.

The UNCLOS Treaty is highly suspect because of its central place in the evolving Global Governance system. What has been quite shocking and alarming to all of my friends is that the UNCLOS regime can: 1) infringe upon individual liberties and private property rights; 2) undermine or take away intellectual property rights [patents and copyrights]; and 3) usurp US national sovereignty, thereby circumventing parts of our Civil Opportunity Society.

One disturbing theme repeatedly encountered while undertaking the research to prepare this UNCLOS paper is the primacy of global society’s public rights in the *res communis* over individual private rights. This one principle supports what seems to be the almost limitless authority exercised by *European* governments to tax or impose user fees on private economic activities for any identified public environmental purpose, at the expense of the basic freedoms and fundamental rights of ordinary Europeans.

***[See Section VIII of UNCLOS 2008: A Critical Review].***

In the view of certain commentators, the notion of *res communis* would extend as well to patents derived from bio-organisms prospected from the deep sea beds and water columns – i.e., “the Convention [UNCLOS] provides fairly clear grounds for denying patentability for products derived from pure marine scientific research and for those covering organisms themselves collected in the Area.” Similarly, the UNDP considers knowledge as a type of ‘human-made’ global public good (GPG).

***[See Section IV.B.2 of UNCLOS 2008: A Critical Review].***

## **7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:**

The UNCLOS Treaty can require the United States to give away U.S.-owned tangible and intellectual property (intangible) rights to countries which: 1) we do not trust; 2) may be our enemies; or 3) are not accountable and responsible to their own people. In some of these countries genocide, human rights violations, and woman and child abuses continue, and violence, suppression, strong-arming and war is their main choice of power politics. These countries systematically deny their own citizens the ability to secure a positive future for themselves and their families. Ordinary people, in other words, are provided little or no opportunity to secure a job, to own a home, to start a business or to acquire other forms of property. In effect, the opportunity to realize their dreams in a Civil Opportunity Society is intentionally being withheld.

Let us look at what James Lyons, U.S. Navy retired admiral, former commander in chief of the U.S. Pacific Fleet, senior U.S. military representative to the United Nations, and deputy chief of naval operations had to say on the UNCLOS:

*“Given the current war on terror, we cannot deny our Navy the ability to carry out legitimate naval intercept operations against vessels carrying possible nuclear weapons or other weapons of mass destruction... More important, the treaty requires U.S. companies to transfer strategic technologies to Third World countries, some of them declared or potential enemies of the U.S. ...\_If the United States joins a treaty that allows for this sort of maipulation, we will still be subject to the Treaty's requirements, and will not necessarily be able to influence decisions concerning China and Russia.”*

In addition, two former secretaries of the navy, Bill Middendorf and John Lehman, have also signaled their opposition to the UNCLOS.

## **7. Losing “American Know How” and “American Ingenuity” Under UNCLOS:**

Here is what Larry Kogan, my LOST IN THE LOST ‘colleague-in–arms’ and author of *UNCLOS 2008: A Critical Review*, had to say:

**“[UNCLOS can be used to] seriously *impair U.S. industry's global economic competitiveness and undermine and significantly reshape the American legal and free enterprise systems.*”**

Finally, let us seriously consider what Frank Gaffney, President/CEO of the nonprofit Center for Security Policy, who has testified before the Senate Foreign Relations Committee, had to say:

***“UNCLOS’ broad jurisdiction, involving virtually anything affecting the world's oceans, is an invitation to U.N. interference in United States affairs on an unprecedented scale... The Law of the Sea Treaty [LOST] is inconsistent with American security. As a party [to UNCLOS], the United States would be obliged to uphold myriad commitments at odds with our military practices and national interests, including the obligation to ensure that the oceans are reserved exclusively for "peaceful purposes."***

## CONCLUSION

### CONCLUSION – FIVE OVERARCHING ISSUES

**The UNCLOS and its relationship with multiple U.N. institutions, agencies and programs gives rise to FIVE OVERARCHING ISSUE AREAS OF CONCERN:**

**1) NATIONAL SECURITY:**

Under what circumstances and in what situations can the UNCLOS, the U.N. and the U.N.'s ancillary bodies place the United States in a disadvantaged or compromised position, now or in the future?

**2) CONSTITUTIONAL RIGHTS:**

How, can the UNCLOS, the U.N. and the U.N.'s ancillary bodies be utilized to supersede U.S. Rights recognized under the 5<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution? To what extent can UNCLOS, U.N. and U.N. ancillary body tribunal decisions result in sticky and questionable U.S. Constitutional law case reviews, and ultimately judgments that U.S. courts are required by international law to enforce, even though they may potentially compromise these Rights?

**3) COMMERCE, TRADE AND U.S. CORPORATE VIABILITY:**

How, when, or to what extent, now and in the future, can the UNCLOS, the U.N. and the U.N.'s ancillary bodies undermine the free market principles of U. S. trade, property rights, and intellectual property rights so as to cripple U.S. corporations and the USG overseas? What we see here are evolving strictures on U.S. economic, political and military sovereignty that will prove disastrous for American consumers and U.S. industrial and technological competitiveness. Can these treaties encourage countries to issue compulsory licenses on spurious grounds pursuant to the so-called 'TRIPS flexibilities' to illegitimately obtain and then reverse-engineer patents, devices, research and development and other related services [including important military complex technology and weaponry] at below market, and perhaps even, below cost prices? To what extent can these treaties, now and in the future, be applied unfairly

## CONCLUSION

### CONCLUSION – FIVE OVERARCHING ISSUES CON'T:

to small and medium-sized U.S. businesses, for the purpose of impairing their ability to compete internationally with our large U.S. corporations? It must be remembered that, because of their ‘economies of scale’, large U.S. corporations can endure greater losses [often with little consequence], and tolerate higher fines, levies and taxes than can smaller, medium-sized U.S. companies.

4) NO SOUND RULE OF LAW & SOUND EMPIRICAL ENVIRONMENTAL SCIENCE:

**The Executive Branch and the Congress must** unequivocally prove that the UNCLOS, U.N. and the U.N.’s ancillary bodies are governed by Rule of Law and Sound Empirical Environmental Scientific principles. **How can such proof be provided, “ABSENT”** public hearings in Congress under oath within those of its various sub-committees possessing oversight jurisdiction, attended by all agencies and departments of the Executive Branch, with specialists, scientists and experts on the environment who have supporting substantive material “for or against” such positions, serving as witnesses?

5) U.S. MILITARY:

**The Executive Branch and the Congress must** show unequivocally that the UNCLOS, the U.N. and the U.N.’s ancillary bodies do not place U.S. Military personnel, now and the future, in precarious legal [challenging] situations, during both short term critical intervention crisis stages and long term deployments [land, sea and air].

**In addition,** the Global Governance system that continues to evolve under the auspices of the UNCLOS, the U.N. and the U.N.’s ancillary bodies poses increasing material *risks* to American private sector suppliers of U.S. Military goods and services. Failing to examine in advance the potential damage which could be inflicted on United States military, economic and technology *supply-chains* by aggressive foreign powers’ leverage of environmental laws (*lawfare*), intelligence, technology and financial resources leaves our great country in a vulnerable, untenable position.

## CONCLUSION - Executive Branch & Congress Dilemma

### Connect UNCLOS Dots with How Americans Do Business in the Global Economy

*“We ought not to look back unless it is to derive useful lessons from past errors, and for the purpose of profiting by dear-bought experience.”*

**George Washington**

#### ISSUES:

How does the Executive Branch and Congress fulfill their obligations to the American People by exercising due diligence in connecting the dots between the UNCLOS, the U.N. and the U.N.’s ancillary bodies, so that Americans can continue to successfully do business in the global economy?

How does the United States Executive Branch, with all of its agencies and departments, correctly address the breadth and depth of the comprehensive UNCLOS, considering its complex, inextricable and interwoven relationships with numerous United Nations multilateral environmental agreements, secretariats, agencies, etc.?

How does the United States Senate and House of Representatives, with all of their responsible congressional committees and subcommittees, correctly address the breadth and depth of the comprehensive UNCLOS, considering its complex, inextricable and interwoven relationships with numerous United Nations multilateral environmental agreements, secretariats, agencies, etc.?

#### RECOMMENDATIONS:

The U.S. Congress and each U.S. Department and Agency should directly address the UNCLOS. Such action requires public hearings under oath conducted on the issues, concerns and problems that are deeply embedded and hidden throughout the body of the UNCLOS. The U.S. Congress has the obligation to candidly and directly address how the

## **CONCLUSION - Executive Branch & Congress Dilemma**

### **RECOMMENDATIONS con't:**

UNCLOS relates, correlates, and serves as a linchpin to other treaties and laws. As of this date, proper and fitting hearings in the House and Senate have not transpired. Accordingly, hearings in the House and Senate should be scheduled not only to look at the UNCLOS provisions, but also to directly focus on: 1) The Rule Of Law and how it relates to our U.S. Constitution; 2) The Treaty's direct and indirect effects on free trade; 3) How the treaty can be used by foreign governments and companies to employ unfair practices against: a) U.S. citizens in foreign countries and b) U.S. corporations doing business in foreign countries; 4) The treaty's inherent incompatibility with the notions of individualism and private property rights, taking into account how its rules can be used to infringe on private tangible and intellectual (intangible) property rights; and 5) How the treaty's provisions and protocols can and will, directly and indirectly, impair U.S. armed forces' ability to freely act on land, sea and air.

### **BOTTOM LINE:**

Members of the U.S. Congress take an oath to practice due diligence in appropriating monies. This entails exercising oversight by undertaking reviews so that proper investigations, research, comprehensive analysis, and review findings will be brought forward and shared between Congressional committees, Executive Branch departments and agencies, and with the American public. Why has the U.S. Congress failed to exercise its oversight responsibilities in regards to the UNCLOS? Should not the U.S. Congress be required to publicly demonstrate how the UNCLOS would actually impact our trade, business, individual, and corporate rights and national security?

## CONCLUSION - American Citizens & Scientists' Dilemma

### Connect UNCLOS Dots For U.S. Citizens & U.S. Scientists' About UNCLOS

*“A popular Government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance....”*

**James Madison**

#### ISSUE:

Although U.S. citizens come in all stripes and colors, many share the same interests and concerns: 1) They are very environmentally sensitive and issue-oriented; 2) They live and work under the same comprehensive federal Rule of Law regime which consists of laws that protect the environment *and* all-inclusive title to private property; and 3) They seek a constructive working relationship between the U.S. Government and the United Nations that fully protects and defends American national interests, including the commercial and financial interests of private U.S. citizens. How can these U.S. citizens satisfy themselves that the United States deals openly and effectively with a constantly faltering United Nations institutional bureaucracy, including that which presides over the UNCLOS, taking into account the UNCLOS' complex, inextricable, and interwoven relationships with numerous United Nations multilateral environmental agreements, secretariats, agencies, etc.?

**H**ow can the many conscientious American environmental scientists working to protect the environment, from the harmful effects of natural hazards, wastes, global warming, and man's interference and interplay with natural lifecycles and habitat conditions [biodiversity], ensure that time-tested and proven science-based protocols are employed under the UNCLOS to adequately address U.S. environmental interests?

(Note: To protect humans, animals and the environment from real risks, as opposed to hypothetical hazards, while allaying groundless fears, requires the development and maintenance of a consistent body of empirical and scientific data and corresponding protocols.

## **CONCLUSION - American Citizens & Scientists' Dilemma**

Note continued: Such scientific data and protocols must then be applied and supported fairly, equitably and justly pursuant to objective benchmarks and the Rule *of* Law.)

### **RECOMMENDATION:**

Open public hearings must be convened by the U.S. Congress and its relevant subcommittees to address how the UNCLOS fails to pass both the Empirical Science and the Rule *of* Law tests. The Congress and the Executive Branch need to investigate, research and report, in fully transparent open public hearings, about the guidelines, by-laws, standards, practices, taxes, user fee levies, protocols, and provisions embedded within and/or associated with the UNCLOS, a very unique and significant multilateral instrument. Only then, can accurate determinations be made and conclusions drawn concerning which of the UNCLOS' many provisions, standards, protocols, and interlocking agreements lack scientific rigor and/or fall short of the Rule *of* Law.

All-inclusive, transparent and open public hearings convened by Congress and its subcommittees are needed to investigate the public's growing concerns about the UNCLOS. An information platform (a verifiable record) must be created to ensure that a proper and fitting inquiry has been made and that all evidence has been provided that can show whether the UNCLOS meets or fails to meet both the Empirical Science and the Rule *of* Law tests. The Congress and the Executive Branch need to investigate & research, within fully transparent and open public hearings, the guidelines, by-laws, standards, practices, taxes, user fee levies, protocols, and provisions embedded within and/or associated with the UNCLOS. The Congress and the Executive Branch must ensure the participation of all knowledgeable and interested parties. Opponents as well as proponents must be provided the opportunity to present comprehensive testimony under oath. Based on the findings, determinations can then be made concerning which areas of the UNCLOS and the instruments associated with it, require further investigation and scrutiny.

## CONCLUSION - American Citizens & Scientists' Dilemma

### BOTTOM LINE:

**THE U.N. LAW OF THE SEA CONVENTION/TREATY WARRANTS IN-DEPTH SENATE AND HOUSE HEARINGS AND PUBLIC COMMENT AS A BASIS FOR SOUND PUBLIC POLICY DECISIONS AND FINAL CONGRESSIONAL ACTION ON THE TREATY.**

The American Public is entitled to full and impartial public hearings on the UNCLOS convened by the Congress and the Executive Branch. Absence of full hearings and reports would constitute an abdication of leadership responsibilities on the part of those who have been honored by election to serve in the United States Congress.

The Congress' failure or reluctance to provide our citizens with such an education before the UNCLOS is ratified is arguably an act in violation of its members' constitutional oath of office and contrary to Americans' constitutionally guaranteed rights to 'due process of law' and protection of private property.

When they assume their elected office, U.S. senators are effectively bound by an oath to 'support the U.S. Constitution' and its accompanying Bill of Rights, which serve to safeguard Americans against the inclinations of a wanton and arbitrary U.S. government. Since the time-honored notion of due process of law (comprising substantive and procedural rights) is found within the penumbra of the Fifth and Fourteenth Amendments of the Bill of Rights, senators' failure to take such rights into account by heeding Americans' requests for thorough public hearings to vet the UNCLOS is arguably tantamount to a violation of Americans' U.S. constitutional rights.

*[See Section III.B of UNCLOS 2008: A Critical Review].*

## **CONCLUSION - U.N. Officials, UNSC Officials, European Drafters of Precautionary Principle, NGO & European Scientists' UNCLOS Dilemma**

As we are calling for fair and impartial, transparent and inclusive, Congressional investigative hearings as to the intent and direction of the UNCLOS, it would be appropriate to have those U.N. Officials, UNSC representatives, EU Country Leaders, EU Drafters of the Precautionary Principle, NGOs, European Scientists and other Country Leaders and their respective scientists who support the UNCLOS, in whole or in part, to:

- 1) Present their arguments supporting U.S. ratification of the UNCLOS;
- 2) State their case for interpreting the UNCLOS with the Precautionary Principle blueprint as a backdrop;
- 3) Debate freely those UNCLOS provisions, protocols, annexes and regulations we have deep concerns and questions about;
- 4) Work out UNCLOS interpretational differences so the points are clear to the American people;
- 5) Identify any ambiguity or potential misinterpretations about the nature of the UNCLOS blueprint that would *not* lead us to believe there was a supranational or Top-Down Global governance system or framework that is forming, now or in the future;
- 6) Clarify by sound examples how the UNCLOS' by-laws *could not* be used and interpreted against U.S. national interests, now and in the future;
- 7) Clarify and explain the obligation of U.S. federal courts to enforce UNCLOS tribunal decisions/judgments, especially: a) those that may be viewed as hostile to U.S. national interests; 2) those that preclude military interventions or otherwise diminish U.S. sovereignty during peacetime; and 3) those that impair the full exercise of exclusive tangible and intangible (intellectual) private property rights, and/or otherwise deprive Americans of their constitutionally protected right to due process of law;

## **CONCLUSION - U.N. Officials, UNSC Officials, European Drafters of Precautionary Principle, NGO & European Scientists' UNCLOS Dilemma**

- 8) **Provide** all U.N. and EU empirical and scientific research data and analyses relied upon by the EU and its member states to interpret and implement, within the EU region and EU member state EEZs, and for international purposes on the high seas and in the Area, the environmental provisions contained within the UNCLOS, its protocols, annexes, and regulations, and all other treaties, agreements and protocols that incorporate the Precautionary Approach/Principle that are associated with the UNCLOS;
- 9) **Demonstrate** conclusively that, even if the U.S. ratifies the UNCLOS, no taxes, tariffs, fines, user fees or other levies can be imposed, directly or indirectly, in compliance with the UNCLOS, on U.S. citizens, natural or legal, for the privilege of engaging in activities within sovereign EEZs or the high seas, *by* the U.N. or any of its agencies and ancillary bodies, or *by* the governmental institutions of the E.U., and those of its member states, or by the governmental institutions of other countries, now or in the future;
- 10) **Submit** evidence that thoroughly evaluates whether ship port onloading and offloading activities, ocean and air transportation, and inland distribution of goods and services will remain consistent, fair and equal for all U.S. commerce and business activity, now and in the future (unless otherwise renegotiated);
- 11) **Provide** evidence that U.S. ratification of the UNCLOS will not lead to *any* U.S. federal legislative or regulatory changes that would culminate in the U.S. Congress and/or Executive Branch adoption or implementation, directly or indirectly, of the Precautionary Approach/Principle as a federal environmental and/or health standard. When providing such evidence, the former members of the U.S. Commission on Oceans Policy, the current members of the U.S. House Natural Resources and Science and Technology Committees, the current and former directors of the Council on Environmental Quality, Committee on Ocean Policy, the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce,

**CONCLUSION - U.N. Officials, UNSC Officials, European  
Drafters of Precautionary Principle, NGO & European  
Scientists' UNCLOS Dilemma**

- 11) the Bureau of Oceans and International Environmental and Scientific Affairs of the U.S. Department of State and the U.S. Environmental Protection Agency should clarify and fully explain: a) the purpose of and intent behind the Oceans Act of 2000 (P.L. 106-256); b) the findings of the U.S. Commission on Ocean Policy contained in *An Ocean Blueprint for the 21st Century: Final Report of the U.S. Commission on Ocean Policy*, U.S. Commission on Ocean Policy (Sept. 20, 2004), particularly those aspects of the report concerning the Precautionary Approach/Precautionary Principle, and the definition of the terms 'coastal areas', 'ecosystems' and 'ecosystem management'; c) those findings of the U.S. Commission on Ocean Policy adopted by the Bush Administration and submitted to Congress, as reflected in its subsequently issued *U.S. Ocean Action Plan: The Bush Administration's Response to the U.S. Commission on Ocean Policy* (Dec. 17, 2004) as well as, those of the Commission's findings that the Bush Administration rejected and the reasons why; and d) the provisions of H.R. 21, the *Oceans Conservation, Education, and National Strategy for the 21st Century Act* (introduced January 2007), and all expected or anticipated regulations to be promulgated within one year of enactment, that would establish the Precautionary Approach as a new federal standard for U.S. national oceans policy and its relationship to the UNCLOS.

**BOTTOM LINE:**

**THE LAW OF THE SEA TREATY WARRANTS IN-DEPTH SENATE AND HOUSE HEARINGS AND PUBLIC COMMENT BY ALL PARTIES WHO SUPPORT THE UNCLOS FROM THE U.N., U.N. ENTITIES, EUROPEAN UNION, EUROPEAN SCIENTISTS, NGO'S AND OTHER PRINCIPAL LEADERS AND EXPERTS (AS NEEDED) AS A BASIS FOR RENDERING SOUND PUBLIC POLICY DECISIONS AND ARRIVING AT FINAL CONGRESSIONAL ACTION ON THE TREATY.**