Ruling the Waves: The Law & the Sea
4 A Constitution for the Oceans  What law applies to ships when they are sailing on the high seas? What law applies when they sail in the waters off the coast of a foreign state? Find out more as Jon M. Van Dyke explains the key provisions of the United Nations Law of the Sea Convention.

7 Maritime Piracy in the Modern World  Real pirates still exist, and their attacks—growing bolder each year—represent a serious threat to world trade and the rule of law. Robert M. Jarvis explores what companies and countries are doing to combat this modern maritime scourge.

10 Fishing to the Bottom—and Back?  In the wake of a revolution in fishing, fishes have become less plentiful in oceans around the world. Carl Safina looks at how we got to this point and what steps we can take to help fish populations recover, even as world populations increase.


18 Students in Action  The president of Earth Force, Charles Tampio, talks about some of the civic learning that students across the nation are engaged in, from campaigning for bike lanes to advocating for the environment.

20 Teaching with the News: Mystery of Great Lakes’ Oldest Shipwreck  This article from the Detroit Free Press describes the possible discovery of the Griffon, which disappeared on Lake Michigan in 1679.

22 Law Review  How do international treaties become the law of the land (or sea)? Paul J. Martinek outlines the process of ratification and approval in the United States.

24 Learning Gateways: Fisheries Management: Personalizing the Story  In this lesson by Rosanne Fortner and Katie Fraser, students will study a song by Billy Joel—the “Downeaster ‘Alexa’”—to kick off a lesson about the laws that limited fishing off the Atlantic coast during the 1980s. Students will consider the impact of the laws from the perspective of professional fishermen, scientists, politicians, and other groups.

32 Insights on Law & Society Online  Find resources to support this issue, links to lessons, and interactive activities for students at www.insightsmagazine.org.
**Director’s Note**

The oceans cover more than 70 percent of our planet. Nearly half of the world's population lives within 100 miles of the seacoast. Fish supply the greatest percentage of the world's protein consumed by humans. And more than 90 percent of the trade between countries is carried by ships.

We rely on the ocean for food and trade. And yet, despite this reliance, the ocean is largely invisible in our daily lives. We take it for granted. It is so vast that we assume its resources are inexhaustible. We assume it absorbs our waste, so that continuous small-scale pollution goes unnoticed. We assume that the ocean is a regulated and orderly environment, one in which ships and countries abide by common rules. We assume, in short, that it can get along without us needing to do anything much about it. This issue of *Insights* addresses these assumptions by focusing on some of the legal issues connected to the ocean.

The ocean is not regulated by any one country. It is sometimes known as the global commons, because it is not subject to ownership. But there are many customs that govern the sea, and the U.N. Convention on the Law of the Sea codifies these customs into international law. In our opening feature, law professor Jon M. Van Dyke explores the history of the Convention, often called a “constitution” for the oceans, and its main clauses. The Convention was approved by President Clinton in 1994 but has never been approved by the Senate. In Perspectives, two experts on the Convention address the ongoing debate about whether ratifying the Convention would be in the best interests of the United States.

We also consider a more lawless aspect of the ocean. Professor and pirate expert Robert M. Jarvis explains that the ancient pursuit of piracy is on the rise, with a few modern twists. Piracy poses particular problems for trade, as pirates are able to exploit popular trade routes and capture vast, under-manned ships with ease.

The other focus of this issue is fishing, or, to be more accurate, overfishing. Dr. Carl Safina, director of the Blue Ocean Institute and recipient of a MacArthur “genius” grant explores the history of overfishing, and some of the steps that can be taken to change fishing practices and make ocean fishing sustainable. Learning Gateways builds on this feature article by asking students to look at the impact of fishing regulations imposed on the striped bass fishery off the east coast of the United States. A Billy Joel song about the decline of the east coast fishery and the effects of that decline on fishermen helps students connect to the subject and personalize the story.

You can find resources to support this issue, links to lessons, and interactive activities for students online at www.insightsmagazine.org. We hope this issue of *Insights* will bring the oceans to the front of your mind, and the front of your classroom.

Mabel McKinney-Browning
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Should ships be allowed to move freely in all parts of the oceans? Even if they are warships carrying nuclear weapons? Even if they are carrying ultra-hazardous radioactive cargoes that impose risks on coastal populations? Should fishing vessels be free to harvest fish wherever they can be found, or should the people living near the sea have preferred access to, or even ownership of, the fish that live near their coasts? Who should own the petroleum and mineral resources found under the sea? Can scientific research be done freely in all parts of the ocean? How should ocean boundaries be drawn?

Many of these questions are answered in the 1982 United Nations Law of the Sea Convention, which is described by many as the “constitution of the oceans.” The treaty is a comprehensive document that provides rules to govern most ocean activities and procedures for resolving competing and overlapping uses. It is a monumental achievement and (as of February 2006) has been ratified by 149 of the 191 members of the United Nations. But it has not yet reached universal adherence, with key nations such as the United States, Turkey, Iran, and Morocco still withholding ratification.

Negotiations on the treaty began in Venezuela in 1974, amid great fanfare and high expectations, and continued for eight years. One of the central disputes among the negotiating countries concerned the width of the territorial sea. The territorial sea (the adjacent coastal waters that countries have sovereignty over) traditionally extended three nautical miles, but some countries wanted to extend it to twelve or even 200 nautical miles offshore. (A nautical mile is equivalent to about 1.15 land miles.) The United States initially resisted efforts to allow countries to claim such zones because it was concerned that such claims could limit navigational freedoms. The United States was particularly concerned about its continuing ability to navigate its warships, including submerged submarines, through key international straits such as the Strait of Gibraltar (into the Mediterranean Sea), the

"This carefully crafted treaty has allowed countries to utilize ocean resources cooperatively."

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Strait of Hormuz (into the Persian Gulf), the Strait of Bab el Mandeb (into the Red Sea), the Strait of Malacca (connecting the Indian Ocean with the Pacific), the Dover Strait (through the English Channel), the Bering Strait (in the Arctic), and the Strait of Lombok (through the Indonesian archipelago). If countries were allowed to extend their territorial seas to twelve nautical miles, countries bordering on these key waterways might arguably gain control over passage through the straits. The United States maintained that free movement through these straits was essential to its national security.

The compromise that emerged allowed coastal states to extend their territorial seas to twelve nautical miles and recognized the right to transit passage through international straits. The right of passage applies to all vessels and airplanes and cannot be suspended. Submarines are allowed to remain submerged when they exercise this right of transit passage.

There was additional debate about the extent to which coastal states could control the sea beyond territorial waters. By tradition, everything outside the territorial sea was the high seas—an area of shared jurisdiction, where every country had freedoms of fishing and navigation. But coastal countries wanted to exert more control over the waters near their coasts and the resources in it. The compromise reached allowed coastal countries to establish an “exclusive economic zone” (EEZ) for a distance of 200 nautical miles from the coast.

In the newly created EEZs, the interests of both the coastal and the maritime states were carefully balanced in Part V of the Convention. The adjacent or coastal state has sovereign rights over all living and nonliving resources in the EEZ and can take some steps to protect the marine environment, regulate scientific research, and govern artificial structures. Coastal countries must, however, exercise “due regard to the rights and duties of other States” and, in particular, must permit navigational passage. Some countries contend that they have the same navigational freedoms in the EEZs of other countries as they have on the high seas, but a number of coastal countries have imposed restrictions on navigation in their EEZs in order to protect coastal resources and coastal populations. Disputes continue regarding the nature of military activities that countries can engage in while their vessels are in the EEZ of another country, and disputes also exist regarding whether hydrographic surveys by one country is permitted in the EEZ of another country. (Hydrographic surveys contain information for navigators about the water and ocean floor.) Countries cannot engage in marine scientific research in the EEZs of other countries without permission, but coastal countries are encouraged to grant permission when it is requested.

The creation of EEZs in the Law of the Sea Convention meant that most of the productive fishing areas were no longer part of the high seas; instead they fell within the exclusive jurisdiction of the adjacent coastal or island community. Management under this new regime has not always been enlightened or orderly, and new disputes have arisen, particularly when fish stocks overlap or “straddle” an EEZ and its adjacent high seas zone. For example, in the productive fisheries off the east coast of Canada, European fishing vessels harvested fish just outside the 200 nautical-mile EEZ in a way that impacted the stocks within the EEZ. This kind of “straddling” led to several disputes and in 1995 resulted in the creation of a new agreement designed to reduce such conflicts. The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks requires countries to cooperate with each other directly and work together through regional fishery organizations to collect and share data and assess the health of fish stocks. It expands enforcement powers and authorizes countries to utilize the dispute-resolution procedures
established in the Law of the Sea Convention for fishery disputes.

The environmental provisions in Part XII of the Convention use broad, general language and confirm the importance of protecting the marine environment for its own sake. The simple, direct, and elegant language of Article 192 articulates the importance of human stewardship of the ocean: “States have the obligation to protect and preserve the marine environment.” Each word in this sentence has importance and power. The operative word obligation makes it clear that countries have positive duties and responsibilities and must take action. The verbs protect and preserve emphasize that countries must respect the natural processes of the ocean and must act to ensure that they continue for future generations. The “marine environment” is a purposively comprehensive concept covering all aspects of the ocean world—the water itself, its resources, the air above, and the seabed below. It also covers all jurisdictional zones—internal waters, territorial seas, contiguous zones, exclusive economic zones, continental shelves, archipelagic waters, and high seas. Article 192 thus recognizes the responsibility that all countries have to govern the oceans. The marine environment must be preserved for the benefit of those who will come later to exploit its resources, to study its mysteries, and to enjoy the many pleasures that the oceans offer us.

One recent controversy under this part of the treaty concerns the program being developed by the United States and other countries to use low-frequency active sonar to detect enemy submarines. This technology involves lowering loudspeakers into the oceans to emit sounds that are among the loudest ever put into the ocean, and which have the capability of traveling for vast distances without much dissipation. Training exercises using this technology have led to strandings of marine mammals in various locations. This activity appears to constitute “pollution of the marine environment” as defined by Convention, which must be prevented under Article 194(1).

Part XI of the Law of the Sea Convention regulates seabed mining on the sea floor in the area beyond the exclusive economic zones of coastal countries. The primary resources thought to be of some potential value are softball-sized polymetallic nodules on the sea floor. These nodules, which contain nickel, manganese, cobalt, copper, and trace amounts of other metals, are found in the Pacific and Indian oceans. The Convention declared this resource to be “the common heritage” of humankind and established an International Seabed Authority, based in Jamaica, to regulate it. The structure of this Authority was one of the major reasons the United States (during the Reagan Administration) refused to sign the Convention in 1982.

The Clinton Administration worked with the international community to modify the provisions of Part XI of the Law of the Sea Convention to address the concerns that had been identified during the Reagan Administration. President Clinton then submitted the Convention to the Senate for advice and consent to ratification on October 7, 1994, but as of the date of this publication the U.S. Senate has not yet provided the necessary advice and consent. The United States adheres to almost all provisions of the Convention and considers it to be a reflection of binding customary international law, but until it formally ratifies the treaty, it will not be able to utilize the innovative dispute-resolution procedures, which are designed to resolve disputes in a peaceful manner. (The question of whether the United States should ratify the Convention is considered in more detail in the Perspectives section on page 14.)

The 1982 Law of the Sea Convention has served to regulate ocean activities for a quarter of a century and should continue to be the main document utilized to guide conduct and resolve disputes. This carefully crafted treaty includes many compromises and leaves some issues unresolved or ambiguous. But it will continue to be the starting point that officials and scholars turn to when conflicts arise. It has brought substantial stability and has allowed countries to utilize ocean resources cooperatively. It will be viewed in coming generations as one of the international community’s crowning achievements.
Maritime Piracy in the Modern World

Far from Hollywood, Real Pirates Are Plaguing the High Seas.

by Robert M. Jarvis

To most people, pirates are fictional characters with a strange affinity for bandannas, eye patches, and parrots. But real pirates still exist, and their attacks—growing bolder and more audacious each year—represent a serious threat to world trade and the rule of law. To combat them, countries are stepping up their enforcement activities, shipboard security technologies are being enhanced, vessel owners and crews are taking steps to reduce their vulnerability, and a variety of international organizations are focusing on the problem. Nevertheless, much remains to be done to eliminate this modern maritime scourge.

Anne Bonny. Blackbeard. Captain Kidd. During the golden age of piracy (1690–1725), they and others like them roamed the oceans, preying on merchant ships at will. Today, however, most Americans are more familiar with Captain Hook (Peter Pan’s nemesis), Jack Sparrow (Johnny Depp’s character in the hit Disney movie Pirates of the Caribbean), and Long John Silver (the fast food chain named for the villain in Robert Louis Stevenson’s Treasure Island). Even Captain Henry Morgan, one of the most notorious pirates of all time, now is better known as a slightly mischievous pitchman who hawks spiced rum.

Given pirates’ status as pop culture icons, it almost always comes as a shock when people learn that real pirates still exist. Equally unknown are the steps being taken to thwart, capture, and prosecute them. Yet despite these efforts, piratical attacks have increased sharply in recent years. What accounts for modern-day piracy? Where does it occur? And what can be done to stop it? Before we can answer these questions, some preliminary matters must be addressed.

History

Piracy has existed for more than 3000 years, and references to it can be found in both The Iliad and The Odyssey. The term pirate dates from 140 B.C., when the Roman historian Polybius used the word peirato (in Latin, pirata means “to attempt”). In the 10th and 11th centuries, however, Norse raiders were known as “Vikings,” while in medieval England, the word pirate was used to refer to just about any type of sea thief.

“All countries have an obligation to root out and punish pirates under international law.”

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During the 17th century, West Indian pirates were called “buccaneers,” due to the wooden frame (or boucan) used by French hunters to cook meat. When these hunters turned to piracy, they became boucaniers. To the Dutch, pirates were vrijbuiters (plunderers), while to the Spanish they were picaroons (rogues).

Despite its popularity, the word pirate does not accurately describe everyone to whom it is applied. In A.D. 100, the Greek historian Plutarch provided what has become the generally accepted definition of pirates: those who attack from ships without legal authority. In contrast, privateers (also called corsairs, from the Latin cursa, meaning “raid”) are individuals who have been granted a “letter of marque” authorizing them to capture enemy merchant ships. Famous privateers include the Barbary corsairs, the Maltese corsairs (who operated under a letter of marque issued by the Knights of St. John), and Sir Francis Drake (1540–96), who enjoyed a long and profitable career as an English privateer.

Recognizing their utility, Article I, section 8 of the United States Constitution empowers Congress to “grant letters of marque and reprisal.” At the suggestion of Tsar Alexander II, however, the use of such letters was outlawed by the 1856 Declaration of Paris (the first international agreement to regulate armed conflict). As a result, the practice soon fell into disuse, much to the consternation of the United States (which worried that without the counterweight of the privateers, nations able to afford large peacetime navies would gain an important military advantage).

In addition to corsairs and privateers, pirates must be distinguished from “commerce raiders.” During the Revolutionary War, warships would be disguised to hide their true nature. When they found an unsuspecting enemy merchant ship, they would approach it and, once near, open fire. In World War II, this tactic was used to great advantage by the German navy.

Legal Status
It is commonly accepted that a defendant cannot be tried in a court of law unless he or she is linked to it through either nationality (citizenship) or territoriality (having committed some act within its boundaries). Pirates, however, typically operate on the high seas, over which no country has jurisdiction.

To overcome this problem, the Roman statesman Cicero dubbed pirates “hostis humani generis,” or enemies of humanity (a phrase that later gained wide currency through the writings of the 16th century Italian jurist Alberico Gentili). As such, they can be prosecuted wherever and whenever they are found due to the concept of “universal jurisdiction.” In addition to piracy, universal jurisdiction now applies to air hijackings, genocide, slavery, war crimes, and “crimes against humanity.” Since 9/11, some commentators have called for terrorism to be added to the list.

In addition to piracy being a universal jurisdiction crime, the suppression of piracy being a universal jurisdiction crime, the suppression of

FOR DISCUSSION

The principle of “universal jurisdiction” permits any state that captures a pirate to try him or her in its courts. In your opinion, given advances in communications and transportation, should such individuals have to be remanded to their home countries for prosecution? Likewise, now that the International Criminal Court has been established, must pirates be turned over to it?

Under United States law, a defendant found guilty of piracy receives an automatic sentence of life in prison. Is this a just punishment? If so, under what circumstances should the president use his clemency powers to shorten the sentence? Would a uniform, worldwide standard be better?

Piratical attacks have been effectively suppressed in American waters, but remain a problem in other parts of the world due to corruption, poverty, and lax security. In your opinion, should we intervene militarily in these areas of the world? What would be the legal justification for such action?
piracy is regarded as a jus cogens (Latin for “compelling law”). Thus, all countries have an obligation to root out and punish pirates under international law.

In recent times, the global community has twice reaffirmed these principles. In the 1958 Geneva Convention on the High Seas, Article 14 requires states “to co-operate to the fullest possible extent in the repression of piracy,” while Article 19 makes it clear that “every State may seize a pirate ship” and arrest and try those on board. In the more recent (and comprehensive) 1982 United Nations Convention on the Law of the Sea, these same provisions appear in Articles 100 and 105. Under both treaties, the penalties for piracy are set by individual nations.

Relying on a different clause in Article I, section 8 of the United States Constitution (which gives it the power to “define and punish piracies and felonies committed on the high seas”), Congress in 1790 passed a law prohibiting piracy. Now codified as section 1651 of Title 18 of the United States Code, the law provides that anyone found guilty of piracy “shall be imprisoned for life.”

**Recent Attacks**

Modern pirates range from desperate fishermen looking to steal whatever they can to highly organized professional thieves brandishing AK-47s and rocket-propelled grenades. Overall, it is estimated that pirates annually steal goods worth $13–$16 billion.

In 1992, the International Chamber of Commerce’s International Maritime Bureau established the Piracy Reporting Centre (PRC) in Kuala Lumpur, Malaysia, to act as an information clearinghouse. Despite gross underreporting by shipowners (estimated at 50 percent and attributable to embarrassment, a desire to avoid protracted police questioning, and worries about increased insurance costs), the PRC recorded a nearly fourfold increase in attacks between 1994 (90) and 2004 (329). Although the number of attacks dropped in 2005 (276), this decrease is felt to be a temporary one caused by the dislocation attending the Christmas 2004 tsunami.

Not surprisingly, piratical attacks often involve violence. Between 1995 and 2005, 340 crewmembers and passengers were killed by pirates while another 461 were injured. By far, the greatest number of attacks take place in the South China Sea and its surrounding waters, both because of its peculiar geography (which affords pirates numerous hiding places) and the lack of effective policing policies. However, attacks also occur in other parts of the world, including Africa, the Caribbean, and, more recently, the Middle East. The country reporting the greatest number of attacks in 2005 was Indonesia (79), followed by Somalia (35) and Bangladesh (21). Closer to home, Jamaica (8) experienced the most attacks.

Although 95 percent of attacks involve cargo ships (due to their small crews and slow speeds), all ships are at risk. In December 2001, for example, New Zealand environmentalist Sir Peter Blake, a two-time winner of the America’s Cup, was killed by Brazilian pirates aboard his yacht Seamaster. In April 2002, the U.S. Navy oiler Walter S. Diehl was attacked by pirates while passing through the Straits of Hormuz in the Persian Gulf.

*Naval ships from Indonesia, Singapore and Malaysia sail during a ceremony to launch a trilateral coordinated patrol between the three countries in the Strait of Malacca, one of the world’s most important shipping lanes. Navies from the three countries began joint patrols of the vital Strait of Malacca shipping lane in 2004 to combat piracy and terrorism.*

*continued on page 13*
Fishing to the Bottom—and Back?

Ocean Fishing Can Remain Viable—If We Act Now.

By Carl Safina

Oceans have long affected humans, and vice versa. Anthropologists tell us people have been fishing for 100,000 years. Today, nearly half of humanity lives within 100 miles of the coast. The question on our plates today is: how much longer will fishes be joining us for dinner?

For a long time, people have caught fishes faster than the sea produced them. In 1631 King Charles I proclaimed, “The former abundance of fish is turned into such scarcitie and deareness, that … our citie of Lond- on, and even our owne Court, are many times unprovided for their neces- sary dyet … therefore … the nets heretofore called traules … which is notoriously known to destroy the said frie & spawne … is … forbidden by the law.”

The scarcity and dearness of fishes is now global. But recognition of that problem is new. Until recently, whenever the question arose of how to feed the booming populations of the future, thoughts turned seaward. Assumptions were made about vast undiscovered populations of fishes and of an ocean that would somehow remain resilient to all assaults.

A Fishing Revolution

However, a revolution in fishing power has caused the rapid depletion of fishes. The revolution came in two steps, one mechanical and one electronic. In the early 1900s internal combustion engines greatly increased boats’ net-towing power. After World War II, detection technologies that were developed for fighting ene- mies at sea quickly found adaptation for what amounted to a veritable war on fishes. Sonar allowed boats to see fishes hundreds of feet deep; Loran allowed boats to pinpoint and return to any rockpile or drop-off where fishes congregated in the seemingly trackless distances of the ocean. Radar allowed boats to fish through fogs that might previously have suspended operations. Before this revolution in fishing, fishes had two great de facto reserves in the sea, known to fishermen as “too far” and “too deep.” But after industrial fishing came of age, fishes could no

“A revolution in fishing power has caused the rapid depletion of fishes.”

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longer hide. And while we could see the fishes anywhere, our new nylon nets and lines were virtually invisible to them.

By the 1960s, new fishing technology fueled a lawless gold rush in the ocean, the last great global commons. Government-subsidized fleets hurried to the hunt. Fisheries management was geared entirely toward finding new sources and catching more.

**Depletion**

This headlong race hit its first significant bump in the mid-1970s, when a few countries began declaring waters out to 200 nautical miles from the coast as their “exclusive economic zones.” (The feature article entitled “A Constitution for the Oceans” contains more information about EEZs.) Communist-bloc nations’ intensive fishing just off the beaches of New England brought the first widespread cries of overfishing in the United States. By the time the United States declared its own 200-mile zone in 1976—specifically to protect its own fishermen and fishes from the catching power of foreigners—the notion that an ocean could be depleted by boats towing nets had gained international traction.

As declarations of 200-mile exclusive economic zones became standard policy and nations closed their continental shelves to foreign fishing, some countries finished the job of depleting their own waters during the 1980s. During the early ’90s, the fisheries of the Grand Banks (a huge shoal in relatively shallow ocean waters off the coast of Newfoundland and Labrador) and Georges Bank (70 miles off the coast of New England) were closed. For half a millennium these areas had produced the richest fisheries on Earth; their closure signaled radical changes in government policies. Finally, there was some recognition that overfishing had diminished major resources to commercial extinction.

Massive unemployment, social dislocation, and government bailouts followed, shaming once-proud people and fracturing communities that had been stable and prosperous for centuries. In just twenty years, the reputation of the North Atlantic’s fishing grounds went from the world’s richest to the most depleted. As other developed countries serially depleted their fishes and profitability dissipated, European and Russian distant-water fishing fleets shrank. The remnants turned south, underpaying their way into the fishing zones of countries too desperate for foreign cash to say no.

Things were changing on the high seas, too. In the early 1990s the United Nations banned the large-scale drift nets (which were up to 40 miles in length) that a fleet of about 1,000 mostly Asian boats had been using, mainly in the Pacific. Many drift netters subsequently regearred to target tunas with longlines. As continental shelves closed to foreign boats and international agreements began to govern fishing in the Southern Ocean, unlicensed, illegal ships greatly increased their efforts in sub-Antarctic waters, largely targeting toothfishes (which are marketed as Chilean seabass).

New scientific reports confirm that fishing has largely depleted the prey it depends on. Not one peer-reviewed, journal-published scientific paper examining the issue has found evidence to the contrary or reason to question the conclusion that many once-abundant populations of fishes have been driven to all-time lows. Teams led by the University of British Columbia, Scripps Institution of Oceanography, Duke University, Dalhousie University, and several independent scientists have contributed major new scientific assessments. In a series of papers, these scientists have shown that:

- Abundance of large marine animals including fishes, whales, and turtles in the oceans and coastal waters of the pre-industrial past was almost inconceivably greater than it is today.

- Abundance of large fishes such as tunas, sharks, cod, and groupers has declined roughly 90 percent since 1950.

- Humans remove from continental shelves fully one-third of the annual productivity of those waters.

- Because of depletion of large edible fishes, fisheries are forced to target animals lower on the food web. For example, some new fisheries target jellyfish for human consumption.

- One quarter of all sea life caught is unwanted and discarded dead. This bycatch is driving serious declines endangering sea turtles, albatrosses...
and certain other seabirds, and certain fishes. For example, in shrimp fishing, five to ten kilograms of unwanted juvenile fishes and other sea creatures are commonly discarded for each kilogram of shrimp caught.

**Improvements**

Increasing recognition of these problems has led to changes in some fishing practices, legislation, and international cooperation. Some fisheries have succeeded in markedly reducing bycatch. For example, catches of endangered turtles have been significantly reduced in the United States and several other places by fitting trawl nets with release devices called turtle excluders. Albatrosses and most other seabirds can be kept away from lines or nets with scaring devices, by setting nets deeper, and by fishing at certain times of day. The eastern Pacific tuna fishery’s improved dolphin-release procedures have greatly reduced the numbers of dolphins drowned in their nets (though questions remain about separation and loss of dolphin infants chased to exhaustion prior to netting; tuna follow dolphin herds, and the boats encircle dolphins with nets to get the tuna beneath them). These improvements point the way toward success but need to be refined and more widely adopted.

International bodies are increasingly recognizing the overfishing problem. The United Nations has enacted a high-seas fisheries treaty and published a Code of Conduct for responsible fishing, and drafted Plans of Action for reversing sharp declines in populations of sharks and seabirds. Though change will come slowly, these represent major steps toward recognizing the problems. And the Convention on International Trade in Wild Fauna and Flora, also known as CITES, recently took action to track trade in seahorses, sharks, and caviar-producing sturgeon. This body, which made it illegal to import elephant ivory, had been reticent to wade into fisheries until recently.

The United States has committed some of the worst mistakes in fisheries management, but it also has taken some of the most forward-thinking steps. In an overhaul of its federal fishing legislation, the United States passed the Sustainable Fisheries Act in 1996. This act defined overfishing, prohibited fishery managers from allowing catches beyond sustainable levels, mandated that overfished species be listed annually, and mandated recovery plans for overfished species. Since the law was implemented in 1998, numerous declines have been arrested; some populations of previously depleted species have shown substantial recoveries.

**Toward the Future**

Ocean fishing can remain viable if we rebuild fish populations and then cap catches. In a world facing increasing human populations, this will be challenging. Fishing power must be reduced by about half. One way of achieving this is through a system of transferable fishing quotas. In some fisheries in Alaska, for example, managers have reduced fishing power by allowing boats to buy and sell shares of the allowed catch quota. This has allowed some marginal operators to sell out and other marginal operators to buy quota shares and thus increase profitability. For this to work economically, fish landings have to be scientifically limited and enforced. For it to work socially, safeguards limiting share ownership must be in place to prevent corporate monopolies. Alaska’s system provides good examples of both.

Many ask whether it would be best to stop hunting wild fishes and focus on fish farming. While fish farming is the fastest-growing sector in agriculture, it is not necessarily an answer to ocean woes. Farming has not reduced fishing pressure on wild fishes or shrimp for two reasons. First, fish farms are often constructed by destroying natural habitats that support diverse wild populations and human fishing communities.

**FOR DISCUSSION**

When did people and countries become concerned about overfishing? What steps did they take to address the problem? What were some of the intended and unintended consequences of their actions?

What does the Sustainable Fisheries Act require? Has the act been effective? In your opinion, can domestic laws effectively limit overfishing?

What steps can we take to ensure that fisheries remain viable in the future?

What international laws have been enacted to encourage responsible fishing? Why is international regulation necessary?
Second, many farmed fish and shrimp must be fed fishes caught from the ocean. For example, it can take three to five kilos of edible fishes to produce one kilo of farm salmon—a net loss of protein. Yet some fishes and shellfish are raised in environmentally benign ways. The way forward lies in developing progressively less harmful farming methods and supporting best practices.

Marine reserves, closed to fishing, have become a focus of debate in recent years. New Zealand, Australia, the Philippines, and several other countries have established such reserves, but on a global basis this approach is in its infancy. What is clear is that the size, abundance, and fecundity of fishes increases in reserves. It is less clear how often this leads to improved fishing outside the reserve boundaries. Whether it does probably depends on the size of the reserve. Ecologists are working to answer this question.

Consumers of seafood can also play a large role in improving ocean fishing and farming practices. Several organizations such as Blue Ocean Institute, Environmental Defense, Monterey Bay Aquarium, and Marine Stewardship Council publish consumer advice recommending menu choices that seafood enthusiasts can enjoy with a clear conscience. Increasing awareness, celebrity-chef involvement, and news media coverage have made the seafood experience more meaningful for choosy seafood lovers.

The answers to ocean recovery lie in fishing slower than the fishes can breed, farming seafood in ecologically less destructive ways, and giving consumers the information they need to vote with their conscience and their wallet. There is time. And, yes, there is hope.

Maritime Piracy in the Modern World
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And in November 2005, pirates unsuccessfully tried to board the luxury cruise ship Seabourn Spirit off the coast of Somalia.

Prevention Efforts

To ward off attacks, shipowners now regularly reroute their ships to avoid areas known to harbor pirates, as well as to steer clear of “chokepoints” (such as narrow channels) where, because of limited maneuverability, large vessels are particularly vulnerable.

When such course changes are not possible, captains are instructed to take special precautions. Among the more common ones are not stopping in unfamiliar places (two-thirds of all attacks occur while ships are at anchor or in berth), not having money on board, locking all exterior doors, keeping search lights illuminated, increasing the number of lookouts, running the ship’s engines at maximum speed, charging the fire hoses so they can be used to repel boarding parties, and, controversially, issuing weapons to the crew.

In addition to these low-tech strategies, a variety of high-tech ones are being employed. Many vessels now are equipped with Long Range Acoustic Devices (LRADs), more commonly known as “sonic cannons.” When activated, these small round dishes produce a deafening sound. By having its security officer use one while the captain took wake-producing evasive action, the Seabourn Spirit was able to fend off the pirates that attacked it.

Other innovations include SecureShip, a collapsible electrified fence that can be mounted on a ship’s deck and delivers a nonlethal shock to would-be intruders, and SHIPLOC, a satellite-tracking system that allows a vessel’s location to be plotted if it is hijacked. And in an attempt to stop the burgeoning trafficking in stolen ships, the 2002 International Ship and Port Facility Code requires vessels to emboss their International Maritime Organization number on their hulls.

The Future

In July 2004, Indonesia, Malaysia, and Singapore agreed to work together to safeguard the Strait of Malacca, the 621-mile waterway that links the Indian and Pacific oceans and accounts for nearly 40 percent of all attacks. So far, however, this effort has not been successful, in part because of a lack of money and in part because of squabbles between the partner governments.

So just where does the fight against piracy stand? The answer is best summed up by two events that occurred in January 2006. Near the end of that month, pirates captured by the destroyer USS Winston S. Churchill (which had been acting on a tip from the PRC) were handed over to Kenya for prosecution. Yet even as the transfer was taking place, another band of pirates was being paid $450,000 in ransom to release three Taiwanese fishing boats. Thus, while there is reason for hope, there also is reason to believe that real pirates will be with us for some time to come.

Yes
By David B. Sandalow

What topic unites the Navy, oil and gas industry, fishing industry, and major environmental groups? The answer is the Law of the Sea Convention, which all these organizations support and have urged the United States to join.

The Convention, sometimes called a “constitution” for the oceans, has been ratified by more than 140 nations. Among its many provisions, the Convention limits coastal nations to a 12-mile territorial sea, establishes 200-mile exclusive economic zones, requires nations to work together to conserve high seas fisheries, and establishes a legal regime for the creation of property rights in minerals found beneath the deep ocean floor.

In February 2004, the U.S. Senate Foreign Relations Committee unanimously recommended that the United States join the Convention. The full Senate has yet to act on that recommendation, hurting U.S. interests.

National Security Interests
In 2004, as Chairman of the Joint Chiefs of Staff, General Richard B. Myers called ratification of the Convention by the United States “a top national security priority.” His remarks were echoed by the Chief of Naval Operations, Admiral Vern Clark, who told Congress the Convention “supports U.S. efforts in the war on terrorism.”

Why do these and other military leaders consider approval of the Convention so important? Because, by codifying important navigational freedoms,

“The recognition of our 200-mile exclusive economic zone by other nations is fundamental to gaining full value from our rich fisheries.”

the Convention reduces burdens on our armed forces and helps avert conflict.

Historically, the U.S. Navy was required to contend with many excessive claims by coastal nations concerning control of the oceans. In the 1940s, for example, Chile asserted the right to control access by all vessels within two hundred miles of its coast. Later, Indonesia asserted a similar right with regard to all waters between its many islands.

These claims and others are effectively resolved by the Convention, which recognizes navigational and overflight freedoms within 200-mile exclusive economic zones and through key international straits and archipelagoes. The Convention also recognizes rights of passage through territorial seas (within 12 miles from shore), without notice and regardless of means of propulsion, as well as navigational and overflight freedoms on the high seas.

The failure of the United States to join the Law of the Sea Convention puts these gains at risk. Important provisions are more likely to be weakened by amendment if the United States stands outside the Convention, without the ability to vote or block consensus. Nations that have put aside excessive maritime claims are more likely to backslide and renew those requests if the world’s leading maritime power refuses to join the Convention.

Commercial Considerations
The U.S. economy depends on the oceans. Goods worth more than $700 billion are shipped through U.S. ports each year. More than a third of the oil and gas produced around the world each year comes from offshore wells. U.S. fisheries had landings in excess of $3 billion in 2002.

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More than two decades of negotiation culminated in 1982 with the Law of the Sea Convention. Because of U.S. opposition, however, the Convention failed to gain the 60 ratifications necessary to take effect at that time.

The U.S. did not sign the Convention because the Reagan Administration opposed Part XI, which dealt with mining of deep seabed deposits of nickel, manganese, cobalt, and other metals more than 200 miles from land.

The Clinton Administration renegotiated the Convention and proclaimed that the problems cited by President Ronald Reagan had been fixed. The United States signed in 1994, setting off a stampede of foreign ratifications.

However, the U.S. Senate did not ratify the treaty. Only in 2004 did the Senate Foreign Relations Committee recommend that the United States accede to the Convention. At her confirmation hearing Secretary of State Condoleezza Rice stated that the President “would certainly like to see it pass as soon as possible.” Continuing opposition has prevented the treaty from reaching the Senate floor.

The fundamental premise of Part XI of the Convention is that all unowned resources on the ocean’s floor belong to the people of the world. The Convention creates a collectivist, highly politicized system to govern much of the unowned resources of mankind. At a time when the spread of free economic systems has proved to be a boon for the world’s poor, the Convention is a reactionary step back into the collectivist past.

“**The only sure guarantee of free passage is the power of the U.S. Navy.**

Yet even some critics of the treaty argue that the treaty doesn’t matter—seabed mining has not become commercially viable, and if there’s no seabed mining, the regulatory regime is not important, no matter how awful it might be. So why not ratify the Convention? Because a bad agreement is a bad agreement and would set a bad precedent. And if seabed mining ever becomes economically viable, it could be crippled by the Convention’s unnecessarily complicated rules.

After winning changes in some of the treaty’s most burdensome provisions in the early 1990s, U.S. UN Ambassador Madeleine Albright praised the Convention for providing “for the application of free market principles to the development of the deep seabed” and establishing “a lean institution that is both flexible, and efficient.” The Bush Administration is making much the same argument.

In fact, the Clinton Administration only turned a disastrous accord into a bad one. The treaty has not been “fixed.” The original collectivist framework remains. The revised treaty would still create an absurdly complex system of regulation—including institutions such as the International Seabed Authority (ISA) and its chief subsidiary, the Enterprise, which would mine the seabed.

The revisions to the Convention restrict some of the ISA’s discretion, but still submerge seabed mining in the bizarre political dynamics of international organizations. For every site it wishes to mine, a private company must also survey, gratis, a site for the Enterprise. ISA fees have been lowered, but royalties and profit-sharing are left to be determined. (The “system of payments,” intones the compromise text, shall be “fair both to the contractor and to the Authority,” as if that has any practical
meaning.) Funds would still be distributed to developing states and “peoples who have not attained full independence,” like the Palestinian Authority.

Even some of the specific “fixes” to the Convention look inadequate. The United States would have more influence than it did in the original Convention, but no veto. And other nations could block action when the ISA needed to act, such as to approve mining rules and applications. Production controls, one of the most controversial provisions in the original text, are preserved in the new agreement. The revision leaves intact Article 150, which, among other things, states that the ISA is to ensure “the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral.”

Funding remains a problem as well. The United States, naturally, would be expected to provide the largest share of the ISA’s budget, 25 percent to start. And the revised agreement changes none of the underlying institutional incentives that bias virtually every international organization, most obviously the United Nations itself, toward extravagance.

One of the Convention’s worst left-over provisions governs technology transfer. The amended agreement leaves intact an open-ended mandate for coerced collaboration between Western companies and Third World states, as well as the Enterprise.

Countervailing Benefits?
Throughout the Convention’s development, some observers acknowledged the treaty’s failings but nevertheless continued that it had enough positive benefits to warrant signing.

The navigation provisions are perceived by many as the most important benefit of the Convention. Washington’s refusal to sign the Convention left critics predicting chaos and combat on the high seas two decades ago. Yet we have witnessed not one incident as a result of the failure to implement the Convention.

Nor is the Convention unambiguously favorable to transit rights. It introduces some new limitations on navigation and at other times its language is ambiguous—regarding transit rights for submerged submarines, for instance. In short, there is only modest theoretical advantage for which to trade away the mining provisions. Even if the Convention offered a definite and positive interpretation, the legal protections would provide little practical gain. Nations usually have far more to gain economically from allowing unrestricted passage.

However, where countries perceive their vital national interests to be at stake, as in war, they rarely allow judicial niceties to stop them from interdicting or destroying international commerce. As for military transit, America should concentrate on maintaining good relations with the handful of countries that sit astride important sea lanes. The only sure guarantee of free passage is the power of the U.S. Navy.

Conclusion
Unfortunately, notwithstanding the 1994 revisions, the Law of the Sea Convention remains a bad agreement, one that cannot be fixed without abandoning its philosophical presupposition that the seabed is the common heritage of the world’s politicians and their agents, the ISA and Enterprise. Not every international treaty is worth ratifying.

Doug Bandow is vice president of policy for Citizen Outreach and author of Foreign Follies: America’s New Global Empire (Allegiance Press). He formerly served as a special assistant to President Ronald Reagan and deputy representative to the Third United Nations Conference on the Law of the Sea. A graduate of Stanford Law School, he is a member of the California and D.C. bars.

Perspectives—Sandalow
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The Convention helps promote U.S. commercial interests in several important respects.

First, the navigational freedoms recognized under the Convention provide a stable environment for global commerce. Clear rules with widespread acceptance facilitate international trade and reduce risks to the many industries that depend upon marine transport.

Second, the U.S. oil and gas industry benefits from the Convention’s rules concerning offshore resources. Under the Convention, coastal nations have exclusive authority over all resources within two hundred miles of shore. Coastal nations also have authority over the ocean floor beyond this 200-mile zone, to the edge of the continental shelf. This latter provision is especially beneficial for the United States, which has the largest continental shelf in the world.

In addition, the Convention offers a ready set of procedures for delineating the outer limit of each country’s continental shelf. These procedures help provide the certainty needed for major capital investment in offshore oil and
gas facilities. However, these procedures are only available to nations that join the Convention.

For these reasons the American Petroleum Institute, the International Association of Drilling Contractors, and the National Ocean Industries Association all support U.S. ratification of the Convention.

Finally, the Convention promotes the United States’ substantial commercial interests in ocean fisheries. The recognition of our 200-mile exclusive economic zone by other nations is fundamental to gaining full value from our rich fisheries. (Under the Convention, the United States has the exclusive right to determine the allowable catch of living resources within this 200-mile zone.) The requirement that nations work together in managing migratory species is equally fundamental to maintaining the health of many fish stocks.

The U.S. fishing industry, including the U.S. Tuna Foundation, strongly supports U.S. ratification of the Convention.

**Environmental Considerations**

The ocean environment is under enormous stress. Many fisheries are depleted or collapsing. Pollution plagues highly populated coastal regions. Nonnative species threaten ocean ecosystems around the globe.

The Convention provides a comprehensive framework for international cooperation to protect the marine environment. It imposes minimum requirements—all of which are already being met by the United States—to protect and preserve the marine environment. Under the Convention, states are required to take measures to address pollution from vessels and land based sources, to prevent the introduction of alien or invasive species, and to conserve and manage coastal fisheries.

The standards for environmental protection set forth in the Convention work strongly to the advantage of the United States, which has already met and in most cases significantly exceeded these standards, but necessarily depends on actions by other nations to protect the marine environment.

The Convention has strong support from environmental groups, including the National Environmental Trust, the Ocean Conservancy, and the World Wildlife Fund.

**Conclusion**

In January 2005, Secretary of State Condoleezza Rice told the Senate Foreign Relations Committee that the Bush Administration “supports early Senate action on the [Law of the Sea] Convention” and would “work with the Senate leadership to bring the Convention … to a floor vote in the 109th Congress.” The Senate should promptly approve the Law of the Sea Convention to protect and promote wide-ranging U.S. interests.

David B. Sandalow is the director of the Environment & Energy Project at The Brookings Institution. He can be reached by email at DSANDALOW@brookings.edu.

**Focus Questions …**

1. Which considerations do you think are most important in the debate over the Law of the Sea Convention? Why?

2. The ratification of the Convention has received support from a wide variety of groups and individuals—some that might not normally agree on other matters. What about this debate has made them team up?

3. Doug Bandow argues that one of the major reasons against ratification is that the Law of the Sea Convention is inherently flawed in its framework. What are these flaws? Why would they be considered reason enough not to ratify the international accord? Do you agree with Mr. Bandow? Why or why not?

4. David Sandalow warns that one of the reasons the United States should ratify the Convention is that it would offer an opportunity for future decision-making with regard to amendments to the Convention. Why is this important?

5. The U.S. Navy has shown wide support for the Law of the Sea Convention, claiming that it will help the United States in the war on terrorism. Yet Bandow points out that the benefit would be minimal, especially if the United States were to “concentrate on maintaining good relations” with strategically-located countries. Do you agree? Does the ratification of the treaty help American national security? Why or why not?

6. Over the last century and a half, there have been several important international treaties that the United States has refused to ratify (see “Law Review” on page 22). What are some of the other treaties, besides the Law of the Sea Convention, that the United States has not ratified? What is the message sent to other nations in the world when this happens? Do you agree with the choice of the United States? Why or why not?
Democracy for the Next Generation: Is Civics 101 Enough?

By Charles M. Tampio

“I am an environmental leader today because of Earth Force. My future, like many other young people who have participated in Earth Force, will be tied to service, environmental stewardship, and civic action. Earth Force has a very bright future because it is committed to an exciting and daring idea—engaging young people as active citizens who improve the environment and their communities now and in the future.”

—John Vogel, Earth Force Youth and Member of the Earth Force Board of Directors

While celebrating Presidents’ Day this year, I wondered what our past presidents would think about a recent wave of studies that paint a rather alarming picture of our democracy’s future. Polls, surveys and studies show that young people today do not understand the democratic process and lack the desire to participate in it. Is democracy as we know it at risk? Yes, quite possibly. Does youth civic engagement belong on an “endangered species” list? Yes, most certainly.

Is there something we can do to protect this “endangered species”? Yes, most definitely.

One of the first things we must consider is the nature of young people today. Young people are passionate about a wide-range of issues and desire a way to contribute to their communities. The spike in youth volunteerism over the past decade makes it very clear that apathy is not the problem with this generation. Young people today believe in the power of individual action and take part directly in local assistance programs in unprecedented numbers.

However, one of the major problems is that young people, like many adults, simply do not have confidence in collective action and do not understand how to take part meaningfully in the civic life of their communities. The Department of Education’s Report Card on Civic Education has continually shown that students understand basic facts and figures about American government but do not understand how to apply their knowledge to real-world situations.

Earth Force, an organization I recently joined as president, is one of a growing number of civic-minded organizations that focus on the application of democracy in the classroom and in the community. Earth Force was launched in 1994 to address three emerging national trends among young people:

1. Their overwhelming desire to act on behalf of the environment
2. Their desire to help their communities through voluntary service
3. Their need to know how to translate their interests into civic action.

Charles M. Tampio is the president of Earth Force. Through Earth Force, youths discover and implement lasting solutions to environmental issues in their community. The creation of Earth Force in 1994 by The Pew Charitable Trusts recognized young people’s overwhelming desires to act on behalf of the environment and to help their communities through voluntary service. You can reach Earth Force at www.earthforce.org.
For more than a decade, Earth Force, with the help of sponsors like Staples and General Motors, has served thousands of young people across the United States. Earth Force believes that engaging students in authentic civic action is the most effective way to give them the knowledge, skills, and predispositions they need to participate effectively in public life. By authentic, I mean two things: students address issues that matter to them, and projects involve genuine efforts to affect the relevant issues through either policy advocacy or community education. Discussing issues, taking and defending positions, and talking about policy change are necessary but not sufficient; students need to try to effect changes in existing policies and community habits.

This type of civic experience is happening in schools and communities across the country through Earth Force programs. When Earth Force was first launched, the idea of youth civic engagement around environmental issues was both exciting and daring. Today, thousands of students in seventeen states are participating in Earth Force and making this idea a reality.

Several years ago, twelve Belle Hall Elementary 5th graders focused on getting bike and pedestrian lanes included into the design of the Cooper River Bridge as their Earth Force project. Last year, those young people were among the first to bike across that span connecting Charleston to Mount Pleasant in South Carolina.

Those students, with the help and guidance of their teacher, Eva Stratos, partnered with the Charleston Bicycle Advocacy Group to influence state and local government officials to include the bike lanes. The project included researching national trends and bridge designs, as well as surveying hundreds of Charleston area residents, and culminated in a visit to their senators and representatives in Washington, D.C. The impact of their efforts was clear throughout the Charleston community. Dr. Don Sparks, president of the Charleston Bicycle Advocacy Group commended the students saying, “I will never again take on an environmental issue without involving young people.”

“The campaign made a huge impact on me,” said Stratos, who says she has been inspired to become involved with other pedestrian and environmental issues. The students feel that the experience helped them “build confidence in talking with adults, approaching strangers about an issue and to realize that we can have influence on powerful politicians.”

Recently several Michigan area students spoke in front of members of the Michigan House Civics Commission regarding a range of local environmental issues.

- Jonathan Ismail from Grosse Pointe recommended that the House of Representatives encourage the use of rain barrels to alleviate the effects of storm water runoff.
- Christine Geerer and her students at Parcells Middle School in Grosse Pointe examined the problem of improper motor oil disposal. They pointed out that one gallon of oil poured down a storm drain can contaminate one million gallons of water.
- Shelly Cataline from Eaton Rapids encouraged representatives to create “Mercury and Moms Week” in Michigan to alert mothers and young women of the dangers of consuming high quantities of mercury-laden fish from the Great Lakes.
- Cheri Derksen from Rochester Hills encouraged communities to include parking garages in their future planning efforts to help preserve valuable wildlife habitats.

Can you imagine the future potential of young people who are part of this kind of success when they are in middle school? Children as young as 11 or 12 have the capacity—not to mention the enthusiasm and creativity—to incorporate civic action and problem-solving skills into projects that create lasting change in their communities. By planting the seeds of responsible citizenship in middle school, you instill those values for high school, college, and beyond.
The mystery of the sailing ship Griffon has tantalized adventurers and historians ever since the vessel, loaded with furs, disappeared in 1679 on its maiden voyage in northern Lake Michigan. It’s the oldest and most elusive of Great Lakes shipwrecks. And Steven Libert, an amateur underwater explorer who says he has been hunting the Griffon most of his adult life, thinks he may have found the wreckage.

For about a year, he has been locked in a legal battle with the state of Michigan over salvage rights to what’s left of a ship he discovered while diving in 2001 near Poverty Island. The sides have forged a delicate truce, however, that apparently will enable Libert to continue work next spring toward unlocking the mystery of his find.

If it really is the Griffon, it may be the grand prize of his shipwrecks. But it’s not a prize that will bring him riches. The Griffon wasn’t carrying treasure, and its cargo of furs is long gone. Its value is historic and, for Libert, intrinsic rather than monetary.

“It’s the hunt for it, knowing that obviously you do something better than someone else. It’s competition,” said Libert, 51, a Virginia resident who also owns a home in Charlevoix.

A Shocking Discovery
The air in his scuba tank was running low, and Libert was about 100 feet below the surface of the dark Lake Michigan waters on his last dive of the 2001 season. Visibility was about 3 inches when he swam into a long pole sticking out of the lake bottom.

“I didn’t even know what it was,” Libert said. “My face mask ran right into it. I don’t know how to explain the feeling. Talk about shock.”

He sent up a marker and his crew used global positioning devices to note the location. But when he went back to the surface to refill his tank, the air compressor failed and then a storm moved in. Libert had to wait until the following spring to dive again and take another look.

“That was the hardest thing, waiting all that time, wondering: ‘Is this the mast of a ship? Is it anything like that?’” Libert said.

When he made it back, Libert wiped off the zebra mussels and took some infrared video of his find.

Could it be the legendary Griffon? Libert wasn’t sure. But his discovery intrigued Scott Demel, a curator at Chicago’s Field Museum of Natural History, which is interested in excavating and possibly displaying the wreck, if it proves to be the Griffon.

“I think everyone would agree it’s the Holy Grail of the Great Lakes,” Demel said.

Libert took Demel to the site later in 2002 to take samples of the pole for carbon dating.

But carbon dating isn’t an exact science because fluctuations in temperature and climate can affect the test results, Demel said.

“It can’t pinpoint exactly how old the wood is, but it certainly gives us windows to work from,” he said.

The results of the carbon dating give Libert’s discovery a 33 percent probability of dating to 1679. Those aren’t great odds, but it’s one part of the puzzle, Demel said.

Funding the Research
The court battle has stopped Libert from getting back to the site. He says it’s too early to tell whether his find is the Griffon, a French vessel that explorer René-Robert Cavelier, Sieur de La Salle sent out on its fatal trip with a crew of about five. But Libert points to other evidence, such as ax marks on the wood indicating it was hand hewn. He said it’s possible he found the Griffon’s bowsprit and the rest of the ship is loosely buried behind it.

Uncovering the truth has been tricky for Libert, whose real job—the one that pays the bills—is working as
an intelligence analyst for the Department of Defense.

He has formed the company Great Lakes Exploration Group LLC to salvage the ship. And he’s trying to use a combination of his own money and whatever investors and grants he can attract to fund the venture.

The Field Museum is helping Libert write a grant to fund more research.

“We’re not wealthy, but believe it or not, I pull money from other sources—everything in order to be able to do this,” Libert said.

But he can’t explain the exact nature of his lust for shipwreck exploration.

“If you could answer that, you’d be helping me out, and my wife also,” he said.

So far his biggest cost has involved a lawsuit against the state.

Michigan claims all shipwrecks within its waters. But Libert says he should be able to maintain salvage rights to his discovery, and he doesn’t give up easily.

The *Griffon* sailed under the French flag, and Libert persuaded the French government about a year ago to make a claim and give him the rights to salvage the ship.

Melissia Christianson, a spokeswoman for the Michigan Attorney General’s Office, said there is still no agreement on salvage rights.

“We are currently exploring with the other side whether or not we can find co-operations,” she said.

Though the rights to the wreckage are likely to be decided in federal court, it appears as if the two sides may have put aside their differences long enough to decide whether the shipwreck is indeed the *Griffon*.

“Right now it can’t be distinguished from a simple timber,” Christianson said. “There’s no evidence to believe that it is the *Griffon*.”

**Skepticism and Hope**

Though Christianson is skeptical, Libert is hopeful.

“People are finding it hard to believe because it’s been lost for so long,” he said.

Libert has been looking for the *Griffon* for 28 years, researching in libraries and seeking out any other source that might lead to a clue to its whereabouts. Names were different in La Salle’s day and the *Griffon*’s name can be found different ways—*le Griffon*, *Griffin* and *Griffon*.

Said Demel: “It’s the last frontier on the planet, to look at territory that’s underwater.”

**Lake Michigan Facts and Figures**

Lake Michigan is 307 miles long and averages 75 miles across.

It is the sixth largest freshwater lake in the world.

Small lunar tidal effects have been documented for Lake Michigan.

The lake has an average depth of 279 feet; it is 925 feet deep at the deepest point.

Surfers take advantage of some of Lake Michigan’s bigger waves.

Note: This sidebar did not accompany the original *Detroit Free Press* story.

**Discussion questions and resources on page 30.**
How a Treaty Becomes Law

Under the U.S. Constitution, the president is empowered to make treaties with other countries. However, before a treaty becomes U.S. law, Article II, Section 2 of the Constitution (the “Treaty Clause”) requires the “advice and consent” of two-thirds of the Senate.

It sounds simple enough. The President, through the executive branch, negotiates a treaty with another country and, when satisfied, signs the treaty and submits it to the Senate. The treaty has no legal effect in the United States until at least 67 of the 100 senators give their approval (assuming all senators are present) and the president re-signs the measure.

In reality, however, international treaties are often not the product of negotiations by the executive branch, but rather result from efforts by the United Nations, which produces international agreements on a variety of subjects. Member nations of the United Nations are then encouraged to become signatories to the treaty—which typically has no effect until a specified number of nations agree to it.

The first step in ratifying a treaty is that the President must agree to it. This can be a source of delay. For example, President Reagan objected to the terms of the U.N. Convention of the Law of the Sea as it was originally worded in 1982. The treaty was not signed until certain amendments were made to the U.N. document that prompted President Bill Clinton to approve the treaty in 1994. The treaty was then sent to the Senate.

Once a treaty is presented to the Senate, it is referred to the Senate Foreign Relations Committee, which considers treaties on its own timetable. Rules of the Senate make it possible for the chairman of the Foreign Relations Committee to keep a treaty bottled up for years. This was the case with the Law of the Sea Convention. The Foreign Relations Committee’s chairman refused to hold hearings on the treaty; it wasn’t until a new chairman took over in 2003 that hearings were even scheduled. Unlike legislation, treaties can be carried over from one legislative session to the next.

If the committee decides to refer the treaty to the full Senate, that referral can be with a favorable recommendation, an unfavorable recommendation, or no recommendation at all. If a treaty is sent to the full Senate and the Senate adjourns without taking action, the treaty goes back to the Foreign Relations Committee for reconsideration.

If a treaty reaches the full Senate, senators may propose amendments to the text of the treaty. A simple majority of senators is required to approve an amendment. Because general Senate rules govern this process, it is subject to the same delaying tactics that senators often employ to stall legislation that they do not support.

When consideration of the text of the treaty is complete, a resolution is presented to adopt the treaty. At this point, amendments to the text of the treaty itself are prohibited, but senators can add reservations, declarations and other statements intended to affect how the treaty will be interpreted under U.S. law.

Following Senate debate, the treaty is ratified if two-thirds of the senators present vote in favor of ratification. The treaty still does not become law, however, until the President re-signs it. If the Senate amended the text of the treaty, then the president’s signature is not guaranteed as he may object to the changes. And any substantive changes to the text may require renegotiation with other countries that are parties to the treaty.

Only a handful of treaties that have been voted on by the full Senate in the past century have been rejected, including the Treaty of Versailles (which established the League of Nations) and the Nuclear Test-Ban Treaty of 1996. But many more treaties simply languish in the Senate, where an agreement can be stalled at virtually any point in the ratification process. The President can also withdraw a treaty from Senate consideration.

The Convention on the Elimination of All Forms of Discrimination Against Women is one of the most prominent recent examples of a treaty that has been mired in the Senate. This agreement, known as the Women’s Rights Treaty, was approved by President Carter and sent to the Senate in 1980. But the treaty didn’t even get a hearing until 1990, and though the agreement made it out of the Foreign Relations Committee in 1994 and 2002, the full Senate failed to act both times before the end of the session and the treaty returned to the Foreign Relations Committee, where it remains.

When discussing treaties, confusion can result from the fact that in the Constitution, “treaties” are subject to two-thirds Senate ratification, while “agreements” and “compacts” (which appear in Article I,
Section 10) are not. The Constitution doesn’t explain what the difference is between a treaty, an agreement and a compact.

International law considers any international agreement with binding obligations to be a “treaty.” The United States has adopted a narrower definition of “treaty.” Under established U.S. law, an international agreement with a foreign country can become law by simple majority vote of both houses of Congress, if the agreement covers matters on which the federal government ordinarily has power to legislate. These “congressional-executive agreements,” which are treaties in everything but name, are not expressly authorized by the Constitution, and some scholars have questioned their legitimacy. Nevertheless, the prevailing legal view is that congressional-executive agreements are a proper alternative to traditional treaties and they are often used for international trade accords, such as the North Atlantic Free Trade Agreement (NAFTA).

Once an international agreement becomes law—whether through traditional Treaty Clause ratification or a statutorily approved congressional-executive agreement—the measure becomes part of U.S. federal law. It does not supersede U.S. law. That means that Congress can modify or repeal international agreements and U.S. courts will generally uphold that action even if the change is considered a violation of the treaty under international law.

**Focus Questions ...**

1. What do you think of the requirement in the U.S. Constitution for two-thirds of the Senate to approve treaties signed by the President? Does the system appropriately check and balance the power of the President? Or is it too cumbersome in the modern world?

2. Australia drafted its Constitution in the 1890s, and was influenced by both the U.S. system of government and the British Parliamentary system. Why do you think it chose to follow the British model of treaty implementation rather than that of the United States?

3. The United States has entered several international “congressional-executive agreements” through a simple majority vote in both houses. Do you think such agreements should be subject to the treaty ratification process in Article II, Section 2? Does it make a difference that such agreements can only cover matters on which the federal government ordinarily has power to legislate?

**Treaties in England and Australia**

By Katie Fraser

The system of treaty approval in the United States has been criticized because the requirement in the Constitution that treaties be signed by the President and approved by two-thirds of the Senate makes it difficult to ratify treaties. As a result, many international treaties that have been signed by the President have not been ratified.

Every country has a different system for approving treaties. The British system is interesting because its process for treaty approval provided a model for the drafters of the U.S. Constitution. The Australian process is interesting because (as a former British colony) it was also influenced by the British system.

In Britain, the power to sign treaties is traditionally a Royal Prerogative. This means that in the age of absolute monarchy only the monarch could enter into a treaty with another country. Today the power to enter into treaties is exercised by the prime minister and other members of the cabinet.

There is no constitutional requirement for the British Parliament to approve a treaty. However, a rule of procedure called the Ponsonby Rule requires all treaties to be laid before Parliament for 21 sitting days before the treaty is ratified. The rule is named for Mr. Arthur Ponsonby, who introduced the rule in 1924 in response to calls to end the practice of making secret treaties, which were thought to have helped bring about the First World War. Treaties may be scrutinized, debated, or voted upon in Parliament, but there is no legal requirement that this be done. The only exception is when a treaty changes UK law. In that case, the participation of Parliament is required in order to pass legislation.

Australia’s treaty-making procedures are governed by its written constitution. The power to enter into treaties is an executive power within Section 61 of the Australian constitution. The final decision whether to ratify treaties is taken at ministerial level, and in many cases, by the cabinet. Australia’s constitution does not give Parliament any formal role in treaty-making; in this way, Australia’s system is similar to that of the United Kingdom. All treaties are tabled in Parliament for at least 15 sitting days before they are implemented. And as in the United Kingdom, the participation of Parliament is necessary if legislation is required to give effect to a treaty.
Activity A: What does the song “The Downeaster ‘Alexa’” reveal about a fishery issue?

Popular singer Billy Joel wrote “The Downeaster ‘Alexa’” in 1989 as part of his personal support for the struggling fishing industry of Long Island. Joel worked on an oyster boat there when he was young. The words of the song can give us a great deal of information about the events and people of the North Atlantic striped bass fishery.

Procedure
1. Ask students to read the words of the song. If possible, play a recording of the song as students read the words.
2. Ask students to complete the worksheets on page 26 and 27. The worksheets can also be downloaded at www.insightsmagazine.org.
3. Ask students to read the article “Fishing to the Bottom—and Back?” on page 10. Hold a class discussion comparing how the article and the song represent the social impact of regulating fishing and fish depletion.

Materials
2. Recording from Billy Joel’s Storm Front album. You can download the song for $0.99 at mp3.com.

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The Downeaster ‘Alexa’


This map shows the places referred to in the Billy Joel song, “The Downeaster ‘Alexa’”; see Worksheet 1 for accompanying question.

Fisherman working aboard a downeaster boat.
Worksheet 1

1. What places did the “Alexa” visit? List them in order. Locate the places on the map on page 25, and connect them in order of travel.

________________________________________________________________________

________________________________________________________________________

2. Does the song indicate the size of the “Alexa” crew? If there are others aboard, how would you describe the singer’s position among them (is he the captain, a crew member, navigator)?

________________________________________________________________________

________________________________________________________________________

3. Is the “Alexa” crew fishing for recreation (sport fishing) or for a livelihood (commercial fishing)?

________________________________________________________________________

4. According to the song, what influenced the fisher to choose his occupation? How likely is he to be successful in it? Why doesn’t he give up fishing for some other line of work?

________________________________________________________________________

________________________________________________________________________

5. What kind of fish had the fisher apparently been catching? Why doesn’t he catch them now? What is his alternative?

________________________________________________________________________

________________________________________________________________________

6. According to the fisher, how does fishing compare with previous years?

________________________________________________________________________

________________________________________________________________________
Worksheet 2

The song names two fish, the striped bass or “striper” and the swordfish. The striped bass has been regulated since the early 1980s by the coastal states. This means that rules have been made limiting the number of fish that can be caught. Fishery managers call this a sustainable yield of fish. Limiting the fish caught to a sustainable yield ensures that enough fish are left to maintain the fish population.

Read the following extract about the management of striped bass, and answer the questions that follow.

Stripped bass, also known as “stripers,” are rarely found more than several miles from the shoreline. Anglers usually catch stripers in river mouths, in small, shallow bays and estuaries, and along rocky shorelines and sandy beaches …

Prior to the mid-1970s, management of striped bass was carried out more or less independently by each coastal state … In 1981, the Atlantic States Marine Fisheries Commission (ASMFC) adopted a coastwide management plan, to be acted upon by each coastal state. This plan recommended minimum size limits for fish caught in nursery rivers and in coastal areas, and restricted fishing on spawning grounds during the spawning season. In response to constantly dwindling numbers of stripers on the East Coast, this plan was amended (Amendment 3) in 1985 to protect females hatched in 1982 until they have spawned at least once.

The complete article is available at www.mass.gov/dfwele/dmf/recreationalfishing/stripedbass.htm

1. Coastal states can make rules about how many fish can be caught within three miles of land. Are striped bass coastal fish or deep sea fish? Is the striped bass fishery regulated by state or federal law?

2. What did the 1981 coastal management plan recommend?

3. What did Amendment 3 to the 1981 plan require? In your opinion, what was the long-term goal of this plan?

4. In your opinion, what are the advantages and disadvantages of individual states managing fish populations in the waters off their coasts? What are the advantages and disadvantages of groups of states coordinating management of fisheries?
**ACTIVITY B: What are the effects of regulating a fishery?**

1. Ask students to imagine that the year is 1980 and a town meeting is being held to discuss whether laws should be passed to limit the number of fish being caught and protect the striped bass population. The following people are represented at the meeting:
   - Commercial fishers and their families
   - Sport fishers (individuals who fish for recreation)
   - Local politicians
   - State legislators
   - Scientists from the National Marine Fisheries Service (NMFS)

Divide the class into small groups and assign each group one of the above categories. Ask each group to think about the possible impact of the laws being proposed and conduct some research if necessary. Links to research are available online.

Ask each group to brainstorm some of the issues they might face and create a position paper to present to the class. The position paper should:
   - State the position the group is taking on the proposed laws limiting fishing of striped bass. Does the group support or oppose the laws?
   - Provide at least three reasons for its position.

After each group presents its work, continue the class discussion until the class reaches consensus on the suitability of the regulations.

**Possible Issues**
Students may want to consider:
   - the short-term and long-term effects of regulating fishes or fish populations.
   - the short-term and long-term impacts on local communities, including the social issues Billy Joel raises in “The Downeaster ‘Alexa,’”
   - whether fishers should be compensated for loss of livelihood if the law is passed or offered training for different careers,
   - whether other factors besides fishing should be investigated for their impacts on fish population.

2. Ask students to complete the worksheet and assessment on page 29. The worksheets can also be downloaded at www.insightsmagazine.org.

**ACTIVITY C: International Fishing Regulation**

The Billy Joel song also mentions another kind of fish, the swordfish. Swordfish are highly migratory fish and are harvested worldwide from tropical, subtropical and temperate seas.

Swordfish fishing is regulated by an international organization called the International Commission for the Conservation of Atlantic Tunas (ICCAT) (Swordfish is not a tuna, but it has a similar environment and breeding pattern). This organization was established by an international treaty, the International Convention for the Conservation of Atlantic Tunas. The complete text of the treaty is available online at www.oceanlaw.net/texts/iccat.htm.

Article IV of the treaty makes ICCAT responsible for the study of the populations of tuna and tuna-like fishes. Under Article VII of the treaty, ICCAT may make recommendations on the basis of scientific evidence to maintain the populations of tuna and similar fishes. Unless there is an objection, these recommendations become effective for all countries that are parties to the treaty after six months.

1. Why do you think swordfish fishing is regulated by an international organization? Give reasons for your answer.

2. What clause of the Constitution gives the federal government of the United States the ability to sign international treaties?

3. Article XIV of ICCAT says that any country which is a member of the United Nations may join the Convention. This means that, in theory, landlocked countries (i.e. countries that do not have any coastline or access to the sea) are able to join the Convention. No landlocked countries have yet signed. In your opinion, is it a good idea to allow landlocked countries to have input on fishing treaties? Give reasons for your answer.
The Effects of Regulation

Look at the graph, which shows the estimated numbers of striped bass in the Atlantic coast region between 1981 and 2005.

Ask students to answer the following questions.

1. What does the graph tell us about the number of striped bass in 1989, when Billy Joel released his song “The Downeaster ‘Alexa’”?

2. What happened to fish stocks between 1981 and 2005? What conclusions, if any, can you draw about the effectiveness of fishery regulations?

Assessment

Write a report on the outcome of the town meeting as if you are reporting back to the real people you represented. Include answers to the following questions:

- Are you satisfied with the outcome of the meeting? If not, what outcome would you have preferred?

- Did you feel that your input at the town meeting made a difference to the final decision reached?

- Do you think there were good reasons for introducing the regulations? If the regulations had not been put into place, what might the graph on this worksheet look like?
The Abandoned Shipwreck Act gives states rights over abandoned shipwrecks in state waters. Many shipwrecks, however, are discovered by private explorers who use private funds to search for wrecks.

- What role do you think private explorers should play in locating abandoned shipwrecks?
- Do states have an interest in encouraging private explorers to search for abandoned wrecks?
- How could the state use limited grants of its salvage rights to encourage private exploration? Would you advise a state to do so?
- Is it important that the state maintain some sort of control over exploration of abandoned shipwrecks? Why or why not?

2. Why do you think that international law gives special protection to government-owned vessels? The wreck of the Griffon occurred more than 300 years ago. Do you think that government rights to a shipwreck should expire after some period of time? Why or why not?

Web Resources

Great Lakes Exploration Group, LLC maintains a Web site describing the ongoing exploration of the Lake Michigan shipwreck believed to be the Griffon. Included on the site are photos of the submerged shipwreck, information on the collaboration with the Field Museum in Chicago, and historical information on the Griffon and René-Robert Cavalier, Sieur de La Salle. Visit www.greatlakesexploration.org/index.htm

NOVA Online: Voyage of Doom is the companion Web site for a NOVA program that explored the wreck of another of René-Robert Cavalier, Sieur de La Salle’s ships, La Belle, which sank off the coast of what is now Texas in 1686. The site’s features include information on ownership of lost ships, an interactive diagram of La Belle’s wreckage, and “buoyancy brainteasers,” as well as a teacher’s guide and resource listing. Visit www.pbs.org/wgbh/nova/la Belle.

The Submerged Resources Center of the National Park Service (formerly known as the Submerged Cultural Resources Unit) offers an interactive map of current projects around the United States. Visit www.nps.gov/applications/submerged.

The Wisconsin Shipwrecks site allows you to explore 17 shipwrecks off the shores of Wisconsin, through underwater video, historic photographs, and archaeological discoveries. You can also read journal entries of underwater archaeologists, and submit questions about the wrecks to experts at the Wisconsin Historical Society. A CD-Rom that explores the role schooners and steamers played in the state’s economic and social development is also available from the Historical Society. Visit www.wisconsinshipwrecks.org.


For Further Reading

Daniel Lenihan, Submerged: Adventures of America’s Most Elite Underwater Archaeology Team (Newmarket Press, 2002). Recounts the 25-year career of the founder and former director of the Submerged Cultural Resources Unit of the National Park Service.


James E. Bruseth et al, From a Watery Grave: The Discovery and Excavation of La Salle’s Shipwreck, La Belle (Texas A&M University Press; 2005), tells the story of the excavation of the ship La Belle in Matagorda Bay close to what is now Houston, Texas. The ship was lost in a storm in 1686 on a trip led by famed French explorer René-Robert Cavelier, Sieur de La Salle. This book tells the story of the ship’s salvage, the preservation of more than a million artifacts, and the details they reveal about LaSalle’s exploration.

Anka Muhlstein, La Salle: Explorer of the North American Frontier (Arcade Publishing, 1994) is both an adventure story and a lively biography about the life and exploration of La Salle.
In this issue of *Insights on Law & Society*, you can find supplementary materials and further resources for high school teachers of civics and history, law-related education program developers, and others working with the public to teach about law and legal issues. The views expressed in this document are those of the authors and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be construed as representing the policy of the American Bar Association, the Fund for Justice and Education, or the Standing Committee on Public Education.

**Insights Online**

You can find supplementary materials and further resources for this issue at the Web site for *Insights on Law & Society* at www.insightsmagazine.org.

Find a sea of further resources to accompany every feature article in this issue, with links to related lesson plans. If you want to share the feature articles in this issue of *Insights* with your class, no problem—you can download them as .pdf files from our Web site.

Bring your students online so they can learn more about careers related to the oceans, through links to profiles of lawyers, scientists, environmentalists, and teachers whose work is focused on the oceans.

Have your class complete a web quest to find out more about massive ocean pollution and its legal consequences. Your students will be asked to explore Web sites, newspaper articles, and legal decisions in order to learn about oil spills around the world and answer accompanying questions.

Challenge your students to take an online quiz to test their knowledge of the law relating to the sea. You can find multiple choice and true/false questions online, as well as ideas for brainstorming activities.

**To access this issue’s features online:**
username: spring06
password: pyrite

*Insights on Law & Society* is published three times each year (fall, winter, spring) by the American Bar Association Division for Public Education. Chair, Standing Committee for Public Education, Alan Kopit; Director, Division for Public Education, Mabel C. McKinney-Browning; Editor, Katie Fraser; Managing Editor, Michelle Parrini; Consulting Editor, John Paul Ryan; Webmaster: Hilary Glazer.

A one-year subscription to *Insights on Law & Society* costs $34 and includes three issues of the print and online magazine. For subscription information, contact ABA Division for Public Education, 321 N. Clark Street, Chicago, IL 60610-4714; (312) 988-5735; www.abanet.org/publiced; fax (312) 988-5494, ATTN: Circulation Manager; E-mail abapubed@abanet.org

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