



National Security Law Report

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National Security Implications of the Law of the Sea Convention

by John H. McNeill

On October 7, 1994, the President transmitted the UN Law of the Sea (LOS) Convention, with its Deep Seabed Mining Implementing Agreement, to the Senate for advice and consent. The Department of Defense has long supported the United States becoming a Party to the Convention, provided concerns with its deep seabed mining provisions could be adequately addressed. Removal of those objections by the Deep Seabed Mining Implementing Agreement of July 1994 opens the way for US acceptance of the entire Convention, whose provisions are of major strategic and economic importance to the United States.

The value of the LOS Convention lies in the fact that it provides an authoritative compilation of the law governing the world's oceans, which supports operational rights essential to the planning and execution of our national defense strategy. By ratifying the treaty, the nations of the world are agreeing to be bound once and for all to principles that strike a complex but deliberate balance between maritime and coastal interests. On the one hand, the law that is codified in the Convention allows the United States to meet its national security requirements by assuring operational mobility and flexibility on, under, and over the world's oceans. At the same time, it recognizes a coastal State's interest in managing and protecting valuable off-shore resources and coastal areas. It is this balance which, we believe, will lead to the Convention's widespread

acceptability among diverse interest groups and promote the legal stability that we have sought for so long.

The Convention strengthens our national security by strongly supporting crucial freedoms and norms, including:

The Right of Innocent Passage

This right of ships to continuous and expeditious transit is the principal right of nations in foreign territorial seas. Without it, military vessels could not conduct their transits efficiently and effectively. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea, for which neither prior notification nor authorization is required. Aircraft do not have the right of inno-

Continued on page 2

Conference Examines Non-Governmental Security Threats

by John Norton Moore

On December 1-2, the Standing Committee sponsored a conference on "Non-Governmental Security Threats: The "Gray Area" Challenge." Held in Washington, DC, and cosponsored by the University of Virginia Center for National Security Law, the conference attracted more than one hundred participants to hear top experts discuss one of the most significant categories of security threats in the post-Cold War world.

Dr. Roy Godson, President of the National Strategy Information Center; Professor Richard Shultz, Olin Distinguished Professor of National Security at the U.S. Military Academy; and Professor Richard Betts, Director of Columbia University's Institute of War and Peace Studies; provided an overview of the "gray area" problem. All stressed the importance of the security threats grouped together under this category and the interrelation be-

Continued on page 4

Inside

- 3 Book Review—Friedman on Geyer's *Winter*
- 4 Calendar of Events
- 6 National Security Agenda

Law of the Sea Treaty . . .

Continued from page 1

cent passage; in most circumstances, they can enter the airspace above another State's territorial sea only with prior approval from the State. Submarines may transit another nation's territorial sea, but they must do so on the surface.

Of particular note, the Convention provides that coastal States may not prescribe laws or regulations which have the practical effect of denying or impairing the exercise of the right of innocent passage.

The Right of Transit Passage

More than 100 straits used for international navigation are overlapped by territorial seas. Under the Convention's regime of transit passage, ships and aircraft enjoy the right of continuous and expeditious transit through these straits. Transit passage guarantees overflight, as well as submerged transit. Without it, aircraft would not be able to move freely through straits overlapped by territorial seas, and submarines would lose their ability to remain undetected as they move from one area of the high seas to another. This regime also serves important conflict limitation objectives. Since transit of straits is a matter of right rather than of consent by the coastal States, international straits are depoliticized. Our ability to support coalition forces during the war against Iraq required unrestricted rights to transit through key international straits.

Archipelagic Sea Lanes Passage

The Convention confirms the right of transit by ships and aircraft through archipelagoes. Like transit passage, archipelagic sea lanes passage includes the right of navigation and overflight in the normal mode; thus, submarines may transit submerged and aircraft may overfly such sea lanes. Without this right, our ability to move forces to their area of operations in a timely and secure manner would be degraded.

High Seas Freedoms

Effective operation of military ships and aircraft on the high seas involves more than transiting ocean space. Other important activities include task force maneuvering, flight operations, telecommunications, military exercises, space activities, surveillance, and ordinance testing and firing. The Con-

vention preserves these long-standing high seas freedoms in all ocean areas beyond the territorial sea.

Sovereign Immunity

The Convention contains a comprehensive and balanced approach to ocean uses. For example, it directs States to curb marine pollution, but requires that those efforts give due regard to, and be consistent with, important maritime uses, such as navigational freedom. The Convention thus recognizes the delicate balance between protecting and preserving the marine environment and other competing interests. From a national security perspective, an important example of this balancing of interests is the recognition of the special nature of sovereign immune warships and auxiliary vessels. Hence, the portions of the Convention regarding the protection and preservation of the marine environment do not apply to sovereign immune vessels; although States should adopt measures so these vessels act in a manner consistent, so far as is reasonable and practicable, with the Convention's provisions. Nevertheless, the Convention contains a very important recognition of "what is" a sovereign immune vessel, as well as guidelines on the scope of coastal authority over these vessels.

Maritime Claims

The Convention provides important limitations concerning the maximum permissible breadth of a coastal State's territorial sea (12 NM) and exclusive economic zone (200 NM). It also provides rules for

Continued on page 5

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BOOK REVIEW

by Richard E. Friedman

Waiting For Winter To End

by Georgie Anne Geyer

Washington and London: Brassey's

Pages: 237 Price: \$23.00

This book is a multilevel experience. It is a highly enjoyable account of the author's adventurous journey through Central Asia. For serious students of national strategy it is a compelling narrative of the effect that the breakup of the Soviet Union has had on the Muslim-populated areas of Tatarstan, Kazakhstan, Kyrgyzstan, and Uzbekistan.

The author analyzes the problems the new republics of Central Asia face on the near horizon—interethnic rivalry, environmental degradation, organized transnational crime, economic disintegration, political turbulence, and the effect of Islamic fundamentalism. The nature of travelogues has changed. The author writes:

Most early books of exploration were written to uncover the verities of the past, to find treasure or power. Today's adventure was to understand the new, to preserve what was left, to help people advance, and to rummage around in the memories of minds long closed in order to both link us to realities long forgotten and to discover ways to forget and overcome the times of trouble.

The origin of the current conflict in Chechnya is comparable to that of the conflict in the enclave of Nagorno-Karabakh. They are examples of Stalin's tyrannical legacy. The Transcaucasus, the site of both of these conflicts, is composed of different peoples, languages, cultures, history, and quarrels. In order to ensure that these peoples would never come together and threaten the Communist regime, Stalin created a mosaic of peoples, moving a part of one population onto another's historic lands.

The author comments on the xenophobia and paranoia triggered by the presence of the "other," the personification and bringer of evil who could never be trusted and who must be expelled.

The international community is confronted with the rapid disintegration of empires and states. The effect is that myriad groupings of people, stimulated by complex and ancient rivalries dimly understood, are susceptible to passionate outbursts of nationalism. Without a central power with the authority to restrain and mediate, the result is armed conflict.

It is in this context that the United States and its

allies must examine the efficacy of peacekeeping operations. As a predicate to intervention, we must understand the historical context in which the conflict arises and determine whether the disputing parties want mediation or a third party presence to restrain them.

The author comments on the reaction of newly freed, newly self-determined nations to their political freedom:

Here were countries newly freed - newly "self-determined" - and instead of embracing tolerant, liberal, Western precepts of independence, they were striding in rage back towards the past. They were embracing their worst ancient traditions. It was a question of "folk rights" vs. "human rights" something the West chose out of its own experience to believe was long past in the world.

These types of armed fights have a criminal quality that is obscured because we tend to look for political motivation. There is a distinction to be made between political warfare and systemic crime. Young males without an economic future, who are violence-prone, may regard armed conflict as a growth opportunity, particularly when there is no central authority to deter them. Organized crime may replace political authority in these regions. Add to this the potential for drug production and trade, and the ingredients for anarchy and destabilization of small states coalesce.

The United States has made human rights one of the paramount tenets of its foreign policy. It is a highly complex subject and one that will bedevil the world for the next generation, in Central Asia and elsewhere. The author writes:

It deals with the question of the very nature of nation - states in a world of disintegrating multinational states, with the real and revived power of ethnicity, with the rights of peoples as opposed to the rights of individuals, and with the huge question of the right of national self-determination as opposed to the sanctity of existing international borders.

There is a need to recognize the limits of self-determination as a human right. Max Kampelman analyzed the problem of self-determination as follows:

It does not include the right to change boundaries at will, because that is destabilizing. Within every majority seeking secession, there is another minority that may want to secede. Where does it end? Minorities may seek to secede by negotiation. However, if violence is used and conflict occurs, does the secessionist state have protection under international law?

Continued on page 4

Book Review—Geyer

Continued from page 3

The author's narrative foreshadows another issue raised by the Chechnya conflict: do collective rights impinge on individual rights? If so, U.S. policymakers will need to clarify the nature of America's commitment to emerging nation-states—which rights will we promote and defend? The author's analysis of conditions within the Central Asian republics she explored suggests that Chechnya will not be the last time that the international community witnesses an ethnic clash on the periphery of the nation-state system.

Conference . . .

Continued from page 1

tween these threats and other security challenges of the post-Cold War world such as nonproliferation and encouraging a transition to democracy in the former Soviet and Warsaw Pact Nations.

Of particular interest, Stanley Morris, Director of the Financial Crimes Enforcement Network at the Treasury Department, pointed out that the criminal groups controlling hundreds of billions in financial assets are increasingly moving back and forth between legal and illegal activities. These organized criminal groups are exploiting political instability and new communications technologies. He observed that if the Sicilian Mafia were a Nation its proceeds from drug sales alone would make it approximately the twentieth wealthiest nation in the world. Organized crime on this level is a significant threat to the stability of global business and finance, which depend on integrity of agreement and honest dealings. The problem is serious—like an epidemic or famine—and poses serious risks in corrupting and distorting markets unless checked.

Similarly, David Andelman, Washington Correspondent to CNBC, talked of rumors of radical States counterfeiting "super bills" in Lebanon's Baka Valley—\$100 notes virtually impossible to spot as forgeries. He also indicated that some large criminal groups are purchasing legitimate banks to enhance their ability to launder large sums of cash.

Brian Sullivan, Senior Research Fellow at the National Defense University, discussed an all out attack by the Mafia against investigative magistrates—with the unsolved murders of many—and discussed the tragic history of collaboration between the Mafia and former Italian governments. He stressed that it is a synergy between these allegedly "autonomous" criminal groups and govern-

ment itself that poses the greatest threat.

Peter Grinenko, Supervising Investigator of the Brooklyn District Attorney's Office, discussed a criminal scam by two Russian brothers which took in 1-2 *billion* in a California health insurance scam. He also indicated that in past years the Soviet Government knowingly employed criminals and inadvertently provided strong economic incentives for honest people to become criminals.

The Panel on Organized Crime in the Former Soviet Union stressed the seriousness of this growing problem. While apparently there is yet no centralized organization comparable to the Sicilian Mafia, there may be four- to five-thousand criminal organizations in the former Soviet Union—and the problem is growing. Jim E. Moody, Chief of the Organized Crime and Drug Operations Section of the FBI, detailed the extent of the organized crime problem in the former Soviet Union and described the innovative efforts of the FBI to work with the new Russian Government in combating the problem. He also called attention to rapidly growing problems in Western Europe in the wake of the removal of internal border restrictions pursuant to European integration.

All panels, including that on Controlling International Drug Cartels, pointed out the risk to democratic institutions of a growing synergy between Government officials and organized crime, including drug cartels. Thus, one important goal in the international fight against drugs should be to support democratic institutions and to combat efforts by drug cartels or other organized criminal groups to corrupt and penetrate democratic governments. Stephen H. Greene, the Deputy Administrator of the Drug Enforcement Administration, made the important point that we are unlikely to win the struggle against drugs until we begin to apply deterrence *directly* to those organized crime leaders running the criminal organizations. Otherwise, seized drugs and lost revenues will simply be treated as a cost of doing business.

Calendar of Events

January 19—Breakfast Meeting, International Club (Speaker: Les Aspin, Chairman, President's Foreign Intelligence Advisory Board)

February 7—Conference on Implementing the Chemical Weapons Convention, Capitol Hilton Hotel, Washington DC

Marine Colonel Guy Roberts, of the Naval War College, pointed out in introducing the counter-terrorism panel that we need to broaden our thinking about modes of terrorism in a world in which a computer keyboard may do more damage than a bomb. Philip Wilcox, the Coordinator for Counter-Terrorism of the Department of State, described a synergy between drug cartels and terrorism and indicated that the Department was looking at ways to strengthen United States antiterrorism laws, including laws to prevent terrorist groups from engaging in fund raising in this country. Professor Alberto Coll, of the Naval War College, stressed that the heart of our counter-terrorism policy must be deterrence. We must be serious and consistent in punishing any resort to terrorism; and we must have a strategic response to terrorism that is credible. Above all that means our antiterrorism rhetoric must be matched by concrete deeds.

The presentations of both Malvina Halberstam of the Benjamin N. Cardozo School of Law and Neil C. Livingstone, President of the Institute on Terrorism and Subnational Conflict, emphasized the importance of effective enforcement against terrorists and their sponsors.

This conference generated great interest and lively discussion about "ungovernability" or "gray area" threats. It is hoped that the conference will raise the visibility of these important issues and make at least a modest contribution in encouraging a more effective governmental response.

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Law of the Sea Treaty . . .

Continued from page 2

establishing baselines and closing lines from which these zones are measured. By confirming these limits, the Convention fairly balances coastal State interests against those of maritime States, thereby discouraging jurisdictional creep. With excessive maritime claims in check, navigational freedoms can be exercised in a more certain, stable legal environment.

Conclusion

A universal legal regime for the oceans is needed to safeguard U.S. security interests, as well as defuse those situations in which competing uses of the oceans are likely to result in conflict. The international law of the sea spelled out in the LOS Convention ensures operational rights that are essential to the planning and execution of our national defense strategy. It does this by guaranteeing that key sea and air lines of communication will remain open as a matter of legal right — not contingent upon approval by coastal and island States along the route or in the area of operations. The benefits of the LOS Convention can best be realized by the United States becoming a Party to the Convention and continuing its leadership role in maritime matters.

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The National Security Agenda

Faculty Seminar on Teaching About Strategic Weapons Proliferation Set for July—The Nonproliferation Policy Education Center, the Fletcher School of Law and Diplomacy's International Security Studies Program, and the National Strategy Information Center will cosponsor the First Faculty Seminar on Teaching About Strategic Weapons Proliferation at Bowdoin College in Brunswick, Maine, July 9-15, 1995. Applications from faculty of all ranks who either already teach in the field or intend to do so are due March 15, 1995. Admission will be limited to approximately 25 applicants, who will receive round-trip travel and room and board at the seminar. For further information, contact Henry D. Sokolski at (202) 466-4406.

Humberto Ortega Resigns as Nicaraguan Defense Chief—On December 21, Nicaraguan President Violeta Chamorro announced that Sandinista General Humberto Ortega—who has served as Defense Minister since the 1979 revolution—will resign on February 21. Last May, following the explosion of a Sandinista-controlled secret arms cache in a Managua auto repair shop (owned by a Basque ETA terrorist) and the resulting revelation that the Sandinistas had provided a safe haven and citizenship for hundreds of international terrorists from Europe, the Middle East, and other Latin American States and maintained numerous other large weapons caches for guerrillas in El Salvador and other neighboring States, President Chamorro announced that General Ortega would step down in 1995. (The *Los Angeles Times* reported last June 21 that the chef at one of Managua's most popular restaurants was a Red Brigade terrorist (Alessio Casimirri) convicted *in absentia* for the 1978 murder of Italian Prime Minister Aldo Moro and sentenced to several life prison terms by Italian courts. The *Times* added: "Many of those who had used Sandinista Nicaragua as a sanctuary worked directly for the Interior Ministry run by intelligence czar Tomas Borge. The foreign radicals exchanged weapons training and used Nicaragua as a base of operations, running spy networks and plotting guerrilla missions, according to former Sandinista officials.") Ortega will be replaced by General Joaquin Cuadra Lacayo, who will serve a five-year term and has "agreed to obey civilian authority." Cuadra was a hero of the Sandinista revolution and has long served as Ortega's Vice Minister of Defense and Army Chief of Staff. Although he is viewed as strongly loyal to Ortega, he is a non-Marxist and has a reputation for competence. In their 1993 book, *The Civil War in Nicaragua: Inside the Sandinistas*, Sandinista defector Roger Miranda and Hoover Institution scholar Dr. William Ratliff note that Sandinista hard-liners referred to Cuadra—the son of wealthy former central bank president Joaquin Cuadra Chamorro—as the Army's "social democrat." The authors compare him with Cuban General Arnaldo Ochoa Sanchez (who was executed in 1989, reportedly on trumped-up charges because Castro feared his popularity within the military and questioned his loyalty).

State Department Says Serb Atrocities Increased in Recent Months—On December 28, State Department spokesman Michael McCurry voiced further support for the Bosnia war crimes tribunal and said that "ethnic cleansing" has "accelerated in recent months . . ." He said that data collected by the United Nations shows that Bosnian Serb forces "have expelled, killed or imprisoned over 90 percent of the 1,730,000 non-Serbs" in the territory they have captured.

Biological Weapons Evidence found in Iraq—The *Washington Times* (Dec. 20) reported that UN inspectors "found previously undisclosed germ cultures" in Iraq "for cholera, tuberculosis and the plague," which experts said "could indicate a wider Iraqi research program into biological arms than previously thought."

Russian Arms Control Developments—On December 19 Czech police arrested three men for smuggling six pounds of weapons-grade Uranium thought to have originated in the former Soviet Union. Two days later, Defense Secretary William Perry expressed concern about what he termed a "lively market" in nuclear materials from this region—however he added that none of the discoveries to date were large enough to "make a bomb." The *Washington Post* (Dec. 22) reported an agreement "in principle" for the United States and Russia to exchange classified data on their nuclear arsenals. The *Washington Times* (Dec. 28) quoted Russian Foreign Ministry spokesman Grigory Karasin as calling for "immediate revision" of the 1990 Conventional Armed Forces in Europe (CFE) treaty so that Moscow can deploy heavy weaponry against rebel Chechens.