

## EDITORS' FOREWORD

Almost three-quarters of the earth's surface is covered by water. The oceans are home to the longest mountain ranges, deepest valleys and widest array of living organisms on the planet. Civilization evolves around and depends on the sea as an essential source of food and natural resources. Ships carry the bulk of international trade, and natural phenomena from tsunamis to hurricanes can topple economies and devastate lives.

Despite our reliance on it, the sea remains in many ways a stateless space, where boundaries are often not delineated and international rules of conduct are nebulous or non-existent. The Fall 2005 issue of the *Journal of International Affairs* grapples with these problems, examining political interaction in a realm where pirates raid cargo, multinational companies seek oil, navies fight territorial battles and marine life and island inhabitants alike are displaced by rising sea levels.

A substantial body of international law developed out of early maritime disputes. The most comprehensive treaty in force today that addresses questions of trade, transport, security, energy and environment in the ocean is the United Nations Convention on the Law of the Sea (UNCLOS), one of the most widely ratified international treaties. By exploring the debates surrounding the convention and the ways in which sovereign nations seek to protect their interests in stateless space, this issue of the *Journal* promotes further investigation into questions of governance and interstate relations on the high seas.

The United States is among the few nations that have not ratified UNCLOS, and this decision has generated considerable criticism. To frame this debate, the

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*Journal* opens with two position papers that assess whether ratification would advance or constrain U.S. interests. The debate begins with an argument in favor of adherence, presented jointly by John Norton Moore from the University of Virginia School of Law and Rear Admiral William L. Schachte Jr., a former U.S. delegate to UNCLOS and Vietnam Swift Boat volunteer. Moore and Schachte assert that the United States' continued failure to ratify the treaty actually constrains U.S. interests and weakens the country's role in protecting world navigational freedom. They seek to debunk a list of "myths" put forward by UNCLOS critics, who, they argue, lack an adequate understanding of international law. The opposing argument comes from the Cato Institute's Doug Bandow, who stands opposed to ratification. Bandow asserts that even a revised "LOST," as he dubs it, would impinge on U.S. commercial and security interests, as it would mandate global redistribution of resources, restrict competition, require the transfer of technology and create a monopolistic public mining entity.<sup>1</sup>

To situate these views in a broader historical and institutional context, *Journal* editors interviewed Gudmundur Eiriksson, Iceland's ambassador to Canada and a former judge on the International Tribunal for the Law of the Sea. In the interview, Eiriksson traces the development of UNCLOS and examines how this history is reflected in present day oceans policy. In a discussion that ranges from the Cod Wars of the 1970s to the formative contributions of the Reagan administration to UNCLOS, Eiriksson weighs the validity of arguments both for and against the treaty's implementation.

The articles that follow address more specific areas of oceans policy. We first move into the area of deep-sea resource development with an article by Caitlyn Antrim that examines the treaty's corresponding mining entity, the International Seabed Authority (ISA), in depth and traces its evolution alongside the three-decade negotiation process that culminated in the creation of UNCLOS in 1982. She sets forth the ISA as a model of international global development that could inform other cooperative international resource regimes. Meanwhile, Hurst Groves focuses on another aspect of deep-sea resource development—offshore oil exploration—and uses the cases of São Tomé e Príncipe and Nigeria to examine the issues that arise when states with vastly different resource development experience embark on a joint venture to exploit shared offshore oil deposits.

The *Journal* then moves into a series of articles examining maritime security issues. Captain J. Ashley Roach, the United States' chief negotiator for bilateral and multilateral maritime law enforcement agreements, discusses current security measures in the Malacca Straits, a potential chokepoint in the primary shipping route for Asia-bound cargoes of Persian Gulf oil. Vessels transiting the straits face the constant threat of piracy and other forms of violence and theft, and Roach proposes mechanisms for international cooperation that can better secure this strategic transit route.

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Zou Keyuan from the Singapore-based East Asian Institute then examines the measures taken to combat piracy in South Asian seas and finds that effective anti-piracy efforts require greater regional cooperation supported by more robust legal regimes in affected states. Keyuan leaves us with the impression that piracy has not been relegated to the domain of lore but remains a real and pressing threat to maritime trade.

Yet regulating stateless space can be far more complicated than interdicting roaming troublemakers. When questions of national sovereignty and resource economics surface, even an uninhabited rocky outcrop can become the center of an international dispute. Alison Williams and Jonathan Donaldson explore some of the 61 ongoing embroilments that involve overlapping claims to territorial waters. Their critical analysis of the physical and theoretical parameters that influence these disputes is complemented by a case study of the East China Sea.

John Harrald then brings the debate on maritime security back to the docks with an argument that post-9/11 investment in port security has been sorely inadequate. As the director of the George Washington University Institute for Crisis, Disaster and Risk Management and a 22-year Coast Guard veteran, Harrald examines recent U.S. and international port security initiatives and argues for a holistic approach that incorporates technology, governmental agencies, legislation, partnerships and a greater political commitment.

The dimensions of ocean security reach far beyond the prow of a military patrol boat. Global environmental conditions ultimately affect the safety of all nations, but immediate security interests often take precedence when they come into conflict with seemingly less tangible environmental impacts. In the words of Alfred M. Duda, our first contributor to this section, "we all need to get on the path of [environmental] sustainability." Duda questions the ecological effects of the sector-by-sector development strategies of coastal states, particularly in the Global South. By applying practical lessons from the World Bank's Global Environmental Facility, he suggests a broader reframing of the land-sea interface that would incorporate sea-related issues into the overall development framework.

Environmental effects are not distributed equally, and the causes of borderless problems such as global warming typically have little, if any, connection to the most affected states. Jon Barnett addresses the impact of climate change on the politics of Pacific island states and suggests adaptation and mitigation strategies to confront rising sea levels. Meanwhile, this issue's Andrew Wellington Cordier essay addresses the appalling magnitude of marine debris and other ocean waste. We conclude with a contribution by Meryl J. Williams, the former director of the WorldFish Center, who asserts that fisheries management and marine wildlife conservation present "the ultimate sustainability challenge."

When resource development and environmental welfare come into conflict in a

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stateless space, or national security and sovereignty are challenged beyond national borders, the ideal international framework is one that would guide the parties toward a peaceful and sustainable outcome. UNCLOS, the current framework for oceans policy development, falls short of this ideal, as illustrated in the debates that open the *Journal*. Yet its significance is highlighted by the fact that all of the authors reference UNCLOS as they explore their various topics. These articles depart from received wisdom on stateless space, embracing the boundlessness of the sea while seeking to ensure the health of its inhabitants, the equitable use of its resources and the safe passage of ships and their cargoes.

—*The Editors*

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<sup>1</sup> “LOST” is an acronym for Law of the Sea Treaty that is typically used by the treaty’s critics and opponents. Given that the position papers advocate specific viewpoints, the editors have respected the authors’ chosen nomenclature for UNCLOS.