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## **EarthJustice Legal Defense Fund: How Environmentalism Weakens U.S. National Security**

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### **... The Law of Sea Treaty and the Precautionary Principle**

As the sonar case illustrates, environmentalists are pressing U.S. courts to recognize an evolving legal standard known as the “precautionary principle.” This is the ‘better safe than sorry’ view that says lawmakers have a duty to regulate or restrict what could be a potential risk even when there is no evidence to prove a hazard.

For instance, EarthJustice is helping groups restrict efforts by the government of Columbia to stop cocaine trafficking by spraying herbicide on the coca crop. Columbian officials cite studies showing the spraying is safe. But EarthJustice worries that spraying could harm the nation’s “threatened amphibian species,” contaminate drinking water and destroy legal food crops. **If the idea takes hold that it is good law and public policy to act merely on suspicion and to ban substances and practices even when no harm has been demonstrated, then no enterprise is safe from a lawsuit, observes” Lawrence Kogan, CEO of the Institute for Trade Standards and Sustainable Development (ITSSD). And nowhere is the precautionary principle more entrenched than in the proposed Law of the Sea Treaty.**

To date, more than 150 countries have signed the treaty. President Reagan vetoed the pact in the early 1980s, but the Bush administration favored its ratification and today it has strong backing at the Pentagon and among many members of Congress in both parties. They believe the treaty can clear up disputes concerning navigation rights. But opponents like Kogan and Frank Gaffney, president of the Center for Security Policy (CSP), warn that the treaty will transfer U.S. sovereignty to the authority of foreign tribunals, which will rule on U.S. seabed mining and military transportation. **“The innocent passage of US nuclear-powered military vessels,” write Kogan and former Navy secretary J. William Middendorf, could be stymied by lawyers claiming hypothetical environmental risks. (See “The ‘LOST 45’ UN Environmental Restrictions on US Sovereignty, Copenhagen Institute, Sept. 27, 2007, <http://www.coin.dk/default.asp?aid=1370>.)**