

FACT SHEET

Law of the Sea: Separating Fact from Fiction

June 2012

The United States Senate is currently debating the ratification of the United Nations Convention (or Treaty) on the Law of the Sea.

Although the treaty has been overwhelmingly backed by the private sector, military officials, Democrats and Republicans - including the previous George W. Bush Administration, unfortunately a minority partisan opposition seeks to block the treaty's ratification.

The main issues of contention in the treaty include U.S. sovereignty, resource rights and national security. This paper debunks fallacious claims that opponents of the treaty have made with facts.

“Joining this treaty will have positive implications for our operations across the maritime domain.

The convention improves on previous agreements, including the 1958 Geneva Convention. It will further protect our access to the maritime domain. It will fortify our credibility as the world's leading naval power. And allow us to bring to bear the full force of our influence on maritime disputes.

In short, it preserves what we have and it gives us yet another tool to engage any nation that would threaten our maritime interests.”

Adm James Winnefeld Jr., Vice Chairman of the Joint Chiefs of Staff,
14 June 2012

Claim: The United States would be surrendering its national sovereignty under this treaty

Fact: It's exactly the opposite: the Treaty increases our sovereignty

- The treaty already grants the U.S. exclusive economic zones 200-miles off the coast as customary international law. Ratifying the treaty would secure U.S. sovereign rights further off the coast line, including our vast continental shelf areas.

- The U.S. continental shelf extends at least 600 miles off Alaska into the Arctic Ocean.
- This region is estimated to hold 30 billion barrels of oil and 72 billion barrels of natural gas as well as valuable mineral deposits.

Claim: The treaty's provision for binding dispute settlement would impinge on our sovereignty

Fact: These provisions in the Treaty actually advance U.S. interests, by creating a mechanism by which the U.S. can hold other countries accountable to the rules

- The United States is party to similar provisions in international law, including in the World Trade Organization, which has allowed us to bring trade cases, many of them currently pending, against abusers around the world.
- As with the WTO, the U.S. has much more to gain than lose: rule of law holds others accountable under a clear and transparent system.
- For example, the U.S. could hold China to their international agreement not to extend their sovereignty to the entire South China Sea.
- The treaty allows the U.S. to exempt military activities from binding dispute settlement

“Most important to me as the Commander of U.S. Pacific Command are the protections contained in the Convention for our navigational rights and freedoms, over-flight rights and freedoms, military activities, and our rights to transit international straits and choke points without impediment.

With more than half the world's ocean area within my AOR, forces assigned to me rely on these basic rights, freedoms, and uses daily to accomplish their mission.

All of the foregoing rights and freedoms are specifically protected by the Convention.”

Adm. Samuel J. Locklear, III, U.S. Navy Commander, U.S. Pacific Command, 14 June 2012

Claim: The U.S. would be submitting to mandatory technology transfer

Fact: While this concern was relevant decades ago, mandatory technology transfer has been taken out of the modern treaty.

- In 1994, negotiators made modifications specifically to address each of President Reagan's objections.
- This included mandatory technology transfer and limitations of seabed productions, two key articles that were removed from the treaty.
- President Reagan's own Secretary of State, George Shultz, has since written since that the U.S. should join the convention in light of these modifications.

Claim: The U.S. do not need to join the convention for American companies to drill beyond 200 miles or to engage in deep seabed mining

Fact: This is the opposite. Companies doing the exploration and drilling say they need this treaty to engage in deep seabed mining

- Many companies have stated that they will not take on the costs and risk these activities under uncertain legal frameworks.
- Industry leaders in, fishing, shipping and mineral exploration such as: Chevron, Lockheed Martin, the Chamber of Shipping of America, the National Fisheries Institute and others have expressed their support ratifying the treaty.
- Companies need for the internationally recognized rights available under the treaty in order to invest in future operations.
- U.S. legal advisors claim that companies are greater targets for environmental suits if the U.S. not party to the treaty.
- Under the Convention, 12 commercial exploration operations for deep seabed hard minerals have been approved by the International Seabed Authority and another 5 will be reviewed by the International Seabed while only one US license holder remains of the original four, and that firm says it will only conduct operations at sea under the framework of the Convention.

“The treaty provides substantial economic benefits to the U.S. It accords coastal states the right to declare an ‘Exclusive Economic Zone’ where they have exclusive rights to explore and exploit, and the responsibility to conserve and manage, living and nonliving resources extending 200 nautical miles seaward from their shoreline.

Our nation’s exclusive zone would be larger than that of any country in the world—covering an area greater than the landmass of the lower 48 states.

In addition, the zone can be extended beyond 200 nautical miles if certain geological criteria are met; this has significant potential benefits where the U.S.’s continental shelves may be as broad as 600 miles, such as off Alaska, where vast natural resources lie.”

Henry Kissinger, George Shultz, James Baker III, Colin Powell And Condoleezza Rice,
Wall Street Journal, 31 May 2012

Claim: The payments for benefit-of-resource rights beyond 200 miles is a “U.N. tax”

Fact: The convention does not contain or authorize any such taxes. The U.N. “tax” is actually a royalty fee for resources outside of national boundaries. Companies would not use the resources without this Treaty.

- Any royalty fee does not go to the United Nations; it goes into a fund for distribution to parties of the convention.

- If we join the convention, we unlock economic opportunities worth potentially trillions of dollars for a small percentage royalty (up to 7%).
- Royalties are held there until agreement is reached on disbursement of the funds (if agreement is ever reached). The United States, with its permanent seat, would have to agree to any (and all) distribution.

Claim: The U.N. “tax” can be used to support enemies of the United States

Fact: The U.S. will have “veto” power over plans for the distribution of accumulated royalties

- When the U.S. becomes a party to the convention, we would be a permanent member on International Seabed Authority with a permanent veto power over how the funds are distributed.
- The U.S. would easily be able to prevent funds from ending up in the hands of aggressors - we can not do this now.

Claim: U.N. treaties inherently undermine the sovereignty of the United States

Fact: This U.N. convention is a platform for the U.S. to advance its interests, not impede them

- Entering into treaties and conventions is a sovereign right of states.
- The fact that a treaty was negotiated under the auspices of the United Nations, a convenient gathering place for the countries of the world, has not stopped us from joining agreements that are in our interests.
- We are party to dozens of agreements negotiated under the U.N. auspices on everything from counterterrorism and law enforcement to health, commerce and aviation.
- The U.S. also often pays fees under other treaties, recognizing the benefits we get dwarf those minimal fees.

Claim: We would be handing over U.S. Naval power to an international body

Fact: Nothing in the treaty would impede our Navy’s power. The treaty would grant the Navy internationally recognized navigational rights

- As party to the treaty, the U.S. Navy would gain greater international legitimacy in asserting its navigational rights.
- The treaty has gained nearly unanimous support from Navy leaders and military officials in general.
- The U.S. Navy gains operational mobility by in International Straits and by sovereign immunity from the environmental laws and regulations of coastal states in the EEZ
- U.S. Secretary of Defense Leon Panetta, Sectary of State Hillary Clinton and the Chairman of the Joint

Chiefs of Staff Martin Dempsey have all expressed their support for the treaty.

- All of the aforementioned supporters have also asserted that the treaty advances U.S. intelligence interests.
- Disputes concerning U.S. military activities are clearly excluded from dispute settlement under the convention.

Claim: The convention is a backdoor Kyoto Protocol

Fact: No climate change policies exist within the treaty and the U.S. could veto any such policy if party to the treaty

- Binding settlement of environmental disputes is strictly limited to international regulations and standards accepted by U.S. through ratified treaties or through an organization that the U.S. has specifically recognized as issuing binding regulations and standards, particularly the International Maritime Organization, acting in accordance with the Law of the Sea Convention.
- The treaty does not contain Kyoto Protocol so-called “rules and regulations” nor does it contain obligations to implement any particular climate change policies.
- The U.S. would have a permanent seat and veto power on the International Seabed Authority and therefore any policy concerning environmental regulation would be implemented within U.S. interests.
- The treaty does not require adherence to any specific emission policies.

“Joining the [Law of the Sea] convention would strengthen our ability to apply sea power.

It codifies the navigational rights and freedoms necessary to project and sustain our military force.

These include the right of transit through international straits, the right to exercise high-seas freedoms in foreign exclusive economic zones and the right of innocent passage through foreign territorial seas....it reinforces the sovereign immunity of our warships as they conduct operations.”

Gen. Martin Dempsey, Chairman of the Joint Chiefs of Staff. May 23 2012

Building a New American Arsenal

The American Security Project (ASP) is a non-partisan initiative to educate the American public about the changing nature of national security in the 21st century.

Gone are the days when a nation's strength could be measured by bombers and battleships. Security in this new era requires a New American Arsenal harnessing all of America's strengths: the force of our diplomacy; the might of our military; the vigor of our economy; and the power of our ideals.

We believe that America must lead other nations in the pursuit of our common goals and shared security. We must confront international challenges with all the tools at our disposal. We must address emerging problems before they become security crises. And to do this, we must forge a new bipartisan consensus at home.

ASP brings together prominent American leaders, current and former members of Congress, retired military officers, and former government officials. Staff direct research on a broad range of issues and engages and empowers the American public by taking its findings directly to them.

We live in a time when the threats to our security are as complex and diverse as terrorism, the spread of weapons of mass destruction, climate change, failed and failing states, disease, and pandemics. The same-old solutions and partisan bickering won't do. America needs an honest dialogue about security that is as robust as it is realistic.

ASP exists to promote that dialogue, to forge consensus, and to spur constructive action so that America meets the challenges to its security while seizing the opportunities the new century offers.



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