

The U.N. Convention on the Law of the Sea

THE ISSUE

The proponents of U.S. ratification of the U.N. Convention on the Law of the Sea (UNCLOS) claim that America cannot secure or “guarantee” its maritime interests without being a member of the treaty. That claim is baseless.

It is unnecessary for the U.S. to join UNCLOS to protect its navigational rights and freedoms in the Arctic, the South China Sea, or anywhere else in the world. The navigational provisions in UNCLOS either codify customary international law that existed well before the United Nations adopted the convention in 1982, or they “refine and elaborate” navigational rights and freedoms that are widely accepted as binding international law.

The Arctic. The U.S. has already secured, and continues to pursue, its national security and economic objectives in the Arctic through bilateral and multilateral treaties that are not saddled with UNCLOS baggage. U.S. membership and participation in multilateral organizations—such as the Arctic Council, the Northern Chiefs of Defense Conference, and the Arctic Security Forces Roundtable—provide the necessary “seat at the table” to secure U.S. national interests in the region in the years ahead without accession to a deeply flawed treaty.

South China Sea. Ratification of UNCLOS will neither sway China nor guarantee U.S. navigational rights in the South China Sea, which are advanced not by membership in a treaty, but by maintaining a strong Navy, conducting persistent naval operations against China’s excessive maritime claims, supporting key U.S. allies, and adhering to long-standing principles of the customary international law of the sea.

THE COSTS

In addition, joining UNCLOS comes with costs that outweigh any real or perceived benefit of membership.

Oil Royalty Transfers. If the U.S. joins UNCLOS, it will be required to transfer royalties from oil production of the U.S. extended continental shelf (ECS) to the International Seabed Authority for redistribution to other countries. The value of the resources beneath the U.S. ECS may be worth trillions of dollars. U.S. accession would amount to an open-ended commitment to forgo an incalculable amount of royalty revenue for no appreciable benefit.

Baseless Environmental Lawsuits. Joining UNCLOS would expose the U.S. to lawsuits regarding virtually any maritime activity, such as pollution of the marine environment from a land-based source or through the atmosphere. Regardless of the lack of merit of such a case, the U.S. would be forced to defend itself against every such lawsuit at great expense to U.S. taxpayers. Any adverse judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.

NO BENEFITS

The claimed benefits to the U.S. joining UNCLOS are irrelevant.

Deep Seabed Mining. No legal barriers prevent U.S. access, exploration, and exploitation of the resources of the deep seabed beyond U.S. jurisdiction. The United States has long maintained that U.S. corporations and citizens have the right to develop the resources of the deep seabed and may do so whether or not the U.S. joins UNCLOS.

CONCLUSION

UNCLOS is a fatally flawed treaty. Joining the convention would result in a dangerous loss of American sovereignty. It would require the

U.S. Treasury to transfer billions of dollars to an unaccountable international organization in Jamaica, which in turn is empowered to redistribute those American dollars to countries with interests that are inimical to the United States. The convention's mandatory dispute mechanisms will ultimately result in troublesome and costly lawsuits and adverse judgments if the

United States is deemed to have "violated" the convention—most likely when the United States has acted in its best interests.

Should the Senate be asked to ratify UNCLOS, it should follow the example of previous Senates, stretching back to the 1980s, by rejecting U.S. membership in the convention.