

The United States and the Law of the Sea

Introduction

The U.N. Convention on the Law of the Sea (UNCLOS) is a set of rules for the use of the world's oceans, which cover 70 percent of the Earth's surface. The Convention was concluded in 1982 to replace a group of treaties adopted in 1958 that were out of date and unfavorable to America's economy and security. UNCLOS came into force in 1994, and to date, 158 countries and the European Commission have joined the treaty. As of yet, the United States has not. The Law of the Sea has been described as the most comprehensive and progressive protection for the oceans of any modern international accord. It essentially protects the economic, environmental, and national security concerns of coastal states, as well as establishes international cooperative mechanisms for resolving disputes on these issues. The convention also safeguards imperiled marine habitats by strengthening state sovereignty over the enforcement of resource management and environmental regulations in each state's Exclusive Economic Zone (EEZ) up to 200 miles offshore. UNCLOS benefits American business, the American military, and the environment of the world. We are hopeful that the U.S. will soon ratify the treaty and become a productive member of the Law of the Sea Convention.

Background: the Path to Ratification

In 1983, Ronald Reagan directed U.S. agencies to comply with all of the provisions in UNCLOS except for Part XI, which concerns deep-sea mining. With U.S. leadership, Part XI was reworked and the Convention was officially modified in 1994, addressing all U.S. concerns. Since 1983, the U.S. has been in voluntary compliance with the entire Convention and thus accession would not result in any changes to current U.S. domestic or foreign policy. Even in 2004, all 19 members of the Senate Foreign Relations Committee voted unanimously in favor of UNCLOS. Although not a single Senator abstained or voted against the treaty, then Majority Leader Frist never brought it to the floor for a vote. In 2008, it again was passed by the Committee on a 17 to 4 vote. In the current 111th Congress, the treaty must be reviewed and passed by the Committee again before it is brought to the Senate floor for a final vote.

UNCLOS Benefits Business, the Military, and the Environment

- 1) Joining UNCLOS will benefit American businesses. UNCLOS would protect the claims of U.S. firms to mineral resources and give us an opportunity to provide better management for the sensitive Arctic environment adjacent to U.S. boundaries. Each country has exclusive rights to manage the resources in areas near its coast. Under the terms of UNCLOS, which maps out the boundaries of these areas, the American zone is larger than that of any country in the world. The size of this zone is 3.65 million square miles –larger than the lower 48 states combined. In addition, under UNCLOS, coastal states can exercise sovereign rights over natural resources within the extended continental shelf area beyond this territory. Under UNCLOS, the five Arctic states – Norway, Denmark, Russia, Canada and the U.S. – can claim mineral and oil extraction rights in the Arctic seabed in areas that extend beyond their respective exclusive economic zones and stand to gain tremendously by this. In addition, joining UNCLOS, would give U.S. companies an opportunity to apply for licenses with the International Seabed Authority, which manages claims to resources in the deep seabed, an area over which no country has sovereign rights.

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- 2) Joining UNCLOS will help us protect our military's ability to freely navigate the oceans. In addition, the U.S. military, which relies heavily on its ability to navigate on and fly freely over the sea, has been a strong advocate of UNCLOS. In the absence of treaty law, the U.S. is forced to rely on customary law that can change as States' practices change. Also, under this customary law, countries often make unreasonable and irresponsible claims on marine territory to stop the U.S. military from defending U.S. interests. The U.S. has tried to talk around these claims, but without a legal framework to support us we risk compromising our intelligence and military operations at sea.
- 3) Joining UNCLOS would enable the U.S. to work to promote higher environmental standards in countries throughout the world. In the U.S., we have laws to keep marine resources available for future generations. The convention also contains special measures to save endangered whales, salmon, and other marine mammals. It helps the fisheries of coastal states by allowing them to set limits within their EEZ. It also protects valuable migratory fish stocks such as tuna and billfish on the high seas, beyond the 200-mile limit. UNCLOS sets a global standard so that all countries are legally bound to protect the marine environment, protect fish stocks, and prevent pollution with as much care as the U.S. does.

Solutions and policy options: the change we can make with membership.

One benefit of membership is a permanent position on the International Seabed Authority, an organization of countries set up to regulate deep sea mining. With the world's most powerful economy, the U.S. would have by far the most powerful vote on the council – or none at all if we choose to reject UNCLOS.

Moreover, as of November 2004, members of UNCLOS have the right to modify the treaty. As a member, the U.S. can use the treaty to seize new opportunities and protect our interests. By contrast, if we choose not to join, we put in jeopardy all of the provisions that U.S. negotiators worked tirelessly to negotiate into the treaty. Without the U.S. at the table, countries will be free to make changes without U.S. input. Beyond modifying the Convention itself, such changes could change the basis of customary international law on which the US has relied to protect our interest at sea in absence of being party to the Convention. In contrast, by joining the Convention, we will lock in our rights as currently contained in the Convention unless and until any amendments are approved by the Senate and ratified by the U.S.

For example, since UNCLOS codifies traditional law of the sea that is applied to commercial ship movements, it is crucial that the U.S. be present for debates over amendments to the treaty. UNCLOS guides the rules that apply to the movements of commercial ships that carry over ninety-five percent of U.S. foreign commerce. And UNCLOS establishes the basis for discussions on environmental protections in the international maritime world. Several countries have noted that UNCLOS still does not adequately address environmental issues and are publicly saying that it should be amended to accommodate the new awareness of coastal needs regarding ships in innocent passage as well as those bearing for specific ports. It is very important for the U.S. to be at the table as these discussions begin. While there is not a specific request yet for UNCLOS review, it is clearly on the horizon and the U.S. would be well served to be in a position of major influence on the debate. The U.S. is a nation that values responsibility and cooperation. Joining UNCLOS tells the 158 countries that have already joined UNCLOS, including all of our allies, that we are committed partners in protecting the planet and its people.

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