

## AFF Blocks to NEG

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# AFF Blocks to NEG

## \*Hard Power

### A2: Naval Operations (General)

#### Link Defense Rhetoric

1. (Tribunals Link Defense) Brower '12 of Yale University writes that in an analysis of 18 different multilateral agreements with mandatory dispute settlements, the U.S. has only been challenged in 3. Other countries are simply unwilling to challenge the U.S. because of the global influence it exerts.
2. Overall: Beech '16 of TIME Magazine writes that the navy is one of the biggest proponents for UNCLOS and already adheres to its principles, indicating that acceding really doesn't preclude any of our naval operations.

#### Link Turn Rhetoric (Careful not to double turn w/ DA)

1. Myers '18 of the New York Times writes that China now has a stronger naval presence in the region, indicating that America's power is not enough by itself. Fortunately, accession solves; Ordaniel '17 of the Pacific Forum Centre for Strategic and International Studies writes that a multilateral coalition is necessary to engage in freedom of navigation operations for two reasons:
  - a. Unilateral FONOPs only allow China to divert attention away from the rule of law into a great-power struggle that they are able to ignore.
  - b. Multilateral FONOPs raise the stakes for China, forcing them into compliance.

#### Soft Power Better DA

1. Right now, Schachte of Georgetown University writes that because America remains outside of the convention, its only way to resolve disputes is through military power. However, acceding to UNCLOS changes this dynamic by pivoting to legal means, which is preferable to military power for two reasons:
  - a. **First, sustainability.**  
De Tolve '12 of the Naval Law Review writes that military operations are unsustainable to maintain freedom of navigation with countries pushing back to deny access to these operations. For example, Glaser '12 of the Council of Foreign Relations writes that China has developed technology to deny American naval access in the Pacific. Thus, Noyes '07 of the George Washington International Law Review writes that America needs to

accede to UNCLOS to counteract the current trend of other states redefining customary international law.

**b. Second, de-escalating conflict.**

Glaser '12 contines that our naval operations are the most likely source of a miscalculation in the region. Fortunately, Noyes '07 concludes that acceding would decrease reliance on military power by providing America the tools to combat China through peaceful means.

Julia Brower, 2012 ",Yale, [https://law.yale.edu/system/files/documents/pdf/cglc/yale\\_law\\_school\\_-\\_unclos\\_and\\_arbitration.pdf](https://law.yale.edu/system/files/documents/pdf/cglc/yale_law_school_-_unclos_and_arbitration.pdf) (NK)

The United Nations Convention for the Law of the Sea (UNCLOS) establishes a compulsory dispute settlement regime for resolving disagreements between member states. Critics of the Convention have argued that the mandatory dispute resolution provisions force member states to cede too much control over the dispute resolution process to an international body. They have also **Critics of UNCLOS argued that the dispute resolution process is biased against the United States, and that the United States tends to fare poorly in international arbitration proceedings.** This report addresses the first criticism by examining possible exceptions to mandatory dispute resolution provisions. At least one Annex VII tribunal has interpreted Article 281(1) of UNCLOS to permit states to contract around the mandatory dispute resolution provision through regional agreements. However, a subsequent tribunal applied a much more constrained interpretation of the Article 281 exception. Ultimately, the impact of this exception will depend upon which interpretation is applied. The report also examines the scope of the Article 298(1)(c) exception, which exempts from binding resolution "disputes in respect of which the Security Council . . . is exercising the functions assigned to it by the [U.N.] Charter." This exception is not confined to specific subject matters, but it is limited by the procedural difficulties of adding or removing an item from the Security Council's agenda, as well as by the political costs that such an effort entails. Finally, the report notes that UNCLOS's compulsory dispute settlement regime is not accompanied by similarly robust enforcement provisions. **The report addresses the second criticism by examining the United States' record in arbitration proceedings under eighteen multilateral treaties containing mandatory dispute resolution provisions, as well as a series of bilateral aviation agreements that provide for mandatory dispute resolution. Fifteen of those agreements have yielded very few readily identifiable arbitration proceedings involving the United States.** The record of the United States under the three agreements through which there have been arbitral proceedings of note is as follows: • The World Trade Organization (WTO): The United States has been highly successful in the cases it has initiated (winning 90%), but less successful in those in which it has served as the respondent (winning 19%). However, many of the losses were in cases where only relatively minor economic or political concerns were at stake. • The North American Free Trade Agreement (NAFTA): Three disputes have been brought to arbitration. The arbitral panels have ruled against the United States in all.

Hannah Beech, 7-8-2016, "Why China Won't Listen to the U.S. on the South China Sea," Time, <http://time.com/4397808/south-china-sea-us-unclos/> (NK)

Washington's outsider position undercuts its message as it urges China to respect global maritime norms. After all, China ratified UNCLOS in 1996, even if Beijing now says it rejects any judgment by the Permanent Court of Arbitration. In a speech in Washington earlier this month, retired Chinese top diplomat Dai Bingguo accused the U.S. of "heavy-handed intervention" in the South China Sea. "Accidents could happen," said the still influential Chinese Communist Party official, "and the South China Sea might sink into chaos and so might the entirety of Asia." Still, even as Beijing has launched a public-relations blitz ahead of the July 12 ruling, Chinese state media and diplomatic statements have not highlighted America's AWOL status in UNCLOS. Perhaps critiquing the U.S. absence is harder when China itself is distancing itself from one of the treaty's utilized tribunals. **It's true that even if Congress hasn't ratified UNCLOS, the U.S. Navy, which is the world's largest, adheres to its principles. American top brass openly support U.S. ratification. "I think that in the 21st century our moral standing is affected by the fact that we are not a signatory to UNCLOS,"** said Admiral Harry Harris, head of the U.S. Pacific Command, in testimony to the House Armed Services Committee earlier this year. In a June speech at the U.S. Air Force Academy, U.S. President Barack Obama urged Congress to move ahead on UNCLOS. "If we're truly concerned about China's actions in the South China Sea," he said in his commencement address, "the Senate should help strengthen our case by approving the Law of the Sea convention, as our military leaders have urged." But ratifying the convention will require a two-thirds majority in the Senate, an all but impossibility particularly in this contentious election year. The U.S. Navy will continue to ply the high seas, acting as the world's oceanic policeman by engaging in freedom-of-navigation exercises to ensure open trade routes. But American hypocrisy when it comes to maritime rule of law looks likely to endure.

De Tolve, Robert C. "At What Cost-America's UNCLOS Allergy in the Time of Lawfare." *Naval L. Rev* 61 (2012): 1. <<http://www.jag.navy.mil/documents/navylawreview/NLRVolume61.pdf>> //RJ

**It is myopic for the United States to gamble that its extant approach of FON assertions and diplomatic protests will be an adequate near and long-term course of action, especially in an era of increasing national security interconnectedness.** Under the geopolitical conditions prevalent during the last fifteen years, the United States may well have been better

postured to leverage its significant political, economic, and military influence in support of its maritime security objectives than it will be in the coming twenty five years. **While**

**UNCLOS critics appear content to assume that staying the current course of UNCLOS abstention for the next twenty-five years is unlikely to result in adverse impact,** such a sanguine assumption ought to be regarded with an "all else equal" asterisk. While the aforementioned relative advantage has clearly not evaporated, **the current trend toward its erosion appears to portend that "all else" will likely not be equal going forward.** Given that the dynamics of political and customary international legal norm development typically include interrelated, gradual incubation periods, as well as discernable "tipping points," a more exacting predictive model is appropriate. This is especially so given the potential that significantly increased political, economic, and military costs could attend sustaining current access levels to key regional sea lines of communication in the future. As Professor Kraska posits, "**The strategic, operational and political 'landscapes' of the sea have changed.**" seen from the assessments of some among the Chinese naval establishment in 1994, the year UNCLOS entered into force for member states, he is not alone in this view.

[Noyes, John](#). "U.S. Policy and the United Nations Convention on the Law of the Sea." [George Washington International Law Review](#). Vol. 39. (2007): 621-638.

**Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.**<sup>36</sup> **This resurgence threatens Convention-based navigational rights,** which are at least as important today as they were during the Cold War. **Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.**<sup>37</sup> **Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law.** As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Committee, "some coastal states contend that the navigational and over-flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it."<sup>38</sup> **if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program**<sup>39</sup> **or negotiating new bilateral agreements.**<sup>40</sup> **The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive-in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts-than continuing to stand outside it.**

Glaser 12 Bonnie S., Senior Fellow – Center for Strategic and International Studies, "Armed Clash in the South China Sea," CFR, April, <http://www.cfr.org/east-asia/armed-clash-south-china-sea/p27883>

**The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ).** These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. **At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific.** Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, **the United States has a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.** The Contingencies of the many conceivable contingencies involving an armed clash in the South China Sea, three especially threaten U.S. interests and could potentially prompt the United States to use force. **The most likely and dangerous contingency is a clash stemming from U.S. military operations within China's EEZ that provokes an armed Chinese response.**

**The United States holds that nothing in the United Nations Convention on the Law of the Sea (UNCLOS) or state practice negates the right of military forces of all nations to conduct military activities in EEZs without coastal state notice or consent. China insists that reconnaissance activities undertaken without prior notification and without permission of the coastal state violate Chinese domestic law and international law.** China routinely intercepts U.S. reconnaissance flights conducted in its EEZ and periodically does so in aggressive ways that increase the risk of an accident similar to the April 2001 collision of a U.S. EP-3 reconnaissance plane and a Chinese F-8 fighter jet near Hainan Island. A comparable maritime incident could be triggered by Chinese vessels harassing a U.S. Navy surveillance ship operating in its EEZ, such as occurred in the 2009 incidents involving the USNS Impeccable and the USNS Victorious. The large growth of Chinese submarines has also increased the danger of an incident, such as when a Chinese submarine collided with a U.S. destroyer's towed sonar array in June 2009. Since neither U.S. reconnaissance aircraft nor ocean surveillance vessels are armed, the United States might respond to dangerous behavior by Chinese planes or ships by dispatching armed escorts. **A miscalculation or misunderstanding could then result in a deadly exchange of fire, leading to further military escalation and precipitating a major political crisis.** Rising U.S.-China mistrust and intensifying bilateral strategic competition would likely make managing such a crisis more difficult.

[Schachte, William L.](#) "National Security: Customary international law and the Convention on the Law of the Sea." [Georgetown International Environmental Law Review](#). Vol. 8, No. 2 (Summer 1995).

**Since 1979, the United States has formally contested excessive coastal state claims, both operationally and diplomatically, through the Freedom of Navigation Program.** The program is based entirely on the navigation and overflight provisions of the Convention. While this program is designed to breathe life into the terms of the Convention, Parties to the Convention are likewise capable of defining or refining provisions of the Convention. **By remaining outside the Convention, the United States' only way of confronting attempts by Parties to the Convention to interpret or refine Convention provisions would be by the exercise of our naval and air forces in accordance with the existing terms of the Convention.** However, in presenting Admiral Center's paper, Commander Rosen will discuss that **this will be harder to do in the years to come** as we downsize. Also, as a nation committed to the rule of law, **the use of military force to resolve legal conflicts between Parties and non-Parties to the Convention should not be the preferred method of challenging excessive coastal state claims.**

Ordaniel, Jeffrey. "South China Sea a Chinese Lake?" 21 Feb. 2017. [Jeffrey Ordaniel is a resident Vasey fellow at the Pacific Forum Centre for Strategic and International Studies, Honolulu and PhD candidate at the Graduate Institute for Policy Studies, Tokyo.]

<https://international.thenewslens.com/article/61996> //RJ

While unilateral U.S. Navy freedom of navigation operations (FONOPs) should continue, including in waters surrounding Chinese-built artificial islands, **Washington should establish another mechanism that engages its treaty allies and partners in the Pacific on freedom of navigation issues: bilateral and multilateral freedom of navigation patrols.** In essence, **Washington should institute another instrument that involves allies and regional partners that not only challenges excessive maritime entitlement claims, but also reinforces the rule of law in other areas that could be subject to new and illegal restrictions by any state in the future.** Australia and the Philippines are ideal partners for bilateral or trilateral FONOP patrols. Canberra has been conducting overflight exercises in the South China Sea since the 1970s and its involvement should not be too surprising to the Chinese. Manila is a direct claimant and a U.S. treaty ally. In early 2016, a joint patrol was integrated as one manifestation of the long overdue U.S.-Philippines Enhanced Defense Cooperation Agreement forged in 2014. But the Duterte government decided to end this cooperation. **A clearer U.S. commitment to defend Philippine vessels in the South China Sea,** as per Article 5 of the 1951 US-Philippines Mutual Defense Treaty, **could encourage an increasingly unpredictable Manila to begin to trust Washington again.** The transition from the Obama to the Trump administration provides an opportunity to reset relations between the two allies. Moreover, **a multilateral mechanism could coordinate multi-party FONOP patrols, not just in the South China Sea, but in all of East Asia's maritime commons.** The mechanism should be open to China to avoid any misconception of "containment" or of the U.S. and its allies "ganging up" on Beijing. The U.S. could propose this to the ASEAN Regional Forum or any ASEAN dialogue as a confidence-building measure in the maritime Asia Pacific, with the goal of maintaining open, secure and unimpeded access to East Asia's maritime commons without prejudice to any sovereignty claims. The first such exercise could begin in the Sea of Japan, then move south to the East China Sea, passing through the Luzon Strait towards the South China Sea, exiting through the Malacca Strait and then to the Indian Ocean or vice versa. **The guiding mechanism should be relevant provisions of UNCLOS** — nothing else. **China could complain, but if**

**many countries are involved the pressure for compliance will be greater. If FON exercises, including FONOPs, are conducted only unilaterally by the U.S. Navy, the South China Sea issue could easily spiral into a great-power struggle and the importance and essence of the rule of law will be sidestepped.**

Since respect for international law in East Asia's maritime commons is a vital U.S. national interest, Washington should take the lead and engage East Asia. Unilateralism can only do so much.

Myers, Steven. "With Ships and Missiles, China is ready to challenge U.S. Navy in the Pacific." Washington Post. Aug. 2018. <https://www.nytimes.com/2018/08/29/world/asia/china-navy-aircraft-carrier-pacific.html> //RJ

**A modernization program focused on naval and missile forces has shifted the balance of power in the Pacific in ways the United States and its allies are only beginning to digest. While China lags in projecting firepower on a global scale, it can now challenge American military supremacy in the places that matter most to it: the waters around Taiwan and in the disputed South China Sea.** That means a growing section of the Pacific Ocean — where the United States has operated unchallenged since the naval battles of World War II — is once again contested territory, with Chinese warships and aircraft regularly bumping up against those of the United States and its allies. **To prevail in these waters,** according to officials and analysts who scrutinize Chinese military developments, **China does not need a military that can defeat the United States outright but merely one that can make intervention in the region too costly for Washington to contemplate.** Many analysts say **Beijing has already achieved that goal. To do so, it has developed "anti-access" capabilities that use radar, satellites and missiles to neutralize the decisive edge that America's powerful aircraft carrier strike groups have enjoyed. It is also rapidly expanding its naval forces with the goal of deploying a "blue water" navy that would allow it to defend its growing interests beyond its coastal waters. "China is now capable of controlling the South China Sea in all scenarios short of war with the United States,"** the new commander of the United States Indo-Pacific Command, Adm. Philip S. Davidson, acknowledged in written remarks submitted during his Senate confirmation process in March. He described **China** as a "peer competitor" **gaining on the United States not by matching its forces weapon by weapon but by building critical "asymmetrical capabilities," including with anti-ship missiles and in submarine warfare.** "There is no guarantee that the United States would win a future conflict with China," he concluded. **Last year, the Chinese Navy became the world's largest, with more warships and submarines than the United States, and it continues to build new ships at a stunning rate.** Though the American fleet remains superior qualitatively, it is spread much thinner.

## A2: FONOPs Good

### Link Defense Rhetoric

1. Pham '18 of the East Asia Forum writes that FONOPs are recognized under international law and thus would not be outlawed when we accede.
2. Other nations like Australia and the UK conduct FONOPs, and both of these countries are in UNCLOS. As a result, it seems incredibly unlikely that the U.S. uniquely would lose the ability to use FONOPs upon accession.
3. (Tribunals Link Defense) Brower '12 of Yale University writes that in an analysis of 18 different multilateral agreements with mandatory dispute settlements, the U.S. has only been challenged in 3. Other countries are simply unwilling to challenge the U.S. because of the global influence it exerts.
4. Overall: Beech '16 of TIME Magazine writes that the navy is one of the biggest proponents for UNCLOS and already adheres to its principles, indicating that acceding really doesn't preclude any of our naval operations.

### Soft Power Better DA

1. Right now, Schachte of Georgetown University writes that because America remains outside of the convention, its only way to resolve disputes is through military power. However, acceding to UNCLOS is preferable to military power for two reasons:
  - a. **First, sustainability.**
    - i. De Tolve '12 of the Naval Law Review writes that military operations are unsustainable to maintain freedom of navigation with countries pushing back to deny access to these operations. For example, Glaser '12 of the Council of Foreign Relations writes that China has developed technology to deny American naval access in the Pacific. Thus, Noyes '07 of the George Washington International Law Review writes that America needs to accede to UNCLOS to counteract the current trend legally or other states will limit freedom of navigation by redefining customary international law.
  - b. **Second, de-escalating conflict.**
    - i. Glaser '12 continues that our military operations in the region are the most likely source of a miscalculation in the region. Fortunately, Noyes '07 concludes that acceding would decrease reliance on FONOPs by providing America the tools to combat China through peaceful means.

Pham 18 Tuan N Pham, 6-29-2018, "The world is pushing back in the South China Sea," East Asia Forum, <http://www.eastasiaforum.org/2018/06/29/the-world-is-pushing-back-in-the-south-china-sea/> //DF

The aforementioned commentaries on the SCS also repeat some familiar Chinese perspectives on US FONOPs and US intelligence, surveillance and reconnaissance (ISR) operations that require some US perspectives for a more balanced understanding of the issues. **US FONOPs are an important expression of and are recognised by international law.** The purpose and intent of US FONOPs are clearly laid out in US policy, and all operations are meticulously documented and published every year. On the whole, **US FONOPs challenge excessive maritime claims in the SCS,** not competing sovereignty claims; **do not discriminate against particular states, but rather focus on the claims that individual states assert; are deliberate in nature, but are not deliberate provocations;** and contest unilateral restrictions on freedom of navigation and overflight rather than accept rhetoric. US ISR operations — which are conducted inside other countries' exclusive economic zones (EEZs) — are lawful under customary international law and Article 58 of the United Nations Convention on the Law of the Sea (UNCLOS). The Chinese argument on the permissibility of military activities in EEZs is counter to the US position. The United States believes that while coastal states under UNCLOS have the right to regulate economic activities in their EEZs, they do not have the right to regulate foreign military activities in their EEZs.

Julia Brower, 2012 ",Yale, [https://law.yale.edu/system/files/documents/pdf/cglc/yale\\_law\\_school\\_-\\_unclos\\_and\\_arbitration.pdf](https://law.yale.edu/system/files/documents/pdf/cglc/yale_law_school_-_unclos_and_arbitration.pdf) (NK)

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**UNCLOS,**” said Admiral Harry Harris, head of the U.S. Pacific Command, in testimony to the House Armed Services Committee earlier this year. In a June speech at the U.S. Air Force Academy, U.S. President Barack Obama urged Congress to move ahead on UNCLOS. “If we’re truly concerned about China’s actions in the South China Sea,” he said in his commencement address, “the Senate should help strengthen our case by approving the Law of the Sea convention, as our military leaders have urged.” But ratifying the convention will require a two-thirds majority in the Senate, an all but impossibility particularly in this contentious election year. The U.S. Navy will continue to ply the high seas, acting as the world’s oceanic policeman by engaging in freedom-of-navigation exercises to ensure open trade routes. But American hypocrisy when it comes to maritime rule of law looks likely to endure.

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**It is myopic for the United States to gamble that its extant approach of FON assertions and diplomatic protests will be an adequate near and long-term course of action, especially in an era of increasing national security interconnectedness.** Under the geopolitical conditions prevalent during the last fifteen years, the United States may well have been better

postured to leverage its significant political, economic, and military influence in support of its maritime security objectives than it will be in the coming twenty five years. **While UNCLOS critics appear content to assume that staying the current course of UNCLOS abstention for the next twenty-five years is unlikely to result in adverse impact,** such a sanguine assumption ought to be regarded with an "all else equal" asterisk. While the aforementioned relative advantage has clearly not evaporated, **the current trend toward its erosion appears to portend that "all else" will likely not be equal going forward.** Given that the dynamics of political and customary international legal norm development typically include interrelated, gradual incubation periods, as well as discernable "tipping points," a more exacting predictive model is appropriate. This is especially so given the potential that significantly increased political, economic, and military costs could attend sustaining current access levels to key regional sea lines of communication in the future. As Professor Kraska posits, "**The strategic, operational and political 'landscapes' of the sea have changed**," seen from the assessments of some among the Chinese naval establishment in 1994, the year UNCLOS entered into force for member states, he is not alone in this view.

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**Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.**<sup>36</sup> **This resurgence threatens Convention-based navigational rights,**

which are at least as important today as they were during the Cold War. **Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.**<sup>37</sup> **Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law.** As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Committee, "some coastal states contend that the navigational and over-flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it."<sup>38</sup> **If it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program**<sup>39</sup> **or negotiating new bilateral agreements.**<sup>40</sup> **The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive-in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts-than continuing to stand outside it.**

Glaser 12 Bonnie S., Senior Fellow – Center for Strategic and International Studies, “Armed Clash in the South China Sea,” CFR, April, <http://www.cfr.org/east-asia/armed-clash-south-china-sea/p27883>

**The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ).** These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. **At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific.** Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, **the United States has a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.** The Contingencies of the many conceivable contingencies involving an armed clash in the South China Sea, three especially threaten U.S. interests and could potentially prompt the United States to use force. **The most likely and dangerous contingency is a clash stemming from U.S. military operations within China's EEZ that provokes an armed Chinese response.** **The United States holds that nothing in the United Nations Convention on the Law of the Sea (UNCLOS) or state practice negates the right of military forces of all nations to conduct military activities in EEZs without coastal state notice or consent. China insists that reconnaissance activities undertaken without prior notification and without permission of the coastal state violate Chinese domestic law and international law.** China routinely intercepts U.S. reconnaissance flights conducted in its EEZ and periodically does so in aggressive ways that increase the risk of an accident similar to the April 2001 collision of a U.S. EP-3 reconnaissance plane and a Chinese F-8 fighter jet near Hainan Island. A comparable maritime incident could be triggered by Chinese vessels harassing a U.S. Navy surveillance ship operating in its EEZ, such as occurred in the 2009 incidents involving the USNS Impeccable and the USNS Victorious. The large growth of Chinese submarines has also increased the danger of an incident, such as when a Chinese submarine collided with a U.S. destroyer's towed sonar array in June 2009. Since neither U.S. reconnaissance aircraft nor ocean surveillance vessels are armed, the United States might respond to dangerous behavior by Chinese planes or ships by dispatching armed escorts. **A miscalculation or misunderstanding could then result in a deadly exchange of fire, leading to further military escalation and precipitating a major political crisis.** Rising U.S.-China mistrust and intensifying bilateral strategic competition would likely make managing such a crisis more difficult.

[Schachte, William L.](#) "National Security: Customary international law and the Convention on the Law of the Sea." [Georgetown International Environmental Law Review](#). Vol. 8, No. 2 (Summer 1995).

**Since 1979, the United States has formally contested excessive coastal state claims, both operationally and diplomatically, through the Freedom of Navigation Program.** The program is based entirely on the navigation and overflight provisions of the Convention. While this program is designed to breathe life into the terms of the Convention, Parties to the Convention are likewise capable of defining or refining provisions of the Convention. **By remaining outside the Convention, the United States' only way of confronting attempts by Parties to the Convention to interpret or refine Convention provisions would be by the exercise of our naval and air forces in accordance with the existing terms of the Convention.** However, in presenting Admiral Center's paper, Commander Rosen will discuss that **this will be harder to do in the years to come** as we downsize. Also, as a nation committed to the rule of law, **the use of military force to resolve legal conflicts between Parties and non-Parties to the Convention should not be the preferred method of challenging excessive coastal state claims.**

## A2: Intelligence Operations

### Link Defense Rhetoric

1. (Tribunals Link Defense) Brower '12 of Yale University writes that in an analysis of 18 different multilateral agreements with mandatory dispute settlements, the U.S. has only been challenged in 3. Other countries are simply unwilling to challenge the U.S. because of the global influence it exerts.
2. Pham '18 of the East Asia Forum writes that our intelligence operations are consistent with UNCLOS as well as with customary international law.
3. Overall: Beech '16 of TIME Magazine writes that the navy is one of the biggest proponents for UNCLOS and already adheres to its principles, indicating that acceding really doesn't preclude any of our naval operations.

### Soft Power Better DA

1. Right now, Schachte of Georgetown University writes that because America remains outside of the convention, its only way to resolve disputes is through military power. However, acceding to UNCLOS is preferable to military power for two reasons:
  - a. **First, sustainability.**
    - i. De Tolve '12 of the Naval Law Review writes that military operations are unsustainable with countries pushing back to deny access to these operations. For example, Torelli '13 of the Joint Intelligence Operations writes that China has already developed anti-access policies that put intelligence operations at risk. Thus, Noyes '07 of the George Washington International Law Review writes that America needs to accede to UNCLOS to counteract the current trend legally or other states will limit freedom of navigation by redefining customary international law.
  - b. **Second, de-escalating conflict.**
    - i. Glaser '12 contines that our naval operations in the region are the most likely source of a miscalculation in the region. Fortunately, Noyes '07 concludes that acceding would decrease reliance on military power by providing America the tools to combat China through peaceful means.

Julia Brower, 2012 ",Yale, [https://law.yale.edu/system/files/documents/pdf/cglc/yale\\_law\\_school\\_-\\_unclos\\_and\\_arbitration.pdf](https://law.yale.edu/system/files/documents/pdf/cglc/yale_law_school_-_unclos_and_arbitration.pdf) (NK)

The United Nations Convention for the Law of the Sea (UNCLOS) establishes a compulsory dispute settlement regime for resolving disagreements between member states. Critics of the Convention have argued that the mandatory dispute resolution provisions force member states to cede too much control over the dispute resolution process to an international body. They have also **Critics of UNCLOS argued that the dispute resolution process is biased against the United States, and that the United States tends to fare poorly in international arbitration proceedings.** This report addresses the first criticism by examining possible exceptions to mandatory dispute resolution provisions. At least one Annex VII tribunal has interpreted Article 281(1) of UNCLOS to permit states to contract around the mandatory dispute resolution provision through regional agreements. However, a subsequent tribunal applied a much more constrained interpretation of the Article 281 exception. Ultimately, the impact of this exception will depend upon which interpretation is applied. The report also examines the scope of the Article 298(1)(c) exception, which exempts from binding resolution “disputes in respect of which the Security Council . . . is exercising the functions assigned to it by the [U.N.] Charter.” This exception is not confined to specific subject matters, but it is limited by the procedural difficulties of adding or removing an item from the Security Council’s agenda, as well as by the political costs that such an effort entails. Finally, the report notes that UNCLOS’s compulsory dispute settlement regime is not accompanied by similarly robust enforcement provisions. **The report addresses the second criticism by examining the United States’ record in arbitration proceedings under eighteen multilateral treaties containing mandatory dispute resolution provisions, as well as a series of bilateral aviation agreements that provide for mandatory dispute resolution. Fifteen of those agreements have yielded very few readily identifiable arbitration proceedings involving the United States.** The record of the United States under the three agreements through which there have been arbitral proceedings of note is as follows: • The World Trade Organization (WTO): The United States has been highly successful in the cases it has initiated (winning 90%), but less successful in those in which it has served as the respondent (winning 19%). However, many of the losses were in cases where only relatively minor economic or political concerns were at stake. • The North American Free Trade Agreement (NAFTA): Three disputes have been brought to arbitration. The arbitral panels have ruled against the United States in all.

**Pham 18** Tuan N Pham, 6-29-2018, "The world is pushing back in the South China Sea," East Asia Forum, <http://www.eastasiaforum.org/2018/06/29/the-world-is-pushing-back-in-the-south-china-sea/> //DF  
US FONOPs are an important expression of and are recognised by international law. The purpose and intent of US FONOPs are clearly laid out in US policy, and all operations are meticulously documented and published every year. On the whole, US FONOPs challenge excessive maritime claims in the SCS, not competing sovereignty claims; do not discriminate against particular states, but rather focus on the claims that individual states assert; are deliberate in nature, but are not deliberate provocations; and contest unilateral restrictions on freedom of navigation and overflight rather than accept rhetoric. **US ISR operations — which are conducted inside other countries’ exclusive economic zones (EEZs) — are lawful under customary international law and Article 58 of the United Nations Convention on the Law of the Sea (UNCLOS).** The Chinese argument on the permissibility of military activities in EEZs is counter to the US position. The United States believes that while coastal states under UNCLOS have the right to regulate economic activities in their EEZs, they do not have the right to regulate foreign military activities in their EEZs. Beijing contends that military activities — such as ISR flights, maritime survey operations and military exercises — on the high seas and in EEZs are unlawful according to UNCLOS, and that it is a requirement under UNCLOS that the high seas are used only for peaceful purposes, despite itself doing exactly the opposite. Beijing’s interpretation of UNCLOS is a minority position held by 27 states, while the vast majority of states (over 100, including all permanent United Nations Security Council members other than China) do not hold this position.

Hannah Beech, 7-8-2016, "Why China Won't Listen to the U.S. on the South China Sea," Time, <http://time.com/4397808/south-china-sea-us-unclos/> (NK)

Washington’s outsider position undercuts its message as it urges China to respect global maritime norms. After all, China ratified UNCLOS in 1996, even if Beijing now says it rejects any judgment by the Permanent Court of Arbitration. In a speech in Washington earlier this month, retired Chinese top diplomat Dai Bingguo accused the U.S. of “heavy-handed intervention” in the South China Sea. “Accidents could happen,” said the still influential Chinese Communist Party official, “and the South China Sea might sink into chaos and so might the entirety of Asia.” Still, even as Beijing has launched a public-relations blitz ahead of the July 12 ruling, Chinese state media and diplomatic statements have not highlighted America’s AWOL status in UNCLOS. Perhaps critiquing the U.S. absence is harder when China itself is distancing itself from one of the treaty’s utilized tribunals. **It’s true that even if Congress hasn’t ratified UNCLOS, the U.S. Navy, which is the world’s largest, adheres to its principles. American top brass openly support U.S. ratification. “I think**

**that in the 21st century our moral standing is affected by the fact that we are not a signatory to UNCLOS,"** said Admiral Harry Harris, head of the U.S. Pacific Command, in testimony to the House Armed Services Committee earlier this year. In a June speech at the U.S. Air Force Academy, U.S. President Barack Obama urged Congress to move ahead on UNCLOS. "If we're truly concerned about China's actions in the South China Sea," he said in his commencement address, "the Senate should help strengthen our case by approving the Law of the Sea convention, as our military leaders have urged." But ratifying the convention will require a two-thirds majority in the Senate, an all but impossibility particularly in this contentious election year. The U.S. Navy will continue to ply the high seas, acting as the world's oceanic policeman by engaging in freedom-of-navigation exercises to ensure open trade routes. But American hypocrisy when it comes to maritime rule of law looks likely to endure.

De Tolve, Robert C. "At What Cost-America's UNCLOS Allergy in the Time of Lawfare." *Naval L. Rev* 61 (2012): 1. <<http://www.jag.navy.mil/documents/navylawreview/NLRVolume61.pdf>> //RJ

**It is myopic for the United States to gamble that its extant approach of FON assertions and diplomatic protests will be an adequate near and long-term course of action, especially in an era of increasing national security interconnectedness.** Under the geopolitical conditions prevalent during the last fifteen years, the United States may well have been better

postured to leverage its significant political, economic, and military influence in support of its maritime security objectives than it will be in the coming twenty five years. **While UNCLOS critics appear content to assume that staying the current course of UNCLOS abstention for the next twenty-five years is unlikely to result in adverse impact,** such a sanguine assumption ought to be regarded with an "all else equal" asterisk. While the aforementioned relative advantage has clearly not evaporated, **the current trend toward its erosion appears to portend that "all else" will likely not be equal going forward.** Given that the dynamics of political and customary international legal norm development typically include interrelated, gradual incubation periods, as well as discernable "tipping points," a more exacting predictive model is appropriate. This is especially so given the potential that significantly increased political, economic, and military costs could attend sustaining current access levels to key regional sea lines of communication in the future. As Professor Kraska posits, **"The strategic, operational and political 'landscapes' of the sea have changed"** seen from the assessments of some among the Chinese naval establishment in 1994, the year UNCLOS entered into force for member states, he is not alone in this view.

Torelli 13 (Colonel Andrew Torelli, served as the Operations Officer for the Joint Intelligence Operations Center, International Security Assistance Force, Kabul, 2013, "US Intelligence, Surveillance and Reconnaissance challenges in the Asia-Pacific" <http://airpower.airforce.gov.au/APDC/media/PDF-Files/Working%20Papers/WP37-US-Intelligence-Surveillance-and-Reconnaissance-Challenges-in-the-Asia-Pacific.pdf> DOA 7/8/18) MDS

However, in a contested environment, and against China's anti-access and area denial strategy, there is a greater risk for US ISR to project forward in the region. Critical components required to enable ISR are geographically advantageous operating locations, reliable command and control networks, persistent and penetrating platforms, long-range sensors, and robust processing, exploitation, dissemination architecture, and many more. All these **critical components need to be safe and secure from direct and indirect attacks. Unfortunately, because of China's anti-access and area denial strategy there is a greater possibility they are at risk.** The following examples highlight some of the challenges the US faces against China's anti-access and area denial strategy.

[Noyes, John](#). "U.S. Policy and the United Nations Convention on the Law of the Sea." [George Washington International Law Review](#). Vol. 39. (2007): 621-638.

**Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.**<sup>36</sup> **This resurgence threatens Convention-based navigational rights,**

which are at least as important today as they were during the Cold War. **Alternative ways to respond to creeping coastal state**

**jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.**<sup>37</sup> **Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law.** As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Committee, "some coastal states contend that the navigational and over-flight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it."<sup>38</sup> **if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program<sup>39</sup> or negotiating new bilateral agreements.**<sup>40</sup> **The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive—in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts—than continuing to stand outside it.**

Glaser 12 Bonnie S., Senior Fellow – Center for Strategic and International Studies, "Armed Clash in the South China Sea," CFR, April, <http://www.cfr.org/east-asia/armed-clash-south-china-sea/p27883>

**The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ).** These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. **At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific.** Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, **the United States has a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.** The Contingencies of the many conceivable contingencies involving an armed clash in the South China Sea, three especially threaten U.S. interests and could potentially prompt the United States to use force. **The most likely and dangerous contingency is a clash stemming from U.S. military operations within China's EEZ that provokes an armed Chinese response.** **The United States holds that nothing in the United Nations Convention on the Law of the Sea (UNCLOS) or state practice negates the right of military forces of all nations to conduct military activities in EEZs without coastal state notice or consent. China insists that reconnaissance activities undertaken without prior notification and without permission of the coastal state violate Chinese domestic law and international law.** China routinely intercepts U.S. reconnaissance flights conducted in its EEZ and periodically does so in aggressive ways that increase the risk of an accident similar to the April 2001 collision of a U.S. EP-3 reconnaissance plane and a Chinese F-8 fighter jet near Hainan Island. A comparable maritime incident could be triggered by Chinese vessels harassing a U.S. Navy surveillance ship operating in its EEZ, such as occurred in the 2009 incidents involving the USNS Impeccable and the USNS Victorious. The large growth of Chinese submarines has also increased the danger of an incident, such as when a Chinese submarine collided with a U.S. destroyer's towed sonar array in June 2009. Since neither U.S. reconnaissance aircraft nor ocean surveillance vessels are armed, the United States might respond to dangerous behavior by Chinese planes or ships by dispatching armed escorts. **A miscalculation or misunderstanding could then result in a deadly exchange of fire, leading to further military escalation and precipitating a major political crisis.** Rising U.S.-China mistrust and intensifying bilateral strategic competition would likely make managing such a crisis more difficult.

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**Since 1979, the United States has formally contested excessive coastal state claims, both operationally and diplomatically, through the Freedom of Navigation Program.** The program is based entirely on the navigation and overflight provisions of the Convention. While this program is designed to breathe life into the terms of the Convention, Parties to the Convention are likewise capable of defining or refining provisions of the Convention. **By remaining outside the Convention, the United States' only way of confronting attempts by Parties to the Convention to interpret or refine Convention provisions would be by the exercise of our naval and air forces in accordance with the existing terms of the Convention.** However, in presenting Admiral Center's paper, Commander Rosen will discuss that **this will be harder to do in the years to come** as we downsize. Also, as a nation committed to the rule of law, **the use of military force to resolve legal conflicts between Parties and non-Parties to the Convention should not be the preferred method of challenging excessive coastal state claims.**

## A2: Interdiction (Piracy)

### Link Defense Rhetoric

1. Beech '16 of TIME Magazine writes that the navy is one of the biggest proponents for UNCLOS and already adheres to its principles, indicating that acceding really doesn't preclude any of our naval operations.
2. Ashfaq '10 of the University of Pennsylvania writes that if countries cannot fend off piracy by themselves, other countries can enact Article 100 of UNCLOS, allowing them to pursue pirates even into territorial waters. The implication is that given a real piracy threat, UNCLOS wouldn't hold back America from interdictions.
3. Panetta '12, former Secretary of Defense writes that UNCLOS recognizes the rights of warships to board ships suspected of engaging in piracy.

### Link Turn Rhetoric

1. Duff '05 of the Ocean Coastal Law Journal writes that American interdiction efforts have been challenged by other countries, so acceding would help legitimize our counter piracy efforts.
2. Panetta '12, former Secretary of Defense, writes that UNCLOS actually expands the 1958 rules on interdiction which the U.S. follows, indicating that America would have an increased ability to interdict than right now.

Hannah Beech, 7-8-2016, Time, <http://time.com/4397808/south-china-sea-us-unclos/> (NK)

Washington's outsider position undercuts its message as it urges China to respect global maritime norms. After all, China ratified UNCLOS in 1996, even if Beijing now says it rejects any judgment by the Permanent Court of Arbitration. In a speech in Washington earlier this month, retired Chinese top diplomat Dai Bingguo accused the U.S. of "heavy-handed intervention" in the South China Sea. "Accidents could happen," said the still influential Chinese Communist Party official, "and the South China Sea might sink into chaos and so might the entirety of Asia." Still, even as Beijing has launched a public-relations blitz ahead of the July 12 ruling, Chinese state media and diplomatic statements have not highlighted America's AWOL status in UNCLOS. Perhaps critiquing the U.S. absence is harder when China itself is distancing itself from one of the treaty's utilized tribunals. **It's true that even if Congress hasn't ratified UNCLOS, the U.S. Navy, which is the world's largest, adheres to its principles. American top brass openly support U.S. ratification. "I think that in the 21st century our moral standing is affected by the fact that we are not a signatory to UNCLOS,"** said Admiral Harry Harris, head of the U.S. Pacific Command, in testimony to the House Armed Services Committee earlier this year. In a June speech at the U.S. Air Force Academy, U.S. President Barack Obama urged Congress to move ahead on UNCLOS. "If we're truly concerned about China's actions in the South China Sea," he said in his commencement address, "the Senate should help strengthen our case by approving the Law of the Sea convention, as our military leaders have urged." But ratifying the convention will require a two-thirds majority in the Senate, an all but impossibility particularly in this contentious election year. The U.S. Navy will continue to ply the high seas, acting as the world's oceanic policeman by engaging in freedom-of-navigation exercises to ensure open trade routes. But American hypocrisy when it comes to maritime rule of law looks likely to endure.

Leon Panetta, (former) Secretary of Defense, 2012,

[https://www.foreign.senate.gov/imo/media/doc/SecDef\\_Leon\\_Panetta\\_Testimonydocx.pdf](https://www.foreign.senate.gov/imo/media/doc/SecDef_Leon_Panetta_Testimonydocx.pdf) SECRETARY OF DEFENSE LEON E. PANETTA LAW OF THE SEA CONVENTION

Fourth, some argue that certain military activities – specifically, our ability to conduct maritime interdiction operations – will be constrained because **the Convention** only **recognizes the right of warships to board ships suspected of engaging in piracy**, the slave trade or being stateless. Again, this is simply not the case. The U.S. and our partners routinely conduct a range of interdiction operations at sea based on UN Security Council Resolutions, treaties, port state control measures and the inherent right of self-defense. Further, **the Convention expands the range of interdiction authorities found in the 1958 Law of the Sea Conventions we've already joined**. **In short, the U.S. would be able to continue conducting the full range of maritime interdiction operations**

Sarah Ashfaq, Something for Everyone: Why the United States Should Ratify the Law of the Sea Treaty, 19 J. Transnat'l L. & Pol'y 357 (2010),

[//RJ](https://heinonline.org/HOL/Page?handle=hein.journals/jtrnlwp19&div=14&start_page=357&collection=journals&set_as_cursor=0&men_tab=srchresults)

**Not only does the Convention provide a clear definition of piracy and basis for capture and prosecution of pirates, it also imposes an affirmative obligation upon parties to make efforts to curtail piracy.**<sup>144</sup> **Critics of the Convention argue that it actually impedes the United States' ability to chase and capture pirates because a ship must cease pursuit if the ship it is chasing enters its own or a third state's territorial waters.**<sup>145</sup> **They assert that this provision provides pirates with a safe haven to retreat to undeterred, and that the Convention prevents non-territorial state ships from pursuing the pirates.**<sup>146</sup> This is troubling largely because of the strong presence of Somali pirates.<sup>147</sup> For example, under this provision, Somali pirates can attack ships and if they risk getting captured, rush back into their own state's territorial waters where they would be safe. Somalia, a nation plagued by its own problems of lawlessness and poverty, is in no position to apprehend these criminals.<sup>148</sup> **In such a circumstance, however, the United States can assert that Article 100 of Part VII of the Convention, which imposes upon member parties the duty to cooperate in the repression of piracy, gives it the authority to continue pursuit.**<sup>149</sup> **Somalia is a party to the Convention and where it cannot assist in apprehending and trying pirates, it must cooperate with others who can. This includes permitting states that are**

**working to repress piracy by pursuing pirates to do so within Somalia's territorial waters.**<sup>150</sup>

Furthermore, a December 2008 **United Nations Security Council resolution called upon states to actively assist in combating piracy off of the coast of Somalia and gives them the authority to "undertake all necessary measures 'appropriate in Somalia'"** in furtherance of this end for a period of one year.<sup>151</sup> In April of 2010, the United Nations Security Council adopted a resolution that calls upon states to criminalize piracy under their domestic law and consider prosecution of and imprisonment of apprehended Somali pirates.<sup>152</sup> This resolution also seeks a report from the Secretary General of the United Nations to present options for purposes of "prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia."<sup>153</sup> **Given this explicit guidance to counter piracy coupled with the Convention's anti-piracy provisions, criticism that the Convention would preclude apprehending pirates does not hold up.**

Kelley, Ryan P. "UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime Piracy ." *Minnesota Law Review*. Vol. 95, No. 6 (June 1, 2011): 2285-2317. CKW

The Somali Transitional Federal Government (TFG) and other semi-autonomous regions within Somalia are actively en- gaging with antipiracy efforts.<sup>122</sup> **Somalia went further than waiving its expulsion right under UNCLOS.**<sup>123</sup> **It actively requested international assistance to combat unlawful acts in its waters and piracy,**<sup>124</sup> **perhaps because it could not do so itself, but also because neither UNCLOS nor SUA would otherwise permit foreign navies to intervene in its waters.**<sup>125</sup> The Security Council subsequently passed a number of resolutions on the matter, which have authorized a robust use of military force.<sup>126</sup> Notably, Resolution 1816 provides authorization for foreign states cooperating with the TFG to enter its territorial waters for the purpose of repressing piracy, provided the TFG notifies the Secretary General in advance of the agreement.<sup>127</sup> Resolu- tion 1950 provides the most recent extension of that permission from the date of its adoption.<sup>128</sup> Further, Resolution 1851 argu- ably extends that permission to land-based operations as well, which the French military has undertaken.<sup>129</sup>

**Duff 05** John A. Duff, 2005, "The United States And The Law Of The Sea Convention: Sliding Back From Accession And Ratification," *OCEAN AND COASTAL LAW JOURNAL*, <https://digitalcommons.maine.gov/cgi/viewcontent.cgi?article=1297&context=oclj> //DF  
From the Department of Homeland Security perspective, Rear Admiral John E. Crowley, Jr. testified that "public order of the oceans is best established and maintained by a stable, universally accepted law of the sea treaty reflective of U.S. national interest."<sup>83</sup> This testimony also alluded to the importance of being part of a global law of the sea rulemaking process. The Convention's navigation freedoms and protections, noted Crowley, "allow the use of the world's oceans to meet changing national security requirements," suggesting that a non-state party would be at a disadvantage in fashioning what might be considered new ocean-borne security efforts.<sup>84</sup> **Another significant benefit in becoming a state party to the Convention,** noted Admiral Crowley, **would be the enhanced "ability to conduct . . . interdiction operations and to refute excessive maritime claims."**<sup>85</sup> **Some U.S. efforts in the past had been questioned by states contending that certain treaty-based rights were not reflections of customary international law.** Crowley also cited Convention Article 108 (requiring international cooperation in the suppression of illegal drugs) as a means by which the U.S. could hasten the implementation of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotic Substances.<sup>86</sup> Finally, the Department of Homeland Security support for accession highlighted the wide-ranging responsibilities charged to one of its core functional components, the U.S. Coast Guard. Accession, noted the statement, would augment the Coast Guard's ability to prevent, reduce, and control maritime pollution; purge U.S. waters of substandard ships; and preserve high seas fisheries.<sup>87</sup>

## A2: Interdiction (PSI)

### Link Defense Rhetoric

1. Valencia '06 of the Arms Control Association writes that America has negotiated ship-boarding agreements with multiple countries, indicating that America would be able to do that regardless of UNCLOS.

### Link Turn Rhetoric

1. Panetta '12, former Secretary of Defense, writes that UNCLOS actually expands the 1958 rules on interdiction which the U.S. follows, indicating that America would have an increased ability to interdict than right now.
2. Vanecko '11 of Naval War College writes that many critical Pacific countries would like to join UNCLOS, but are unable to convince their domestic legislatures that the agreement is in compliance with UNCLOS. Thus, he concludes that acceding would resolve this problem immediately because it would signal that PSI is in compliance with UNCLOS.

### Impact Defense Rhetoric

1. Valencia '07 of the Arms Control Association writes that states are able to simply transport nuclear weapons on their own flag vessels or on those of nonparticipating states.
2. Valencia '07 continues that most WMDs are homemade and not transported over the open seas.

Valencia, Mark. "The Proliferation Security Initiative: A Glass Half-Full." Arms Control Association. 2007.  
[https://www.armscontrol.org/act/2007\\_06/Valencia](https://www.armscontrol.org/act/2007_06/Valencia) //RJ

To be sure, the PSI and other U.S.-driven supportive efforts have improved the awareness of the danger and urgency of the problem. The focus on interdiction also has no doubt constrained some trade in weapons of mass destruction, their delivery systems and related materials or at least forced rogue traders to change their tactics. PSI exercises have increased national capacities for coordinated detection and interdiction of suspect shipments. **With the United States having successfully negotiated ship-boarding agreements with the countries whose flags fly on the bulk of the world's ships, flag-state consent for boarding to search for weapons of mass destruction has become an expectation for and of many states** (but not a legal obligation). Most importantly, the PSI has evolved and metamorphosed from a focus on interdiction of ships at sea to inspection in ports, to carriage of weapons of mass destruction by aircraft, and for the United States, to disruption of financial networks involved or supporting such trafficking.

Leon Panetta, (former) Secretary of Defense, 2012,  
[https://www.foreign.senate.gov/imo/media/doc/SecDef\\_Leon\\_Panetta\\_Testimonydocx.pdf](https://www.foreign.senate.gov/imo/media/doc/SecDef_Leon_Panetta_Testimonydocx.pdf) SECRETARY OF DEFENSE LEON E. PANETTA LAW OF THE SEA CONVENTION

Fourth, some argue that certain military activities – specifically, our ability to conduct maritime interdiction operations – will be constrained because **the Convention** only **recognizes the right of warships to board ships suspected of engaging in piracy**, the slave trade or being stateless. Again, this is simply not the case. The U.S. and our partners routinely conduct a range of interdiction operations at sea based on UN Security Council Resolutions, treaties, port state control measures and the inherent right of self-defense. Further, **the Convention expands the range of interdiction authorities found in the 1958 Law of the Sea Conventions we've already joined**. **In short, the U.S. would be able to continue conducting the full range of maritime interdiction operations**

**Valencia 07** Mark J. Valencia [visiting senior fellow at the Maritime Institute of Malaysia and author of The Proliferation Security Initiative: Making Waves in Asia (2006).], 6-2-2007, "The Proliferation Security Initiative: A Glass Half-Full," Arms Control Association,  
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Reflecting the Bush administration's philosophical disdain for the UN, the PSI was conceived, originated, and implemented outside the UN system. In reality, it remains a U.S.-initiated and -driven ad hoc activity designed primarily to deter trade in WMD components and "related materials" to and from North Korea and now Iran. It is far from clear that 12 successful interdictions in two years or even 30 in three years<sup>[18]</sup> mean that the PSI is effective. State and nonstate actors that want to avoid PSI interdictions can still transport WMD components on their own flag vessels or aircraft or on those of nonparticipating states, such as Cambodia. This is particularly applicable to warships and government ships operated for noncommercial purposes, which under Article 32 of the 1982 UN Convention on the Law of the Sea have immunity from other state's jurisdiction. Moreover, **countries that are key to an effective PSI, such as China, India, Indonesia, and South Korea, have not publicly joined** the activity **despite U.S. pressure to do so, and Japan and Russia seem to be** rather **reluctant participants**. **Some states feel that the United States is applying double standards**<sup>[19]</sup> and are concerned by the lack of clarity in some PSI definitions, such as what determines which states are "of proliferation concern" and what constitutes "good cause" (for interdiction), as well as the obligations linked to these vague and subjective definitions.

**Belcher 2011** (Emma Belcher, Stanton nuclear security fellow at the Council on Foreign Relations, "The Proliferation Security Initiative Lessons for Using Nonbinding Agreements", *Council on Foreign Relations*, July 2011,  
[https://www.cfr.org/content/publications/attachments/IIGG\\_WorkingPaper6\\_PSI.pdf](https://www.cfr.org/content/publications/attachments/IIGG_WorkingPaper6_PSI.pdf).  
DOA: July 7th 2018) TG

Participants should consider a reporting mechanism that informs other participants of actions undertaken under PSI auspices, thus adding transparency and building-confidence in the PSI's value. Critics will claim this would be impossible because of the sensitivities surrounding intelligence sharing. But reports could be sanitized for sensitive information, and there is a related precedent: states are required to report on

their actions undertaken under the resolutions against Iran and the DPRK. **The United States should signal intent to comply with international law by ratifying UNCLOS. U.S. ratification of UNCLOS would help the United States garner greater support for the PSI. It would signal U.S. intent to conform to international law at sea and that the PSI is fully consistent with UNCLOS,** doubt over which states such as China and Indonesia cite as reasons for their nonparticipation. Continued refusal by these states to participate following U.S. ratification would reveal the legal argument as a smokescreen for their real objections.<sup>61</sup> Thus, rather than an impediment to the PSI, as some argue, UNCLOS ratification could strengthen the PSI.<sup>62</sup> Policymakers should add incentives for participation in the PSI. The United States could secure greater buy-in among countries that are not currently members by providing tangible benefits for participation, such as donating maritime assets to conduct interdictions and legal assistance to develop their WMD terrorism laws, as required under UN Resolution 1540. Such assistance would enable states to undertake their own interdictions when they see fit and punish proliferators within their jurisdiction, thus preserving their sovereignty.

**Belcher 2011** (Emma Belcher, Stanton nuclear security fellow at the Council on Foreign Relations, "The Proliferation Security Initiative Lessons for Using Nonbinding Agreements", *Council on Foreign Relations*, July 2011, [https://www.cfr.org/content/publications/attachments/IIGG\\_WorkingPaper6\\_PSI.pdf](https://www.cfr.org/content/publications/attachments/IIGG_WorkingPaper6_PSI.pdf). DOA: July 7th 2018) TG

**After PSI participants negotiated the agreement, they presented it to others, including Russia and China, as a fait accompli. China, Indonesia, India, Malaysia, and Russia questioned PSI's legality, expressed concern about sovereignty, and some cited the United States' failure to ratify UNCLOS as cause for suspicion.**<sup>36</sup> Others questioned its legitimacy, and accused the PSI of being a hub and spoke arrangement concealed as a multilateral one.<sup>37</sup> **Though Russia ultimately joined the PSI in May 2004, many other important states have not. These include China (important both for its location in Northeast Asia and its nuclear weapon status), India and Pakistan (for their location beside major Indian Ocean trade routes and nuclear weapon status), Malaysia and Indonesia (for their location on the Malacca Straits), and Egypt (for its location on the Suez Canal). The absence of these states means that the PSI network has critical gaps, which proliferators could exploit.**

Jonathan J. Vanecko, Naval War College, "Time to Ratify UNCLOS; A New Twist on an Old Problem", 04-05-2011, <http://www.dtic.mil/dtic/tr/fulltext/u2/a546081.pdf> JL

Launched in 2003, "the Proliferation Security Initiative (PSI) is a global effort that aims to stop trafficking of weapons of mass destruction (WMD)."<sup>70</sup> The PSI is not a treaty, but instead relies on preexisting international legal frameworks – including the Law of the Sea Convention – and voluntary commitment to a "Statement of Interdiction Principles" to guide cooperation and prevent proliferation.<sup>71,72</sup> Despite the endorsement of ninety-eight nations, major players have proved wary to join the United States in this partnership.<sup>73,74,75</sup> **Conspicuously absent from PSI are both Indonesia and Malaysia who both border the world's busiest maritime straight. With nearly 525 million metric tons traveling this corridor annually, the failure to expand PSI to this SLOC puts international interdiction efforts at a significant disadvantage and complicates an already difficult problem in the PACOM AOR.**<sup>76</sup> This failure to expand PSI should come as no surprise, however. As former Vice Chief of Naval Operations Admiral Walsh testified to in 2007, **many critical Pacific countries would like to support PSI, but are unable to "convince their legislatures that PSI interdiction activities will only occur in accordance with international law, including the Law of the Sea Convention, when the leading PSI nation, the United States, refuse to become a party to the Convention."**<sup>77</sup> **The legitimacy obtained through ratification of UNCLOS would solve this problem immediately.** Recruiting countries to PSI is just the first step, however, as enhanced legitimacy has second-order effects.

**Valencia 07** Mark J. Valencia [visiting senior fellow at the Maritime Institute of Malaysia and author of The Proliferation Security Initiative: Making Waves in Asia (2006).], 6-2-2007, "The Proliferation Security Initiative: A Glass Half-Full," Arms Control Association,

[https://www.armscontrol.org/act/2007\\_06/Valencia](https://www.armscontrol.org/act/2007_06/Valencia) //DF

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[https://www.armscontrol.org/act/2007\\_06/Valencia](https://www.armscontrol.org/act/2007_06/Valencia) //DF

As is often stated by its proponents, the PSI is an activity rather than an organization, and thus it lacks an independent budget or coordinating mechanism. Although these features may enhance its flexibility, as well as the speed of decision-making and resultant action, they also constrain its capacity. Moreover, placing such emphasis on interdictions may undermine other nonproliferation efforts. Perhaps **the greatest obstacle to PSI effectiveness is the dual-use nature of WMD materials and technologies. Few** if any **countries export "turn-key" weapons of mass destruction**. The harsh reality is that **countries and nonstate actors can build their own weapons of mass destruction** from items that have civilian application. **This means that it is very difficult to make decisions regarding "good cause" for interdiction and that such decisions will inevitably be politically influenced** and based on who is sending or receiving the shipment. Moreover, a proliferation of interdictions of dual-use materials may hamper legitimate commerce and thus engender opposition, even from allies.

## A2: Tech Transfers

### Link Defense Rhetoric

1. Taft '04 of the US Department of State writes that mandatory technology transfers were eliminated by an amendment to UNCLOS for military technology. For non-military technology transfers, Moore '05 of the Journal of International Affairs writes that the US would have a veto for any resource-based technology transfer.

No technology transfer is required under the Convention

WILLIAM H. TAFT IV, LEGAL ADVISER, U.S. DEPARTMENT OF STATE, 2004,

[http://www.globalsecurity.org/military/library/congress/2004\\_hr/040408-taft.pdf](http://www.globalsecurity.org/military/library/congress/2004_hr/040408-taft.pdf)

No technology transfers are required by the Convention. **Mandatory technology transfers were eliminated by Section 5 of the Annex to the Agreement amending Part XI of the Convention.** • Article 302 of the Convention explicitly provides that **nothing in the Convention requires a party to disclose information the disclosure of which is contrary to the essential interests of its security.**

Mandatory technology transfer provisions were eliminated

Moore, John Norton, Schachte Jr., William L., Journal of International Affairs, 0022197X, Fall/Winter2005,

**The mandatory technology transfer provisions** of the deep seabed mining sections in the original convention, to which the United States objected, **were eliminated in the 1994 agreement. Any transfer of funds to nations from deep seabed mining revenues, or oil and gas development beyond 200 miles, is subject to a U.S. veto. As such, we not only have a veto over where our seabed mining revenue would go, but also over that of all nations world wide.** This new power is simply lost if we fail to adhere.

# \*South China Sea

## A2: Appeasement

### Link Turn Rhetoric

1. Pham '16 of the Diplomat writes that silence and failure to challenge UNCLOS implies acknowledgement and consent to China's interpretation of the agreement, which is why acceding is important to counteract China.

**Pham 2016** - career U.S. naval officer with extensive operational experience in the Indo-Asia-Pacific, and a former Federal Executive Fellow at Johns Hopkins University Applied Physics Laboratory. Tuan N, "After the South China Sea Ruling," Jun 17, [thediplomat.com/2016/06/after-the-south-china-sea-ruling/](http://thediplomat.com/2016/06/after-the-south-china-sea-ruling/)

Encourage and Support More Legal Challenges. An unfavorable merits ruling for China could invite further, and potentially coordinated, legal challenges from the other rival claimants like Vietnam, Malaysia, and Brunei. **Washington should then encourage and support** Hanoi, Kuala Lumpur, Bandar Seri Begawan, and as much as possible the

other **ASEAN countries** (in lieu of ASEAN as an organization), **in putting additional pressures on Beijing to curb its assertiveness, stop its land reclamation and militarization activities, and come in good faith to the “multilateral” negotiating table for a peaceful and enduring resolution of the competing claims.** The Taiwanese-

proposed SCS Peace Initiative (similar to the 2012 East China Sea Peace Initiative) that calls on all parties to shelve their maritime disputes, respect UNCLOS, and explore the joint development of resources offers a promising starting point in terms of a potential multilateral agreement that all can agree on. Challenge Chinese Reinterpretation of International Law. China's legal positions have morphed over the years as it develops a blue-water navy befitting of an emerging maritime power and rising world power. Chinese positions have become more fluid, nuanced, sophisticated, and in some cases moderated. **Washington should keep challenging Beijing's reinterpretation of**

**international law outside of accepted norms. Silence and inaction implies acknowledgment and consent to China. Better to dissuade and deter Chinese assertiveness and unilateralism now than wait until later,** when it may become a fait accompli. Consider the pending Tribunal's merits ruling. It is quite evident that Beijing's preemptive formal declaration of non-compliance on

October 30, 2015 has little basis in international law. **For all of China's grandiloquence about Chinese rights under UNCLOS and**

**international law, Beijing is conveniently disregarding several provisions therein** and trying to dismiss a ruling that is a product of that same international legal process. This is specious, and should not go unchallenged. If Beijing wants to be a respected major player in the global arena, then it must abide by and uphold the rule of law. **China cannot play by its own set of rules,** or worse flaunt its exceptionalism on the world's stage for all to see. Beijing needs the

international community to believe that its commitments under international law are sincere and credible, especially in the maritime trade realm, on which its growing economy relies. By the same token, the world needs a rising China to be a responsible global leader respectful of the rule of law. That being said, **China is a member of UNCLOS but**

**often violates its provisions, whereas the United States has not ratified UNCLOS but has been its foremost champion** on behalf of freedom of navigation, global commerce, and international rule of law. Hence, **Washington should ratify UNCLOS if its**

**challenges are going to have gravitas and be taken seriously. Otherwise, the status quo simply strengthens Beijing's calling into question Washington's sincerity about upholding international norms.**

## A2: FONOPs against our Allies

### Link Defense Rhetoric

1. Krejsa '15 of the National Interest writes that our allies don't reply vigorously against our FONOPs the way China does because America warns these allies that we are going to engage on a FONOP to enforce international law in general, and they aren't targeted at individual countries.

### Link Turn Rhetoric

1. Noyes '07 of George Washington International Law Review writes that acceding would decrease reliance on military power by providing America the tools to combat China through peaceful means.

Krejsa, Harry. "The Real Meaning Behind America's FONOPS in the South China Sea." National Interest. October 2015. <https://nationalinterest.org/feature/the-real-meaning-behind-americas-fonops-the-south-china-sea-14195> //RJ

Indeed, **Vietnam and the Philippines have not replied nearly so vigorously as China**—despite the fact that their own dubious claims were just challenged by the Lassen during the same FONOP. The United States was wise to package its freedom of navigation patrol as one of international law enforcement—regardless of country, even if involving a treaty ally—rather than actions easily construed as an effort at containing China. To be sure, China's dredging operations are by far the most extensive and threatening to international norms. Extensively documented by the Asia Maritime Transparency Initiative, Chinese land reclamation has now been followed by the construction of basic infrastructure. While China has denied any military intentions for these islands, they now sport runways long enough to accommodate military aircraft. China's sovereignty claims in the region are bounded by a so-called "nine-dash line" that makes up about 90 percent of the South China Sea. **The United States has been warning for weeks that such a freedom of navigation patrol was likely near—and it comes just a week before Admiral Harry B. Harris of Pacific Command is due in Beijing for military-to-military talks.** While likely to receive an earful from his Chinese counterparts, Admiral Harris will undoubtedly emphasize the impartial, legalistic nature of these operations—and how they will reportedly be carried out with greater frequency and regularity throughout the region, not just inside China's unfounded territorial claims. Rather than falling into a false narrative of great-power struggle, **the United States must continue to keep the focus of its operations on the preeminence of law, not strength.**

[Noyes, John](#). "U.S. Policy and the United Nations Convention on the Law of the Sea." [George Washington International Law Review](#). Vol. 39. (2007): 621-638.

**Why support the Convention now? Administration officials cite a "resurgence of creeping jurisdiction" by coastal states within their EEZs.**<sup>36</sup> **This resurgence threatens Convention-based navigational rights,** which are at least as important today as they were during the Cold War. **Alternative ways to respond to creeping coastal state jurisdiction are not satisfactory. If the U.S. continues to rely on assertions that customary international law establishes certain navigational rights, coastal states may increasingly counterclaim that emerging customary international law restricts such rights in coastal zones.**<sup>37</sup> **Some coastal states may altogether deny that Convention-based navigational rights exist under customary international law.** As Admiral Michael G. Mullen, Vice Chief of Naval Operations, testified before the Senate Foreign Relations Committee, "some coastal states contend that the navigational and overflight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it."<sup>38</sup> **if it joined the Convention, the U.S. would likely have less need to rely on either its Freedom of Navigation Program**<sup>39</sup> **or negotiating new bilateral agreements.**<sup>40</sup> **The rules in the Convention clarify issues and narrow considerably the range of possible disagreements over navigational rights. Accepting the Convention will thus be less expensive—in terms of dollars, potential confrontations or loss of good will with coastal states, and U.S. concessions on other fronts—than continuing to stand outside it.**

## A2: Legal Wrangling

### Link Defense Rhetoric

1. Smith '14 of National Interest writes that legal wrangling already exists in the South China Sea, and it has already led to dozens of confrontations. The implication is that America will always try to enforce our interpretation of UNCLOS, and accession doesn't affect that.

### Soft Power Better DA

1. Right now, Schachte of Georgetown University writes that because America remains outside of the convention, its only way to resolve disputes is through military power. However, acceding to UNCLOS changes this dynamic by pivoting to legal means, which is preferable to military power for two reasons:
  - a. **First, sustainability.**
    - i. De Tolve '12 of the Naval Law Review writes that military operations are unsustainable to maintain freedom of navigation with countries pushing back to deny access to these operations. For example, Glaser '12 of the Council of Foreign Relations writes that China has developed technology to deny American naval access in the Pacific. Thus, Noyes '07 of the George Washington International Law Review writes that America needs to accede to UNCLOS to counteract the current trend of other states redefining customary international law.
  - b. **Second, de-escalating conflict.**
    - i. Glaser '12 contines that our naval operations are the most likely source of a miscalculation in the region. Fortunately, Noyes '07 concludes that acceding would decrease reliance on military power by providing America the tools to combat China through peaceful means.

Smith, Jeff. "China and America Clash on the High Seas: The EEZ Challenge." National Interest. May 2014. <https://nationalinterest.org/feature/china-america-clash-the-high-seas-the-eez-challenge-10513//RJ>

For as the temperature has risen on China's maritime territorial disputes, **the U.S. and China have been struggling to manage their own, altogether separate, conflict of interest at sea.** Though it has not garnered the attention of the East or South China Sea disputes, **this legal wrangle has the potential to be every bit as dangerous, and has already led to nearly a dozen confrontations at sea between U.S. and Chinese naval vessels.**

De Tolve, Robert C. "At What Cost-America's UNCLOS Allergy in the Time of Lawfare." *Naval L. Rev* 61 (2012): 1. <<http://www.jag.navy.mil/documents/navylawreview/NLRVolume61.pdf>> //RJ

**It is myopic for the United States to gamble that its extant approach of FON assertions and diplomatic protests will be an adequate near and long-term course of action, especially in an era of increasing national security interconnectedness.** Under the geopolitical conditions prevalent during the last fifteen years, the United States may well have been better postured to leverage its significant political, economic, and military influence in support of its maritime security objectives than it will be in the coming twenty five years. **While UNCLOS critics appear content to assume that staying the current course of UNCLOS abstention for the next twenty-five years is unlikely to result in adverse impact,** such a sanguine assumption ought to be regarded with an "all else equal" asterisk. While the aforementioned relative advantage has clearly not evaporated, **the current trend toward its erosion appears to portend that "all else" will likely not be equal going forward.** Given that the dynamics of political and customary international legal norm development typically include interrelated, gradual incubation periods, as well as discernable "tipping points," a more exacting predictive model is appropriate. This is especially so given the potential that significantly increased political, economic, and military costs could attend sustaining current access levels to key regional sea lines of communication in the future. As Professor Kraska posits, "**The strategic, operational and political 'landscapes' of the sea have changed.**" seen from the assessments of some among the Chinese naval establishment in 1994, the year UNCLOS entered into force for member states, he is not alone in this view.

[Noyes, John](#). "U.S. Policy and the United Nations Convention on the Law of the Sea." [George Washington International Law Review](#). Vol. 39. (2007): 621-638.

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Glaser 12 Bonnie S., Senior Fellow – Center for Strategic and International Studies, “Armed Clash in the South China Sea,” CFR, April, <http://www.cfr.org/east-asia/armed-clash-south-china-sea/p27883>

**The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military**

**vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ).** These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. **At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S.**

**Navy in the western Pacific.** Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, **the United States has a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.** The Contingencies of the many conceivable contingencies involving an armed clash in the South China Sea, three especially threaten

U.S. interests and could potentially prompt the United States to use force. **The most likely and dangerous contingency is a clash stemming from U.S. military operations within China's EEZ that provokes an armed Chinese response.**

**The United States holds that nothing in the United Nations Convention on the Law of the Sea (UNCLOS) or state practice negates the right of military forces of all nations to conduct military activities in EEZs without coastal state notice or consent. China insists that reconnaissance activities undertaken without prior notification and without permission of the coastal state violate Chinese domestic law and international law.** China routinely intercepts U.S. reconnaissance flights conducted in its EEZ and periodically does so in aggressive ways that

increase the risk of an accident similar to the April 2001 collision of a U.S. EP-3 reconnaissance plane and a Chinese F-8 fighter jet near Hainan Island. A comparable maritime incident could be triggered by Chinese vessels harassing a U.S. Navy surveillance ship operating in its EEZ, such as occurred in the 2009 incidents involving the USNS Impeccable and the USNS Victorious. The large growth of Chinese submarines has also increased the danger of an incident, such as when a Chinese submarine collided with a U.S. destroyer's towed sonar array in June 2009. Since neither U.S. reconnaissance aircraft nor ocean surveillance vessels are armed, the United States might respond to dangerous behavior by Chinese planes or ships by dispatching armed escorts.

**A miscalculation or misunderstanding could then result in a deadly exchange of fire, leading to further military escalation and precipitating a major political crisis.** Rising U.S.-China mistrust and intensifying bilateral strategic competition would likely make managing such a crisis more difficult.

[Schachte, William L.](#) "National Security: Customary international law and the Convention on the Law of the Sea." [Georgetown International Environmental Law Review](#). Vol. 8, No. 2 (Summer 1995).

**Since 1979, the United States has formally contested excessive coastal state claims, both operationally and diplomatically, through the Freedom of Navigation Program.** The program is based entirely on the navigation and overflight provisions of the Convention. While this program is designed to breathe life into the terms of the Convention, Parties to the Convention are likewise capable of defining or refining provisions of the Convention. **By remaining outside the Convention, the United States' only way of confronting attempts by Parties to the Convention to interpret or refine Convention provisions would be by the exercise of our naval and air forces in accordance with the existing terms of the Convention.** However, in presenting Ad-miral

Center's paper, Commander Rosen will discuss that **this will be harder to do in the years to come** as we downsize. Also, as a nation committed to the rule of law, **the use of military force to resolve legal conflicts between Parties and non-Parties to the Convention should not be the preferred method of challenging excessive coastal state claims.**

# \*Resources

## A2: Arctic Drilling

### Timeframe Underview

1. If we don't drill now, we won't drill ever; any response that delays the timeframe of drilling serves as terminal defense. Johnston '17 of the Independent writes that within the next few years, solar energy will become materially cheaper than fossil fuels on a global scale. Overall, Schneider '18 of LA Times writes that it would take 20 years for us to drill on the outer continental shelf, and by then, oil will be outcompeted by alternative energy sources, making drilling unprofitable.

### Link Defense Rhetoric

1. Other countries are inevitably going to enter, as Staalesen '18 of the Barents Observer writes that Norway is cooperating with Russia to drill and expand into the Arctic right now. Indeed, Slav '18 of OilPrice writes that Russia plans to expand production to 110,000 barrels per day.
2. Even if other countries don't enter, Arctic drilling is still decades away even with UNCLOS accession:
  - a. Rosen '17 of the CNA Corporation writes that American companies aren't able to build the infrastructure for drilling because of the permafrost freeze-thaw cycle that prevents sustainable drilling.
  - b. Becker '10 of Southern Methodist University writes that in order to get legal certainty for American companies, America would need to acquire a CLCS claim in order to drill in the Arctic. Unfortunately, the CLCS is extremely backlogged and wouldn't be able to evaluate American claims for 25 years.

Ultimately, Schneider '18 of LA Times writes that it would take 20 years for us to drill on the outer continental shelf, and by then, oil will be outcompeted by alternative energy sources, making drilling unprofitable.

(F/L: America will export oil: Johnston '17 of the Independent writes that within the next few years, solar energy will become materially cheaper than fossil fuels on a global scale.)

3. Even if America has the ability to drill, legal uncertainty always exists for two reasons:
  - a. Plumer '15 of Vox writes that after Shell tried to drill in the Arctic, they were sued by environmental groups, imposing a significant cost to Shell. The implication is that environmental lawsuits always create legal uncertainty for companies, providing a barrier to entry.
  - b. Tabuchi '18 of New York Times writes that a new administration could easily change offshore policy down the road, which is why there won't be a rush into the Arctic.
4. But then mitigate their impact; Wong '13 of George Mason University writes that even with an ECS claim, only 3.8% of Arctic Oil lies in the areas we would get after accession.

## Natural Gas Disadvantage

1. Entering the Arctic would be a good thing in combating global climate change; Lindholt '08 of the SSB writes that in the most likely scenario, 60% of drilling in the Arctic would be for natural gas, not oil. That's critical, because the Center for Climate and Energy Solutions writes that natural gas emits 30% less than traditional oil, providing a more sustainable option. Indeed, Biello '15 of Scientific American indicates that cheap natural gas from an increased supply would outcompete oil, keeping a lid on carbon emissions from America. Overall, the Independent '18 concludes that offshore energy exploration has empirically reduced carbon emissions by 14%.

Staalesen, Atle. "Norwegian supply ships support drilling activities in Russian Arctic." The Barents Observer. August 2018. [//RJ](http://www.rcinet.ca/eye-on-the-arctic/2018/08/16/norway-ships-russia-drilling-oil-platforms-supply-arctic)

**Norwegian ships are also playing key roles in connection with the ongoing well drilling in the nearby Nyarmeysky license area. Drilling is conducted by semisubmersible rig Arkticheskaya, an installation owned and operated by Gazprom subsidiary Gazflot. It left Murmansk on 19th July and has since been operating along coast of the Yamal Peninsula (Russian Arctic).** On site near the Arkticheskaya is the Norwegian supply ship Boa Bison, a vessel owned by company Boa, and the Norsesea Fighter, a ship owned by Vestland Offshore. In the area are also the Sea Spear and Sea Supra, two supply ships owned and operated by Norwegian company Solstad Farstad ASA. According to company Operations Director Bjørn-Inge Engene, Sea Spear and Sea Supra are engaged in supporting drilling activities at both the Rusanovsky and Nyarmeysky areas. **The Kara Sea (north of Yamal Peninsula) is ice-free at the moment and the ships will be on site until the end of the drilling.** he says in a comment to the Barents Observer. "We have operated in this area several times before and have gained solid experience from ship management in this kind of remote areas", he underlines. **There hasn't been so many Norwegian vessels in the Kara Sea since 2014 when ExxonMobil drilled its University-1 well in the area.** That drilling was part of the U.S company's comprehensive cooperation with Rosneft, and results showed the discovery of many million tons of oil. **The well was drilled by the Norwegian rig West Alpha and logistical operations were comprehensive. About 2,000 people were involved in the drilling operations and most of them were Norwegians.** The cooperation between ExxonMobil and Rosneft came to a halt after Russia's annexation of Crimea and the subsequent introduction of western sanctions. The sanction regime prohibits key services necessary for deep water and Arctic oil exploration and production. **However, there is still a loophole for offshore supply services.**

**Rosen 17** Mark E. Rosen [Senior Vice President General Counsel], 11-2017, "Unconstrained Foreign Direct Investment: An Emerging Challenge to Arctic Security," CNA Corporation, [//DF](https://www.cna.org/cna_files/pdf/COP-2017-U-015944-1Rev.pdf)

**Despite the vast quantity and value of resources in the Arctic, this analysis does not predict that a resource "rush" will occur in the next few years.** There are several reasons for this. **First, while Arctic resources are becoming more accessible due to technological advancements and climate change, that doesn't mean they are as profitable as resources elsewhere.** At present and for much of the foreseeable future, the impact of climate change will make some resources (such as off shore hydrocarbons) more accessible due to retreating glaciers and less sea ice, but it will not make them completely accessible. Profitable extraction of certain resources will require technological development, such as new drilling technologies and systems that can withstand strong Arctic storms and infrastructure that remains stable as melting permafrost shifts below it. **Wherever regulations require that resources must be extracted and transported in an environmentally responsible manner, companies will need to develop or adopt adequate (and expensive) technology or face steep consequences.** Such regulations apply in the United States, Canada and Norway but less so in Russia and, perhaps, Greenland, which have lower standards and less monitoring. **Second, the emerging freeze-thaw cycles of the Arctic permafrost pose serious challenges to development in the Arctic. As the permafrost melts and refreezes, infrastructure dilapidates at a much faster rate than in lower latitudes.** Climate change is making the problem worse by increasing the depth of soil thawing and by melting ice roads. In 2007, the University of Alaska estimated that melting permafrost from climate change would add \$5.6–7.6 billion dollars to the anticipated costs of replacing worn out infrastructure in the state, representing a 10–12 percent increase [64]. Water and sewer systems are expected to account for the largest share of extra costs, with roads and airport runways following close behind. This trend is also observed elsewhere in the Arctic. Russia is acutely vulnerable to warming permafrost due to the urban design of Russian Arctic cities. Most urban infrastructure consists of standard design — five-tonine-story buildings with concrete pile foundations. Recent analysis of the impacts of warming permafrost projections conservatively anticipate that by 2040, the Russian cities of Salekhard, Norilsk, Yakutsk, and Anadyr will experience critical (<55 percent) reductions in the load bearing capacity of the standard pile foundations that underlie the majority of built infrastructure [65]. If the rates of warming due to climate change are more rapid, this deterioration can be expected to occur sooner, perhaps as early as the mid-2020s. Such

significant reductions in load bearing capacity would exceed the safety factors incorporated into the building designs by Soviet engineers, leading to potentially catastrophic building failure and collapse. In addition to building new infrastructure to support development, the current structures in the Russian Arctic will need to be evaluated and either retrofitted or rebuilt to sustain the impacts of melting permafrost, requiring even greater investment. Melting permafrost will complicate development of natural resources at every step of the process. In the extraction phase, reasonable variability in the stability of the permafrost will cause extraction equipment to shift, sometimes unexpectedly. Buildings such as offices, housing, and community infrastructure will also face challenges due to instability in the permafrost. Transporting extracted resources, whether through the sparse pipeline, road, or rail systems, will also be more difficult and dangerous with melting permafrost. Foundations of pipelines could shift, causing leaks that damage the Arctic environment. Road and rail infrastructure can rapidly deteriorate from season to season, increasing the risk of accidents. **Third, the Arctic lacks infrastructure** (see figure 12). **Before the vast mineral, fossil, and food resources can be exploited, developers will need to construct the infrastructure that will facilitate extraction, processing, transport, export, and housing for operators and their families.** Inconveniently, the melting of the permafrost on land, high rates of erosion, and severe weather pose severe and costly challenges to the larger engineering projects that **would be needed to support resource extraction.** On the U.S. side of the Arctic, there is very little infrastructure north of the Bering Strait.<sup>19</sup> Shortly after Shell pulled out of its exploratory oil and gas project in the Chukchi Sea, the U.S. Army Corps of Engineers postponed efforts to study the creation of U.S. Arctic deepwater port. This means that any ores that are mined would have to transit out of the U.S. Arctic before they could be offloaded for processing. Norway's Tschudi Shipping, by contrast, is building a major bulk commodity handling port in the vicinity of Kirkenes to service a nearby iron ore mine as well as to serve as a receiving and transshipment port for other minerals. The nearby Russian Port of Murmansk also has significant bulk cargo handling capabilities<sup>[66]</sup>. **Fourth, commodity prices do not currently encourage the development of some mineral resources, especially oil and gas.** The low market price of hydrocarbons does not encourage a high-risk, infrastructure-intensive resource exploration in a climatically turbulent and distant part of the world. For these resources to be appealing to large, well-established, and well-capitalized oil operators, the global market price of oil will need to rise.

Becker, Michael. "International Law of the Sea." Southern Methodist University. 2010.

<http://scholar.smu.edu/cgi/viewcontent.cgi?article=1351&context=til> //RJ

**In 2009, the CLCS continued to review pending applications and received fifty new complete submissions and thirty-nine preliminary submissions—more submissions than the CLCS had received in its entire history.**<sup>13</sup> The dramatic increase reflected the fact that May 2009 marked the end of a ten-year submission deadline for many states.<sup>4</sup> **The high volume of submissions, which relate to claims from all over the world, raised serious concerns about the capacity of the CLCS to issue recommendations in a timely manner.** Previous reports had estimated that **it could take as many as twenty-five years to process the current backlog.**<sup>15</sup> Efforts to expand capacity, for example, by creating additional subcommissions to review the applications remain under consideration.<sup>16</sup> Furthermore, as described below, the CLCS announced that it had suspended indefinitely a pending application by Myanmar due to an ongoing maritime delimitation dispute with Bangladesh.<sup>17</sup>

Keith Schneider, 1-5-2018, "Trump has big plans for offshore oil development. But will it ever happen?," latimes, <http://www.latimes.com/nation/la-na-offshore-oil-drilling-20180105-story.html>

Energy analysts also say **it will take at least 10 years for a new well to begin producing in the Gulf, and twice that anywhere else on the outer continental shelf.** **By that time, according to industry forecasts, demand for oil will be well past its peak and dropping due to the advent of electric vehicles, more efficient engines for planes and ships and new materials that are not made with oil or natural gas.**

Plumer, Brad. "The controversy over Shell's Arctic oil drilling, explained." Vox. Sep. 2015.

<https://www.vox.com/2015/9/2/9248593/shell-arctic-drilling-obama> //RJ

But then things got ... messy. **Conservation groups, local communities, and Alaska Native groups all sued at multiple points to stop Shell from drilling. They argued that Shell's preparations and spill-response plans were inadequate, forcing the company to propose fixes.** Then, in 2010, after [BP's massive oil spill in the Gulf of Mexico](#), the Obama administration put a six-month moratorium on offshore drilling while it revamped safety rules. Shell finally got approval to drill exploratory wells in the Chukchi and Beaufort in the summer of 2012, but [that turned into a fiasco](#). Early in the season, one anchored drill ship, the Noble Discoverer, got dragged by gale-force winds and nearly ran aground. **Regulators then barred Shell from drilling deep into hydrocarbon zones after a containment dome, meant to limit the spread of oil in a spill, failed in early testing.**

**Tabuchi 18** Hiroko Tabuchi, 1-23-2018, "Trump Would Open Nearly All U.S. Waters to Drilling. But Will They Drill?," NYT, <https://www.nytimes.com/interactive/2018/01/23/climate/trump-offshore-oil-drilling.html> //DF

The Bureau of Ocean Energy Management, which manages offshore leasing, estimates that the areas opened up to drilling under Mr. Trump's plan hold nearly 45 billion barrels of oil, of which 21 billion barrels would be economically recoverable assuming oil prices remain around \$60 a barrel. (To put that in perspective, since 1970, the western and central zones of the Gulf have yielded about 14.5 billion barrels of oil.) While those are large amounts, **there are significant oil reserves still to be found in the western and central Gulf, which are already open to drilling.** There, some 45 billion barrels of oil reserves are up for grabs, of which 37 billion barrels could be produced economically at current oil prices. Stated another way: Almost **two-thirds of the nation's oil reserves that companies can hope to drill for while still turning a profit lie in seas already open to drilling.** Meanwhile, there's little recoverable oil and gas in the South Atlantic or the Straits of Florida, or off the Washington and Oregon coast, or off Alaska outside the north shore. **The abundance of cheap oil and gas from onshore fracking in the United States has already diminished the incentive for companies to go drill in new offshore zones.** Given the risks and costs of building wells in seas that have seen little development to date, not to mention the possibility that **a new administration could again change offshore policy down the road, analysts don't expect a rush into newly opened waters soon.**

**Slav 18** Irina Slav, 7-12-2018, "Russia Bets Big On Arctic Oil," OilPrice,

<https://oilprice.com/Energy/General/Russia-Bets-Big-On-Arctic-Oil.html> //DF

**Gazprom** Neft, Russia's fourth largest oil producer, **has big plans for its Arctic oil operations, and it seems that neither sanctions nor production cuts can force it to quit its presence there.** In fact, the oil division of Gazprom will try to turn itself into what its head of strategy and innovations called "a benchmark," but not in terms of production. Gazprom Neft wants to become a benchmark in areas such as safety and efficiency, and most notably technology. Arctic drilling was one of the top targets of U.S. sanctions that banned U.S. oil companies—and their European peers—from sharing technological know-how with Russian producers. This may have slowed down the progress of Gazprom Neft and others in the Arctic, but it did not put an end to it. Not that it could: **Russia's energy industry has been working on Arctic exploration for much longer than the four years since the annexation of Crimea**, which became the grounds for the sanctions. Gazprom Neft launched its first Arctic field, Prirazlomnoye, at the end of 2013, and first oil, and the new blend, ARCO, from Arctic Oil, reached markets the following year. Since then, **more than 10 million barrels have been shipped from the field.** Recoverable reserves at Prirazlomnoye are estimated at 540 million barrels of crude, and the peak of production is set to be reached in 2020, at **110,000 barrels per day.** **The Arctic as a whole is top priority for Gazprom Neft:** in 2016, two new projects got the go-ahead there. Messoyakha, which is the northernmost onshore oil field in Russia to date, is estimated to hold 470 million tons of oil and condensate. Novoportovskoye, or Novy Port, field holds an estimated 250 million tons of oil and condensate.

Wong, Ernest. "Geopolitics of Arctic oil and gas: The dwindling relevance of territorial claims." New Voices In Public Policy 7.1 (2013). <https://journals.gmu.edu/newvoices/article/download/132/94> //RJ

**Note that the U.S. cannot submit any ECS claims as it is not a member to the UNCLOS. However, if it wanted to do so in the future, potential claimable areas for resources would be the remaining unclaimed portion of the Amerasia basin,<sup>14</sup> which contains 3.8% of the undiscovered Arctic oil** (see Table 2).

While this constitutes the majority of Arctic oil and gas in unclaimed international territory, **it only amounts to the equivalent of 6 months of U.S. oil consumption in 2010.**<sup>15</sup>

Johnston, Ian. "Global fossil fuel demand set to fall from 2020, three centuries after the dawn of the Industrial Revolution." The Independent. Feb. 2017. <https://www.independent.co.uk/environment/coal-oil-demand-renewable-energy-solar-panels-electric-vehicles-investors-a7557756.html> //RJ

**Technological improvements and the risks posed by climate change were building momentum with rising levels of investment, research and public support in and for renewables. And that, the report said, could result in a global explosion of low-carbon technology deployment in the coming decades". The cost of solar panels has fallen by 85 per cent in seven years with battery costs dropping by 73 per cent over a similar period, while demand for electric vehicles has been growing by about 60 per cent each year. Solar electricity was on track to become "materially cheaper than alternative power options globally"**

the report said.

Schmid, Randolph. "US Study says most natural gas Arctic is Russian." n.d.

<https://abcnews.go.com/Technology/story?id=7706705&page=1> //RJ

**Nearly one-third of the natural gas yet to be discovered in the world is north of the Arctic Circle**, according to an analysis led by researchers at the U.S. Geological Survey. The report, by an international scientific team, estimated that the Arctic also contains 3% to 4% of the world's oil resources remaining to be discovered. **Arctic oil reserves are much smaller than those of natural gas and are unlikely to lead to any shift in world oil balance**, Gautier said in a recorded briefing provided by Science.

Lindholt, Lars. "Future Production of Petroleum in the Arctic under alternative oil prices." SSB. 2008.

[https://www.ssb.no/a/english/publikasjoner/pdf/sa112\\_en/kap5.pdf](https://www.ssb.no/a/english/publikasjoner/pdf/sa112_en/kap5.pdf) //RJ

Wood Mackenzie assessed the undiscovered reserves in the Arctic regions and questioned the high importance of the Arctic as one of the last great oil and gas frontiers<sup>3</sup>. For oil, the study concluded that estimated undiscovered resources were only a quarter of earlier estimates made by USGS 2000 for North America and Greenland. However, the estimates for natural gas in West

Arctic regions were raised compared with USGS 2000 assessment. **The West Arctic region would**, according to the assessment, **in the most likely**

**scenario peak about 20 years from now** at 8 million barrels of oil equivalents per day (boe/d) **with** 40 percent oil and **60 percent**

**gas**. A higher share of gas would mainly consist of remote gas too expensive to transport to markets. According to the Wood Mackenzie assessment, undiscovered reserves are mainly located in either ice-free or seasonal ice-free areas, which require modifications of technology only – not new solutions. Subsea drilling will be used for the greater share of the resources.

Center for Climate and Energy Solutions. "Natural Gas." N.d. <https://www.c2es.org/content/natural-gas/> //RJ

**Combustion of natural gas emits about half as much carbon dioxide as coal and 30 percent less than oil, and far fewer pollutants, per unit of energy delivered.** Natural gas is now the largest source of U.S. electric power generation, helping

reduce U.S. greenhouse gas emissions to mid-1990 levels. To fully realize the potential climate benefits of natural gas, technologies and policies must be put in place to minimize methane leaks and capture carbon emissions.

The Independent. "Want to save the environment? Support Offshore Drilling." August 2018.

<http://suindependent.com/want-save-environment-support-offshore-drilling/> //RJ

Several states are preparing to sue the federal government. They're trying to halt Interior Secretary Ryan Zinke's planned expansion of offshore drilling for oil and natural gas. New York Attorney General Eric Schneiderman, the most vocal opponent of Sec. Zinke's plan, claims the drilling "threatens our environment and our economy." He's wrong on both counts. The proposal

would create jobs for Americans and boost our economy while posing minimal risk to the environment. **In fact, the plan would reduce overall carbon emissions by increasing production of natural gas, which burns more cleanly than coal. Under the plan, more than 90 percent of the U.S. outer continental shelf and 98 percent of resource-rich federal offshore areas would become available for new energy exploration projects.** These areas are currently off limits. **Offshore energy exploration is actually good for the environment. Increased natural gas production has lowered carbon emissions by 14 percent** since 2005.

Biello, David. "Fact or Fiction? Natural Gas will Reduce Global Warming Pollution." Scientific American.

Aug. 2015. <https://www.scientificamerican.com/article/fact-or-fiction-natural-gas-will-reduce-global-warming-pollution/> //RJ

**Natural gas did play a significant supporting role in reducing pollution from the energy sector, however—a role that has increased over time as people and companies have started buying more stuff.** The shift away from burning coal has counterbalanced population growth, according to this new analysis. **In fact, cheap and abundant natural gas appears to have helped keep some 160 new coal-fired power plants from being built, which would have spewed hundreds of millions of metric tons of CO2 over the years.** An analysis by the National Renewable Energy Laboratory suggests that **natural gas and renewables like wind turbines and solar panels have picked up the slack produced by missing coal—the beginnings it seems of a long-term energy transition.** More simply put, **natural gas may be keeping a lid on growth in CO2 emissions from generating electricity in the U.S. at present.**

## A2: Traditional Resource Mining

### Impact Defense Rhetoric

1. Copley '14 of the University of Southampton writes that because we'd only mine in one part of the vent field, animals are able to recolonize the mined area afterwards, thus recovering the area completely.

Copley, Jon. "MINING AT DEEP-SEA VENTS: WHAT ARE THE IMPACTS ON MARINE LIFE?" University of Southampton. Mar. 2014. <http://moocs.southampton.ac.uk/oceans/2014/03/09/mining-at-deep-sea-vents-what-are-the-impacts-on-marine-life/> //RJ

In the Western Pacific, where plans for mining at vents are arguably most advanced, most of the vent fields are associated with "back-arc spreading", rather than being found on mid-ocean ridges. These "back-arc" vent fields can be extensive, for example stretching over kilometres of seafloor in a ring around the summit of an underwater volcano. At many of these "back-arc" vent fields, **it is possible to mine just one part of the vent field, while creating "set-asides" or "reserves" within the same vent field or area, from which animals can recolonise the mined area afterwards. That is exactly what mining company Nautilus Minerals proposes to do at the Solwara-1 vent field near Papua New Guinea,** and they have worked extensively with scientists in the US to understand patterns of gene flow and thereby define what should be effective reserve areas as sources for recolonisation. Looking at those plans as an independent observer, I think **they will work in terms of mitigating the impact on "vent" animals. The mined area should recover, with chimneys regrowing and "vent" animals recolonising them.**