

# UNCLOS is Awful

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# Overviews

# Blocks

A2 China

## A2 China General

- 1. Defense - China doesn't listen - Cardin<sup>1</sup> of Foreign Policy reported in 2016** that China has vociferously stated that it will disregard any international law - no reason why they will listen. **Beech of Time Magazine furthers in 2016** that China has refused to accept its recent arbitration ruling saying there was no jurisdiction on the case.
- 2. Turn - American Naval power is constrained - Kumar Agarwal of the National Maritime Foundation writes in 2011,** "In the light of these observations, the US accession to the LOS Convention will have significant implications for the US interest in the South China Sea. Most notably, the LOS Convention would be applicable to the US completely as it does not allow making reservations at the time of accession. In addition, [Specifically], the US would be obliged to refrain from any acts that would defeat the object and purpose of the convention. Thus, by becoming a party to the Convention, the US would be constrained in the freedom to take inapt actions in the South China Sea without giving due considerations to its possible legal consequences. This may diminish the unchallenged naval power of the US in the Asia-Pacific."<sup>2</sup>
- 3. Turn - US membership doesn't affect China - Dean Cheng of the Heritage Foundation reports in 2014,** "No evidence suggests that China, or any other state, would respect its obligations under UNCLOS to a greater extent if the United States became a party. Nor is there any evidence that ratification of UNCLOS would enhance U.S. military capability. The Freedom of Navigation program, the primary means of the U.S. confronting China's excessive claims, does not rely on U.S. membership in UNCLOS."<sup>3</sup>

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<sup>1</sup> Ben Cardin, Foreign Policy, "The South China Sea Is the Reason the United States Must Ratify UNCLOS", July 2016  
<https://foreignpolicy.com/2016/07/13/the-south-china-sea-is-the-reason-the-united-states-must-ratify-unclos/>

Given our profound national security interests in the free flow of commerce and freedom of navigation around the world, we have a deep national security interest in how the claims are dealt with, as well as the territorial and economic claims that result from how high tide and low tide features are defined. We also have a deep and abiding interest in the development of functional problem-solving architecture and rules-based norms in the Asia-Pacific region, and in its regional diplomacy.

**Unfortunately, China has vociferously stated that it will disregard the tribunal ruling, repeating this posture after the announcement of the ruling.** In so doing it has elevated this case to a test for the regional and international community: If China and other states in the region disregard the arbitral ruling — discarding UNCLOS in the process — it will be a grave blow to regional order and the international system. Today is a day for nations to choose between continuing to build a world of rules, law, and order, or a return to a world of growing volatility and great power politics. I call on my Senate colleagues on both sides of the aisle to join me in stating our commitment to ratifying this critical treaty when the new Congress convenes in January 2017.

<sup>2</sup> Kumar, Sunil Agarwal. Prospects of a Paradigm Shift in the American Policy Towards UN Convention on the Law of the Sea: Potential Implications . National Maritime Foundation: , April 15, 2011. [ More (7 quotes) ] <https://www.unclosdebate.org/argument/1720/us-ratification-unclos-wont-help-resolve-disputes-south-china-seas>

<sup>3</sup> Groves, Steven and Dean Cheng. A National Strategy for the South China Sea . Heritage Foundation: Washington, D.C., April 24, 2014  
<https://www.heritage.org/asia/report/national-strategy-the-south-china-sea>

## A2 Soft Power/ Legitimacy

1. **Turn:** UNCLOS prevents the US from being able to use its naval forces to enforce justice on the high seas. In fact, **Ridenour<sup>4</sup> of the National Policy Review writes in 2006 that Article 88 of the treaty, which stipulates that "the high seas shall be reserved for peaceful purposes" together with Article 301's requirement to refrain from "any threat or use of force against the territorial integrity or political independence of any state" have the potential of unduly constraining U.S. defense operations on the high seas. If they go and break the law its worse legitimacy**
2. **Turn<sup>5</sup>:** Eliot Cohen reports that when the US increases its soft power, it uses that soft power to impose its ideals on other nations, increasing the chance of conflict.
3. **De-link:** (Robin Churchill<sup>6</sup> – International Journal of Marine and Coastal Law 12) Many countries are non-compliant with UNCLOS. These non-compliances are so frequent and significant that UNCLOS has been largely ineffective. There's no legitimacy gained.
4. **De-Link:** (Robinson Meyer<sup>7</sup> - The Atlantic 17) The US is the only country to reject the Paris Agreement. There are already a vast number of national treaties the US has pulled out of. No one will take accession seriously.

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<sup>4</sup> David Ridenour. "Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage ." National Policy Analysis. (August 1, 2006)  
<https://nationalcenter.org/ncpr/ratification-of-the-law-of-the-sea-treaty-a-not-so-innocent-passage>

Finally, opponents of the Law of the Sea Treaty contend that **Article 88 of the treaty, which stipulates that "the high seas shall be reserved for peaceful purposes" together with Article 301's requirement to refrain from "any threat or use of force against the territorial integrity or political independence of any state" have the potential of unduly constraining U.S. defense operations on the high seas.** Proponents counter that warships of all major powers freely travel through the high seas even though the treaty is already in force for nations that have ratified it,<sup>23</sup> which, as of this writing, stood at 149 nations. But *the U.S.'s circumstances are very different than those of the 149 parties to the treaty. As the world's only remaining superpower, the U.S. is the only nation capable of extended, extensive long-range maritime operations. What's more, the U.S. has military obligations that other nations simply do not. Many of the parties to the treaty don't have organized navies. Others don't have significant ones. Consequently, most parties to the treaty have less interest in the military implications of Article 88 than does the United States. The ratification of the treaty by these nations therefore should not be the yardstick by which the risks to U.S. military interests are measured.*

<sup>5</sup> Cohen, Eliot A. *The Big Stick: the Limits of Soft Power and the Necessity of Military Force*. Basic Books, 2018.  
[https://books.google.com/books?id=JSjXCwAAQBAJ&pg=PA183&lpg=PA183&dq=UNCLOS+united+states+soft+power&source=bl&ots=xzOUfQjmdU&sig=cl\\_eYO\\_VFNKV3PHODV4pG\\_HGTVuqO&hl=en&sa=X&ved=0ahUKFwigi8X417bAhVtUvKkHXVDATY4ChDoAOgIIMA#v=onepage&q=soft%20power&f=false](https://books.google.com/books?id=JSjXCwAAQBAJ&pg=PA183&lpg=PA183&dq=UNCLOS+united+states+soft+power&source=bl&ots=xzOUfQjmdU&sig=cl_eYO_VFNKV3PHODV4pG_HGTVuqO&hl=en&sa=X&ved=0ahUKFwigi8X417bAhVtUvKkHXVDATY4ChDoAOgIIMA#v=onepage&q=soft%20power&f=false)  
**Moreover, soft power also engenders conflict. The appeal of American democratic manners, of rights for women and minorities and popular culture, particularly through its entertainment industry, engenders as much hostility and animus as it does attraction.**

<sup>6</sup> Robin Churchill, International Journal of Marine and Coastal Law, "The Persisting Problem of Non-compliance with the Law of the Sea Convention: Disorder in the Oceans." (2012)  
In 1982 it may have been reasonable, if perhaps somewhat optimistic, to hope that the LOSC would, in the words of its preamble, establish a "legal order for...the oceans which...will promote the peaceful uses of the seas and oceans, . . . the conservation of their living resources and the . . . preservation of the marine environment." **Thirty years later it is clear that the LOSC has failed to achieve those goals. This is in part due to continuing non-compliance with many of its provisions.** Such non-compliance is a matter of serious concern for all the reasons suggested earlier. It could—and should—be addressed by States parties making more use of Part XV of the LOSC (perhaps non-governmental organizations could persuade or help States to bring test cases); by considering more use of retorsion and counter-measures; and by developing compliance mechanisms for other treaties that indirectly help to promote compliance with the LOSC. In some cases assistance in capacity building may also be appropriate.

<sup>7</sup> Robinson Meyer, The Atlantic, "Syria Is Joining the Paris Agreement. Now What?" (17)  
<https://www.theatlantic.com/science/archive/2017/11/syria-is-joining-the-paris-agreement-now-what/545261/>.  
It's official. When it comes to climate change, there's now literally everyone else—and then there's the United States. Syria, the last remaining holdout from the Paris Agreement on climate change, announced at a United Nations meeting in Germany Tuesday that it will sign the agreement. The Syrian Arab News Agency, a state-sponsored news outlet, also **reported** that the country's legislature voted to accept the agreement last month.

## A2 Nuke War and PSI

Literally Countries are a part of both PSI and UNCLOS. Like Russia and France (people who aren't "evil").

"Chronological Lists of Ratifications of Accessions and Successions to the Convention and the Related Agreements." *United Nations*, United Nations, 3 Apr. 2018, [www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm).

"Proliferation Security Initiative Participants." *U.S. Department of State*, U.S. Department of State, 9 June 2015, [www.state.gov/t/isn/c27732.htm](http://www.state.gov/t/isn/c27732.htm).

PSI ineffective at stopping WMDs anyways because smugglers are just shipping them in planes **Oswald Nuclear Threat Initiative**

<http://www.nti.org/gsn/article/smugglers-turn-air-transport-evade-maritime-wmd-policing/>

**Effective global policing to interdict weapons of mass destruction-related components being shipped on the high seas is forcing would-be proliferators to increasingly smuggle contraband by air, which offers faster and more permissive transport, according to two senior Obama administration officials.**<sup>8</sup>

## A2 Multilateralism

1. **ASEAN Non-Unique: ASEAN's**<sup>9</sup> website itself reported in 2018 that the US expressed their commitment to enhance cooperation in the status quo. The US had previously underscored the important role of ASEAN in maintaining peace and stability in the region making it the cornerstone for US open strategy.

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<sup>8</sup> Oswald NTI [Smugglers Turn to Air Transport to Evade Maritime WMD Policing](http://www.nti.org/gsn/article/smugglers-turn-air-transport-evade-maritime-wmd-policing/) <http://www.nti.org/gsn/article/smugglers-turn-air-transport-evade-maritime-wmd-policing/> 2013

**Effective global policing to interdict weapons of mass destruction-related components being shipped on the high seas is forcing would-be proliferators to increasingly smuggle contraband by air, which offers faster and more permissive transport, according to two senior Obama administration officials.**  
"Compared to maritime shipments, where states may have days or weeks to develop interdiction courses of action, in the air domain, time is truly of the essence," Rebecca Hersman, deputy assistant secretary of Defense for countering weapons of mass destruction, said on Tuesday. "There may only be a span of hours in which to receive intelligence and take action."

She was speaking at an event at the Center for Strategic and International Studies marking the 10th anniversary of the creation of the [Proliferation Security Initiative](#), a U.S.-led multinational effort to independently and cooperatively halt the illicit transfer of WMD components, such as ballistic missile parts and atomic materials.

The PSI program now has 102 country adherents that have promised to collaborate in blocking suspected WMD shipments transported across land, over sea or through the air.

<sup>9</sup> "ASEAN, United States to Enhance Cooperation." *ASEAN | ONE VISION ONE IDENTITY ONE COMMUNITY*, 5 May 2018, [asean.org/asean-united-states-to-enhance-cooperation/](http://asean.org/asean-united-states-to-enhance-cooperation/).

JAKARTA, [On] 5 May 2018 – ASEAN and the U.S. expressed their commitment to enhance cooperation at the 9th ASEAN-U.S. Joint Cooperation Committee (JCC) Meeting held yesterday at the ASEAN Secretariat. ASEAN and the United States took stock of their cooperation across a wide range of areas and noted the positive progress made in the implementation of the ASEAN-U.S. Plan of Action (2016-2020). **The meeting also noted the U.S.' active participation** in various ASEAN-led mechanisms and support to ASEAN community building, **especially in priority areas of cooperation** under the ambit of the three ASEAN Community pillars, namely, **maritime cooperation, transnational challenges, economic engagements as well as education, women and youth. In reiterating its commitment** to strengthen relations with ASEAN, **the United States underscored the important role that ASEAN has played in maintaining peace and stability in the region, making ASEAN the correct cornerstone of the U.S.' open and free Indo-Pacific strategy.**

2. **Turn - anti-Americanism** - While multilateralism may seem like a good idea in theory, the fact of the matter is that the US will not have full cooperation from the rest of UNCLOS. **Spring<sup>10</sup> writes in the Texas Review of Law and Politics in 2008** that UNCLOS will be subjected to the same anti-American procedural shenanigans that we see in the United Nations system. This anti-American sentiment would mean that rather than working multilaterally, anti-American nations would work against the US and would therefore be undermining its attempts to curb Chinese Aggression.
3. **Turn - prevents naval backing - Ridenour<sup>11</sup> of the National Policy Analysis Center explained in 2006** that article 88 of the treaty ensures that the high seas can only be used for peace which directly constrains US naval operations and opens up the door for suing.
4. **Legitimacy is the link into multilateralism**

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<sup>10</sup> Spring, Baker. "All Conservatives should Oppose UNCLOS." [Texas Review of Law & Politics](#). Vol. 4, No. 12 (April 2008): 453-457. **(no link cuz it's a book)**  
**Neoconservatives have been concerned about rampant anti-Americanism in the United Nations system.** And make no doubt about it: this particular treaty is part of the broader United Nations system. Are we creating yet another institution among many that are already there that will pursue essentially this kind of agenda? I think that we are. And I think that **the international institutions this Convention establishes, such as the International Seabed Authority/ are going to be subject to the same procedural shenanigans that we see in the United Nations system regarding this anti-American agenda.**  
Thus, I think it was not coincidental that, prior to her passing, **former U.N. Ambassador Jeane Kirkpatrick warned strongly against the United States rushing to join this particular Convention. I have no doubts that the U.N.'s systematic anti-Americanism will be pursued in the Law of the Sea institutions.**

<sup>11</sup> David Ridenour. "Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage." National Policy Analysis. (August 1, 2006)  
<https://nationalcenter.org/ncppr/ratification-of-the-law-of-the-sea-treaty-a-not-so-innocent-passage>  
Finally, opponents of the Law of the Sea Treaty contend that **Article 88 of the treaty, which stipulates that "the high seas shall be reserved for peaceful purposes" together with Article 301's requirement to refrain from "any threat or use of force against the territorial integrity or political independence of any state" have the potential of unduly constraining U.S. defense operations on the high seas.** Proponents counter that warships of all major powers freely travel through the high seas even though the treaty is already in force for nations that have ratified it,<sup>23</sup> which, as of this writing, stood at 149 nations. But the U.S.'s circumstances are very different than those of the 149 parties to the treaty. As the world's only remaining superpower, the U.S. is the only nation capable of extended, extensive long-range maritime operations. What's more, the U.S. has military obligations that other nations simply do not. Many of the parties to the treaty don't have organized navies. Others don't have significant ones. Consequently, most parties to the treaty have less interest in the military implications of Article 88 than does the United States. The ratification of the treaty by these nations therefore should not be the yardstick by which the risks to U.S. military interests are measured.

## A2 Mining/Drilling

1. **Defense - US Companies won't invest - According to Grammar<sup>12</sup> of Foreign Policy Magazine in 2017**, the reason US companies won't invest in the arctic is the shale revolution which is much more accessible and more than half the cost of pursuing arctic oil. Empirically, oil companies gave up 2.5 billion in drilling rights in the arctic in 2016 since it was not worth the cost.
2. **Defense - Russia lacks the capacity - Stronski<sup>13</sup> of the Carnegie Endowment for International Peace reported in 2018** that the Arctic is a treacherous environment to work in making it difficult to attract outside investment especially with a poor Russian arctic economy with unemployment rates 2% higher than the national average. As such, it is no surprise that Moscow is decreasing funds into oil extraction right now only giving 1 billion as compared to the needed 5 billion to complete the projects.
3. **Defense - Murray<sup>14</sup> National Center for Policy Analysis in 2013** explained that the US rights to develop in the Arctic only come into conflict with Russia and Canada and bilateral arrangements are sufficient to manage these disputes and protect US claims.
4. **Impact Mitigation on resource extraction - Ben of Greenpeace<sup>15</sup> reported in 2012** that while 90 billion barrels of oil sound like a lot, it would only satisfy three years of the world's oil demand

<sup>12</sup> Robbie Grammer. "Oil Companies Cool on Arctic Drilling. Trump Wants it Anyway." Foreign Policy. March 24 2017.

<https://foreignpolicy.com/2017/03/24/oil-companies-cool-on-arctic-drilling-trump-wants-it-anyway-energy-alaska-environment/#>

Part of the reason is the shale revolution in the United States, which undercut frontier projects like deepwater or the Arctic. "Shale is more accessible and is going to come ahead of the Arctic," said Bud Coote of the Atlantic Council, formerly a CIA energy analyst. When oil companies like Shell did venture to the waters off Alaska several years ago, oil went for more than \$100 a barrel. That made all the extra costs involved in drilling at the edge of the earth a bit more bearable. "I think it has to be back up in that range" for companies to head north again, he told Foreign Policy. Yet crude has hovered around \$50 a barrel since late 2014. **Big oil gave up on some \$2.5 billion in drilling rights in the U.S. Arctic in 2016: expensive plays as oil prices dropped just weren't worth the cost anymore.** "High-cost frontiers," like the Arctic "will be shunned," energy intelligence firm Wood Mackenzie said in December last year.

<sup>13</sup> Paul Stronski. "Cooperation and Competition: Russia and China in Central Asia, the Russian Far East, and the Arctic." Carnegie Endowment for International Peace. February 28 2018.

<http://carnegieendowment.org/2018/02/28/cooperation-and-competition-russia-and-china-in-central-asia-russian-far-east-and-arctic-pub-75673>

Yet Russia struggles to realize many of its Arctic goals. The Arctic remains an isolated and treacherous environment in which to work, and Russia can do little to change that. This harsh reality has made it difficult to attract outside investment. The region is sparsely populated, and it is costly to the Russian state to supply Arctic cities and towns; with the exception of Murmansk, economic and industrial growth in the Russian Arctic is stunted or declining. Yet even in Murmansk, a relatively prosperous city for the Russian far north, unemployment in October 2017 registered at 7.2 percent, which is over two percentage points higher than the Russian national average.<sup>79</sup> Russia's "militarization" of the Arctic appears worrying to other Arctic states, but its capabilities there are more defensive than offensive. Russia's missile systems deployed in the region, which have attracted significant international attention, are short-ranged. Much of Russia's efforts have instead involved refurbishing existing or closed Soviet-era military installations; however, many of these facilities appear to serve search and rescue purposes and to facilitate Russia's goal of creating a passable Arctic shipping lane. To that end, its new technologically advanced icebreakers have limited military capabilities.<sup>80</sup> **Yet recent actions by the Russian government suggest that both projects' futures may be in doubt. Russia's central government appears far less enthused than the Arkhangelsk regional authorities or their Chinese partners in getting the Belkomur and the Arkhangelsk port from the planning to the implementation phase. Moscow is supposed to contribute over \$1.6 billion to the Belkomur project, which as of late 2017 had total planned construction costs of between \$4.3 and \$5 billion.**<sup>101</sup> Yet Russian Transportation Minister Maksim Solokov downplayed Russian government financial commitments to the railway, stating in spring 2017 that it would be financed through a public-private partnership. With stricter budget controls due to Russia's recent stagnant economic performance, it is unclear whether the project can garner state resources. Solokov also appeared to slow roll the railroad, claiming that the general timeframe for Belkomur would be sometime "over the next decade."<sup>102</sup> The consortium working on Belkomur, however, envisions that the project will be operational by 2023, if a concession agreement is signed in early 2018 and construction then proceeds on schedule.

<sup>14</sup> Murray, Iain. LOST at Sea: Why America Should Reject the Law of the Sea Treaty. National Center for Policy Analysis: Washington, D.C., March 2013 (JP) What of the Arctic? A 2011

Bloomberg BusinessWeek editorial argued: "The U.S. continental shelf off Alaska extends more than 600 miles into the Arctic Ocean. American companies have been reluctant to invest in exploiting this underwater terrain, which contains vast untapped reserves of oil and natural gas. That's because the U.S., as a nonparticipant in the sea convention, has no standing to defend its ownership of any treasures that are found there."<sup>32</sup> **Yet this is exactly the same case as in the Gulf of Mexico. Only three nations contest the ownership of resources in the extended North American continental shelf in the Arctic: the United States, Canada and Russia.** American relations with Canada are friendly; therefore, a **United States-Mexico-style treaty with Canada demarcating appropriate lines north of Alaska should be relatively easy to achieve.** Russia might be perceived as a more intractable problem; **but a 1990 treaty between the United States and the Soviet Union defines the maritime boundary between the two powers.**<sup>33</sup> **Under the Treaty, Russia has claimed vast areas beneath the Arctic Ocean, but these claims in no way infringe upon the 1990 Treaty. Actually, they are a challenge to Canada rather than the United States. South of the Arctic Ocean, the treaty line protects U.S. claims to large areas of extended continental shelf in the Bering Sea and in the Pacific Ocean southwest of the Alaskan Aleutian Islands. Accordingly, there is no barrier (barring the low one of a necessity to negotiate a treaty with Canada) to the United States developing the extended continental shelf in the Arctic and its environs in the same way it has in the Western Gap.**

<sup>15</sup> Ben. "Top 10 reasons why Arctic oil drilling is a really stupid idea." Greenpeace. February 29 2012.

<https://www.greenpeace.org/new-zealand/story/top-10-reasons-why-arctic-oil-drilling-is-a-really-stupid-idea/>

It's hugely expensive – because of the extreme nature of operating on the frontiers of the world's last great wilderness, looking for Arctic oil is incredibly expensive. In the last two years Cairn Energy has spent over a billion dollars to drill a handful of wells – and still found no oil. A three year fix – **the US Geological Survey estimates the Arctic could hold up to 90 billion barrels of oil. This sounds a lot, but that would only satisfy three years of the world's oil demand.** These giant, rusting rigs with their inadequate oil spill response plans are risking the future of the Arctic for three years worth of oil. Surely it's not worth taking such a risk?

quickly drying up resources and making the actual resource impact incredibly short term.

## A2 Energy Independence

1. **Non-unique - Lane<sup>16</sup> of the Washington post in 2018 explains** that recent shale oil booms in the US has already given us the energy independence that we require, so offshore drilling or arctic drilling is already gonna happen. Thus, **Eagan<sup>17</sup> of CNN reported in 2016** that the US is trending towards perfect independence by 2020 as a result.

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<sup>16</sup> Robbie Grammer. "Oil Companies Cool on Arctic Drilling. Trump Wants It Anyway. Foreign Policy Magazine. March 24 2017.

<https://foreignpolicy.com/2017/03/24/oil-companies-cool-on-arctic-drilling-trump-wants-it-anyway-energy-alaska-environment/>

In recent weeks, Trump and his new Interior Secretary Ryan Zinke, with some Senate allies, have reportedly begun exploring ways to open the U.S. Arctic to new oil and gas drilling projects. It's part of the president's so-called America First Energy Plan to unlock "vast untapped domestic energy reserves" from environmental protection and begin drilling. But in the Arctic, **energy experts are throwing freakishly warm-but-still-cold water on those plans. And it's not regulations that are making Arctic drilling unappealing: It's market forces themselves, especially crude oil prices that have spent the last two years in the doldrums. "We think there is almost no rationale for Arctic exploration," Goldman Sachs commodity expert** Michele Della Vigna **said** on CNBC's Squawk Box Thursday. **"Immensely complex, expensive projects like the Arctic we think can move too high on the cost curve to be economically doable,"** he said. Part of the reason is the shale revolution in the United States, which undercut frontier projects like deepwater or the Arctic. "Shale is more accessible and is going to come ahead of the Arctic," said Bud Coote of the Atlantic Council, formerly a CIA energy analyst. When oil companies like Shell did venture to the waters off Alaska several years ago, oil went for more than \$100 a barrel. That made all the extra costs involved in drilling at the edge of the earth a bit more bearable. "I think it has to be back up in that range" for companies to head north again, he told Foreign Policy. Yet crude has hovered around \$50 a barrel since late 2014. **Big oil gave up on some \$2.5 billion in drilling rights in the U.S. Arctic in 2016: expensive plays as oil prices dropped just weren't worth the cost anymore.** "High-cost frontiers," like the Arctic "will be shunned," energy intelligence firm Wood Mackenzie said in December last year. Former President Barack Obama didn't help. He threw a wrench into Trump's energy plans when he signed a series of midnight regulations on his way out the door designed to lock up the Arctic from drilling, with little consultation from Alaskan lawmakers.

<sup>17</sup> <http://money.cnn.com/2016/08/09/investing/us-energy-independence-oil-opec/index.html>

Not long ago, the idea of the U.S. achieving energy independence seemed far-fetched. America's vast energy needs have long been met by oil imported from foreign powers, some of whom clash with American interests and ideals. It was apparent during the crippling Arab oil embargo on the U.S. during the 1970s, an era symbolized by motorists lining up at the pump and a dramatic increase in gasoline prices. But the **shale oil and gas revolution** of the last couple of decades has made **the improbable goal of American energy independence close to reality.** Analysts at Raymond James recently predicted **the U.S. will be "fantastically close" by 2020,** as long as oil prices and domestic production rebound. **"The U.S. will be a much smaller importer of oil in the future than anybody thought was possible a decade ago,"** said Jason Bordoff, a Columbia University professor and former energy policy adviser to President Obama.

## A2 Rare Earth Metals Mining

1. **Turn - Potenza<sup>18</sup> of the Verge reported in 2017 that mining rare earth metal destroys active vents that can provide a bunch of incredible new drugs to diseases like Alzheimer's.**
2. **Turn - Potenza<sup>19</sup> of the Verge reported in 2017 that mining rare earth metal destroys active vents that can provide a bunch of incredible new drugs to diseases like Alzheimer's.**
3. **Defense - Stone<sup>20</sup> of the Earther reports in 2018 that the technology doesn't exist for deep seabed mining and won't exist for decades and companies are not interested since the initial cost is billions of dollars.**
4. **Defense - Ryssdal<sup>21</sup> of the Marketplace explained in 2017 that the US can never compete with Chinese rare earth metals because US deposits have highly regulated thorium which cost businesses too much money that cannot outcompete Chinese land deposits.**

<sup>18</sup> **Alessandra Potenza, The Verge, "Deep-sea mining could find rare elements for smartphones — but will it destroy rare species?" 2017**

<https://www.theverge.com/2017/10/3/16398518/deep-sea-mining-hydrothermal-vents-japan-precious-metals-rare-species>

The ISA has granted over 25 contracts to countries — including Japan — to explore for minerals. **But no large-scale commercial mining operations are taking place just yet**, says Nugent. That's because the ISA is still figuring out how to make sure deep-sea mining is done safely. The agency has committed to develop environmental regulations by 2020 — which means that we can expect big underwater robots mining hydrothermal vents commercially around 2025, Nugent says. For now, Japan is mining vents in its own coastal waters, called an exclusive economic zone (EEZ). The country's Economy, Trade and Industry Ministry then plans to commercialize mining at the sites off Okinawa around the middle of 2020, according to The Japan Times. That would fit with the timeline given by Nugent. "If any ISA member state were to conduct large-scale commercial seabed mining within its own EEZ without waiting for the production of the ISA environmental code, that would have diplomatic repercussions," he says. "And I'm not sure that any member state would want to run that risk." "THE DEEP SEA IS OUR OUTER SPACE." Regardless of what Japan's doing in its own waters, hydrothermal vents — and other underwater mineral deposits — in the high seas will be opened to mining soon. And the scientific community will be weighing in to determine how to do it best. **At stake is one of the most unique ecosystems on our planet. Globally, active vents are estimated to cover about 34 square miles, less than 1 percent of the area of Yellowstone National Park. Lee Van Dover says — they're very rare. But also very understudied. Deep-sea animals have yielded big discoveries before, including one small organism that contains a compound that could help treat Alzheimer's. Maybe hydrothermal vents host communities of organisms that may yield the next big drug. And, Thaler says, we should protect them for their own right: these weird, deep-sea creatures exist in pure darkness amidst toxic chemicals that'd be fatal to most animals.** "The deep sea is our outer space," Thaler says, "but it's an outer space that's just full of living things that totally challenge our perception of what it means to be alive."

<sup>19</sup> **Alessandra Potenza, The Verge, "Deep-sea mining could find rare elements for smartphones — but will it destroy rare species?" 2017**

<https://www.theverge.com/2017/10/3/16398518/deep-sea-mining-hydrothermal-vents-japan-precious-metals-rare-species>

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<sup>20</sup> **Maddie Stone, The Earther, "Don't Get Too Excited Over Japan's New 'Semi-Infinite' Rare Earth Stash" 2018**

<https://earther.com/dont-get-too-excited-over-japans-new-semi-infinite-rare-1825185977>

Folks in the media (and some investors) got very excited over the news. The Wall Street Journal suggested Japan could use the discovery to break China's stranglehold on the rare earth market and prevent future market shocks. Fortunecalled it a "monumental discovery." The South China Morning Post suggested the find "potentially frees Japanese firms from costly foreign mineral imports." **There's just one teeny, tiny problem (the same one that always arises when people find exciting new metal deposits on the ocean floor). Deep ocean mining technology doesn't exist, and it probably won't for decades.** "It's just like if we find things on comets and asteroids." As John Wiltshire, a prospecting geologist and director of Hawaii's Undersea Research Lab noted to Earther, **if you look at the top 20 largest mining companies globally, none of their websites reference any ocean mining projects.** "That's gotta tell you something," he said. While acknowledging that the researchers have found "a very good deposit," Wiltshire says **anyone interested in commercially extracting this stuff is going to need to invest billions developing the tech for scraping, blasting, and cutting the seafloor, hauling the valuable bits thousands of feet up to the surface, and mitigating any environmental impacts (which could be huge).** "It's just a feat outside the realm of what mining companies are willing to do today." David Abraham, a senior fellow New America and rare metals expert, told Earther. "It's just like if we find things on comets and asteroids."

<sup>21</sup> **Kai Ryssdal, Marketplace, "Why the US buys all its rare earth metals from China" 2017**

<https://www.marketplace.org/2017/06/26/business/big-book/why-us-buys-all-its-rare-earth-metals-china>

We used to have in this country a viable rare earths industry, right? Bruce: We did. But I would have to say it was a little bit before major technological companies needed the materials. **We have it, we have plenty of rare earths, but they're also mixed with thorium. Ryssdal: Thorium being radioactive, right? Bruce: Thorium being mildly radioactive. Yes. But at this point, we have regulations against thorium that make it really costly to mine them here.** So, our mines are a lot more difficult to mine. **China has its own rare earth deposits, and China has done this several times before — they drop the price and they put all the other mines out of business.** Bruce: What happened was — this goes back to 1991 — the Cold War is over, and I mean it was just like a tsunami of technology leaving the country. These companies wanted access to what they needed, and they also wanted access to the Chinese marketplace, which is huge. And at that point, in Anderson, Indiana, there was a plant called Magnequench and a development that General Motors had made for the most important magnets in technological history. And we allowed that company to be bought by China. So, China said "OK, now we have this company. Now what else do we need? Well, we need all the raw materials." So, they now control from the basic raw materials all the way to the end products that go into all your fighters, all of our smart bombs, everything. Ryssdal: Take me from then, 1990-ish where we started this tale to today, right? Because China has a monopoly, you say, on rare earths. What does it look like then for American industrial policy to be able to break that monopoly and get some control back here?

5. **Turn - Doherty<sup>22</sup> of The Guardian in 2018** states that the process of deep seabed mining has drastic harms for the environment, many of which are still unknown, and that current regulations are deficient
6. **De-link legally allowed - Loris<sup>23</sup> of the Heritage foundation** argued in 2012 that the legal warrant for offshore drilling can simply be attained through bilateral treaties with neighboring countries and acts of Congress the US can accomplish this as a sovereign nation instead of joining UNCLOS.

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<sup>22</sup> Doherty of the Guardian 2018

<https://www.theguardian.com/environment/2018/apr/18/deep-sea-mining-possibly-as-damaging-as-land-mining-lawyers-say>

Proponents argue deep-sea mining could yield far superior ore to land mining – in silver, gold, copper, manganese, cobalt and zinc – with little, if any, waste product. Different methods exist, but most involve using some form of converted [machinery previously used](#) in terrestrial mining to excavate materials from the sea floor, [at depths of up to 6,000 metres](#), then drawing a seawater slurry to ships on the surface. The slurry is then “de-watered” and transferred to another vessel for shipping. Extracted seawater is pumped back down and discharged close to the sea floor.

But environmental and legal groups have urged caution, arguing **there are potentially massive – and unknown – ramifications for the environment and for nearby communities, and that the global regulatory framework is not yet drafted, and currently deficient.**

<sup>23</sup> Loris, the heritage foundation, 2012, **Law of the sea treaty: bad for american energy policy**

<https://www.heritage.org/report/law-the-sea-treaty-bad-american-energy-policy>

Proponents of UNCLOS argue that without joining the convention, the U.S. would be unable to demarcate the extent of its continental shelf beyond 200 nautical miles. This is simply untrue. **The U.S. regularly demarcates the limits of its continental shelf and declares the extent of its maritime boundaries with presidential proclamations, acts of Congress, and bilateral treaties with neighboring countries.** As a result of bilateral treaties between the U.S. and Mexico, the Department of the Interior’s Bureau of Ocean Energy Management currently leases areas of the U.S. ECS in the Gulf of Mexico to American and foreign oil and gas companies for exploration and development.

**The U.S. maintains jurisdiction and control over its ECS on a global basis and will do so regardless of whether it ever accedes to UNCLOS.** It should take every action necessary to secure oil and gas resources located on its ECS in the Arctic Ocean, in the Gulf of Mexico, and throughout the world. **The U.S. can accomplish this as a sovereign nation instead of joining UNCLOS** and seeking the approval of the Commission on the Limits of the Continental Shelf, an international committee of geologists and hydrographers located at U.N. headquarters in New York City.

## Chinese Monopoly on Rare Earth Metals

1. **Strauss<sup>24</sup> of IO9 in 2017** states that Chinese government doesn't have influence on Chinese companies, as "Chinese producers found various loopholes to evade the embargo on Japan."

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<sup>24</sup>Strauss IO9 2017

<https://io9.gizmodo.com/how-chinas-rare-earth-weapon-went-from-boom-to-bust-1653638596>

The embargo that wasn't: **What the Chinese government says and what Chinese companies do are often two different things. Chinese producers found various loopholes to evade the embargo on Japan.** For instance, they were able to export REE that were combined with small amounts of other alloys. And smuggling in China is rampant, with small mining companies, sometimes assisted by crime networks, illegally exporting as much as 20,000 to 30,000 tons of REE per year. **The central government in Beijing, beset with other pressing issues, has not made a concerted effort to crack down on this problem.**

## A2 Offshore Drilling

1. **Impact Turn - spilling the beans - Mingay<sup>25</sup> of the International Journal of Marine and Coastal Law** reported in **2006** that the royalty system in UNCLOS and its gradual increase can lead to wasteful use of resources as they try to extract them at a far faster rate before the royalties take the full effect. Furthermore, **Boem<sup>26</sup> 2014** explains that there is a 75% chance of one or more large spills within 77 years with 800 smaller ones occurring within them. The impact is huge **Chase of the NRDC<sup>27</sup> reported in 2009** that an oil spill can have long-term toxic effects on marine life while costing the economy billions of dollars in redress in addition to removing any benefit from mining the resources.

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<sup>25</sup> George Mingay. "Article 82 of the LOS Convention - Revenue Sharing - the Mining Industry's Perspective" *International Journal of Marine and Coastal Law*. 2006.

Of course the US mining industry, in the oil and gas arena, will have different concerns and interests from the broader mining community. They are after all more likely to benefit from licences in these areas. While Moore's view is also that Article 82 is a "small quid pro quo",<sup>11</sup> the Article may nonetheless have undesirable consequences. For example, Rainer Lagoni observed in New Delhi in 2002 that in providing for five years where the revenue share is nil per cent before slowly climbing by one per cent a year there is an incentive of the mining industry to extract resource at a far faster rate than they might otherwise do.12 This may lead to an inefficient, even wasteful use of resource, particularly when taking into account the gearing of refinery resources to the raw resource available.

<sup>26</sup> BOEM 2014. U.S. Department of the Interior Bureau of Ocean Energy Management Alaska OCS Region [Boem.gov](https://www.boem.gov). N. p., 2018. Web. 2 July 2018.

[https://www.boem.gov/uploadedFiles/BOEM/About\\_BOEM/BOEM\\_Regions/Alaska\\_Region/Leasing\\_and\\_Plans/Leasing/Lease\\_Sales/Sale\\_193/Lease\\_Sale\\_193\\_DraftSEIS\\_vol1.pdf](https://www.boem.gov/uploadedFiles/BOEM/About_BOEM/BOEM_Regions/Alaska_Region/Leasing_and_Plans/Leasing/Lease_Sales/Sale_193/Lease_Sale_193_DraftSEIS_vol1.pdf)

This chapter presents an analysis of potential environmental, social and economic impacts resulting from the oil and gas exploration, development and production scenario developed for leases resulting from Chukchi Sea OCS Oil and Gas Lease Sale 193 (referred to hereafter as "the Scenario"). As a prelude to the environmental impacts analysis, the following subsections will describe:

**Small Oil Spills:** <1,000 bbl Small spills, although accidental, have occurred with generally routine frequency and are considered likely to occur from both Exploration and Development and Production activities. The majority of small spills would be contained on a vessel or platform, and refined fuel spills that reach the water would evaporate and disperse within hours to a few days. Further, those spills reaching the water may be contained by booms or absorbent pads. The subsections below estimate the number and size of small spills that could occur during various phases of the Scenario. Summary of Assumptions about Small Spills BOEM bases the analysis of effects from small oil spills for Alternatives I, III, and IV on the assumptions in Table 4-1. **BOEM estimates about 800 small spills would occur over the course of the 77-year Scenario. These estimated small spills are totaled and rounded to the nearest hundred.**

**Two large spills of crude, condensate, or refined oil are assumed to occur during the Development and Production phases.** This assumption is based on considerable historical data that indicates large spills  $\geq 1,000$  bbls may occur during this phase (Anderson, Mayes and Labelle, 2012). This assumption is also based on statistical estimates of the mean number of large spills from platforms, wells, and pipelines, the number and size of large spills on the OCS, and project-specific information BOEM Lease Sale 193 Draft SEIS 154 Environmental Consequences in the Scenario. **The mean number of large spills is calculated by multiplying the spill rate from the Fault Tree model by the estimated resources produced (4.3 Bbbbl).** By adding the mean number of large spills from platforms and wells (0.5) and from pipelines (0.9), a mean total of 1.4 large spills was calculated for the Scenario. **Based on the mean spill number, a Poisson distribution indicates there is a 75% chance of one or more large spills occurring over the 77 years of the Scenario, and a 25% chance of no spills occurring.**

<sup>27</sup> Chase 2009 NRDC (Natural Resource Defense Council) Protecting Our Ocean and Coastal Economies: Avoid Unnecessary Risks from Offshore Drilling [Chase. Nrdc.org](https://www.nrdc.org). Protecting Our Ocean and Coastal Economies: Avoid Unnecessary Risks from Offshore Drilling. 2009. Web. 2 July 2018.

<https://www.nrdc.org/sites/default/files/offshore.pdf>

**Oil Spills Inflict Devastating Economic Losses Upon Coastal Communities** Oil spills exact a serious toll on coastal economies, including our approximately \$35 billion commercial fishing and \$60 billion ocean and coastal tourism and recreation industries.<sup>6</sup> The damage and clean up costs following the **Exxon Valdez spill** were so extensive that Exxon paid out more than one billion dollars to the federal and state governments for damages and clean up costs—and still owes fishermen, Alaska Natives, business owners, and others a billion dollars to redress the spill's harm.<sup>7</sup> In another example of economic and environmental damage, a July 2008 accident between a chemical tanker and an oil barge discharged more than 270,000 gallons of fuel oil, closing a huge swath of the Lower Mississippi River to vessel traffic for several days. The Port of New Orleans, located at the center of the world's busiest port complex, was shut down and residents were asked to conserve water when water intakes were closed to prevent contamination of drinking water.

**Oil Spills Have Lasting Ecological Impacts According to the National Academy of Sciences**, current cleanup methods can only remove a small fraction of the oil spilled into the ocean, leaving the remaining oil to continue affecting ocean ecosystems over time.<sup>9</sup> Scientists investigating the **long-term impacts of the Exxon Valdez spill estimate that nearly 20,000 gallons of oil from that spill remain** in Prince William Sound, continuing to harm threatened and endangered species and undermine their recovery.<sup>10</sup> **Marine mammals, sea birds, fish, shellfish, and other sea life are extremely vulnerable to oil pollution and the long-term toxic effects can impair reproductive success for generations.** Studies have shown that tiny amounts of oil—as little as one part per billion—can harm pink salmon and cause their eggs to fail.<sup>11</sup> Spills Aside, Drilling Operations are a Major Source of Pollution In addition to environmental damage from oil spills, **the routine operations associated with offshore drilling produce many toxic wastes and other forms of pollution. For example, each drill well generates tens of thousands of gallons of waste drilling muds (materials used to lubricate drill bits and maintain pressure) and cuttings.**<sup>12</sup> Drilling muds contain toxic metals such as mercury, lead, and cadmium **that may bioaccumulate and biomagnify in marine organisms, including in our seafood supply.**<sup>13</sup> The water that is brought up from a given well along with oil and gas, referred to as "produced water," contains its own toxic brew of benzene, arsenic, lead, toluene, and varying amounts of radioactive pollutants. Each oil platform can discharge hundreds of thousands of gallons of this produced water daily, contaminating both local waters and those down current from the discharge.<sup>14</sup> **An average oil and gas exploration well spews roughly 50 tons of nitrogen oxides, 13 tons of carbon monoxide, 6 tons of sulfur oxides, and 5 tons of volatile organic chemicals.**<sup>15</sup> Drilling Exploration Activities Harm Marine Life Seismic surveys designed to estimate the size of an oil and gas reserve generate their own environmental problems. To carry out such surveys, ships tow multiple airgun arrays that emit thousands of high-decibel explosive impulses to map the seafloor.<sup>16</sup> The auditory assault from seismic surveys has been found to damage or kill fish eggs and larvae and to impair the hearing and health of fish, making them vulnerable to predators and leaving them unable to locate prey or mates or communicate with each other. These disturbances disrupt and displace important migratory patterns, pushing marine life away from suitable habitats like nurseries and foraging, mating, spawning, and migratory corridors.<sup>17</sup> In addition, seismic surveys have been implicated in whale beaching and stranding incidents.<sup>18</sup> **Offshore Drilling Results in Onshore Damage** Offshore drilling requires the construction of significant onshore infrastructure such as new roads, pipelines, and processing facilities, which are often built on formerly pristine beaches. Thanks in part to drilling operations, Louisiana is losing roughly 24 square miles of coastal wetlands each year, eating away at natural storm barriers and increasing the risks of storm damage, including damage from oil spills.<sup>19</sup>

2. **Link/Maybe Impact Turn - information sharing - Bandow<sup>28</sup> of the AEI reported in 2007** that UNCLOS mandates global redistribution of resources and technology which creates a monopolistic public mining entity that restricts competition. It is the opposite of a market oriented system imposing heavy costs on the US as it discourages widespread exploration and production.
3. **Defense - Loris<sup>29</sup> of the Heritage foundation** argued in 2012 that the legal warrant for offshore drilling can simply be attained through bilateral treaties with neighboring countries and acts of Congress the US can accomplish this as a sovereign nation instead of joining UNCLOS.

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<sup>28</sup> Econ harms (Bandow – Competitive Enterprise Institute)

Doug Bandow (Competitive Enterprise Institute). LOST: Impeding American Entrepreneurship. Accessed 7/3/18. Published 8/2007. <http://cei.org/pdf/6151.pdf>.

An analogous separation of the ocean resource into navigational rights and ocean floor rights poses no serious difficulties. This would allow us to achieve the useful, if redundant, gains promised in the navigational area, without hindering the creative and ongoing institutional innovations. Innovation is rare when resources are relegated to "common property" status. Indeed, as the materials supplied to this Committee make clear, the development goals of this treaty could far more effectively be advanced - without the risks of over-regulation and over-litigation - by simply creating a claims office to allow ocean floor rights to be catalogued and titled. **Private property would do far more than UN bureaucracies to encourage the development of the ocean's resources in mankind's interest. The Law of the Sea Treaty mandates global redistribution of resources and technology, creates a monopolistic public mining entity, and restricts competition** just the sort of statist panaceas that were discredited by the collapse of Soviet communism and that have been largely abandoned everywhere. **Far from being a market-oriented system**, as claimed by some conservatives who have been co-opted by treaty enthusiasts on this issue, **the treaty will forever discourage widespread exploration and production. The treaty's purported benefits are illusory: the treaty's features would impose heavy costs on America and the world. LOST is a heavily regulatory bill**, creating a body charged with protecting the seas. But, everything eventually flows into the seas. Thus, the UN gains the power to look upstream and into the skies to ensure that everything that has - or might have - impact on the seas be scrutinized and disciplined. The unintended consequences of this regulatory overreach cannot be under-estimated; its potential for damage is massive. This Committee has not done "due diligence" on this topic. And, for the complacent, note that the proponents of this bill - environmental alarmists and legal enthusiasts - are adept at converting hortatory language into legal prohibitions. Did anyone expect the Endangered Species Act to become a national land use planning act? Did anyone expect Superfund to become one of the most costly green pork barrel measures in history or that the Clean Water Act would compel the Corps of Engineers to ban development throughout any area that might have been or might become at some time a "wetland?" **The treaty's regulatory approach would be guided by the precautionary principle, the serious application of which would halt economic development**, since it is impossible to prove a negative that a new process or technology involves no risk

<sup>29</sup> Loris, the heritage foundation, 2012, **Law of the sea treaty: bad for american energy policy**

<https://www.heritage.org/report/law-the-sea-treaty-bad-american-energy-policy>

Proponents of UNCLOS argue that without joining the convention, the U.S. would be unable to demarcate the extent of its continental shelf beyond 200 nautical miles. This is simply untrue. **The U.S. regularly demarcates the limits of its continental shelf and declares the extent of its maritime boundaries with presidential proclamations, acts of Congress, and bilateral treaties with neighboring countries.** As a result of bilateral treaties between the U.S. and Mexico, the Department of the Interior's Bureau of Ocean Energy Management currently leases areas of the U.S. ECS in the Gulf of Mexico to American and foreign oil and gas companies for exploration and development.

**The U.S. maintains jurisdiction and control over its ECS on a global basis and will do so regardless of whether it ever accedes to UNCLOS.** It should take every action necessary to secure oil and gas resources located on its ECS in the Arctic Ocean, in the Gulf of Mexico, and throughout the world. **The U.S. can accomplish this as a sovereign nation instead of joining UNCLOS** and seeking the approval of the Commission on the Limits of the Continental Shelf, an international committee of geologists and hydrographers located at U.N. headquarters in New York City.

## A2 UN Law

## A2 US Enforcing the Law

1. **Turnish - Sanctions - Nordwall<sup>30</sup> of VOA news reported in 2016** that the UN has no mechanism to enforce court decisions through either military action or economic sanctions, the only hope would be diplomatic pressure. The law is unenforceable which is why **McLaughlin<sup>31</sup> of the Ecology Law Quarterly argues in 1994** that UNCLOS takes away the US ability to unilaterally sanction other actors because it violates maritime sovereignty. Sanctions are critical for basically everything especially diplomacy with China as **Ku<sup>32</sup> of Lawfare supports in 2016** that China places huge value on its economic supremacy and the high-class Chinese elites would have their assets frozen and anger them on every fiscal level serving as a huge deterrent for China.

<sup>30</sup> Smita Nordwall. VOA News. "China: UN Court Ruling Will Intensify Conflict." July 12 2016. <https://www.voanews.com/a/china-United-nations-court-ruling-intensify-conflict/3415667.html>

China has launched a massive land seizure and rebuilding effort throughout the South China Sea in recent years, transforming numerous reefs into artificial islands that can support military installations, all the while ignoring competing claims over the region by Brunei, Malaysia, Vietnam and Taiwan, as well as the Philippines. The Hague court also ruled Tuesday that none of the Spratly Islands granted China an exclusive economic zone, and that its construction activities on Mischief Reef caused "irreparable harm" to the reef's ecosystem. Despite Tuesday's ruling, the United Nations has no mechanism to enforce the decision, either through military action or economic sanctions. But it could prompt China's other Asia-Pacific rivals to also file suit, putting increased diplomatic pressure on Beijing to reduce its presence in the South China Sea. The United States also has challenged Beijing's increasing aggressiveness in the region, holding a number of naval exercises and deploying warships near the rebuilt reefs to assert the international freedom of navigation rules.

<sup>31</sup> Richard McLaughlin. "UNCLOS and the Demise of the United States' Use of Trade Sanction to Protect Dolphins, Sea Turtles, Whales, and Other international marine living resources." Ecology Law Quarterly. January 1994. <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1452&context=elq>

This article establishes four general propositions. First, U.S. unilateral trade sanctions to protect marine living resources potentially violate a number of substantive rights provided by UNCLOS. Consequently, if the United States becomes a State Party, other States Parties may rely on the Convention's compulsory dispute settlement provisions to prevent the United States from imposing unilateral sanctions against them, absent some other specific international agreement to the contrary. Second, the United States cannot avail itself of the argument that it is not forcing other nations to change their marine conservation and management policies in violation of the Convention, but instead is merely exercising its sovereign right to control its foreign trade. The purpose behind U.S. sanctions is not to protect the health or safety of U.S. citizens or to further other social or economic aims unrelated to the Law of the Sea. On the contrary, their irrefutable purpose is to coerce target states to adopt marine resource management and conservation policies acceptable to the United States. Although customary international law does not explicitly prohibit the use of unilateral economically coercive measures for political purposes, there is a clear consensus among international legal scholars that unilateral measures are impermissible when a state is a party to an agreement with an effective dispute settlement mechanism. The obligation to refrain from self-help is especially strong if the parties belong to an agreement such as UNCLOS, which provides for interim protective measures. The bottom line is that U.S. membership in UNCLOS will significantly reduce its freedom to impose unilateral economic sanctions to protect marine living resources. The United States will no longer have the luxury of assuming that most nations will comply with its demands simply because they lack easy access to an effective judicial remedy. It is not my intention either to weaken UNCLOS or torpedo U.S. membership in the Convention. To the contrary, the purpose of this article is to point out potential obstacles to signature and ratification so that the Clinton administration can address those concerns in its renewed negotiation strategy. In the absence of broad public and scholarly debate, the United States could find itself facing the worst of all situations. Suppose that the issues presented in this article either had never been raised or are totally ignored. Suppose further that the United States is successful in exacting significant concessions from developing nations on deep seabed mining in return for U.S. accession to the Convention. Later, during Senate debate on ratification, when the 1994 ECOLOGY LAW QUARTERLY potential loss of unilateral trade sanctions finally comes to light, this may well cause the Senate to reject UNCLOS. If such a worst case scenario were to occur, it would be hard to overestimate the damage to U.S. foreign policy interests. For years to come, the United States would find it exceedingly difficult to exercise leadership on any international environmental issue, given the fact that it twice led the world toward a widely accepted Law of the Sea regime only to renege on its commitments at the last minute. The damage would be compounded by the fact that the reason for its rejection was to protect a policy of unilateral economic sanctions that is universally disfavored by the international community, especially developing nations

<sup>32</sup> Julian Ku. "More Possible US Responses to the South China Sea Award: Why Not Economic Sanctions." Lawfare. July 27 2016.

<https://www.lawfareblog.com/more-possible-us-responses-south-china-sea-award-why-not-economic-sanctions>

In the two weeks that have passed since the UN Convention on the Law of the Sea (UNCLOS) arbitral tribunal issued its award against China, no drastic actions have been taken by any of the key parties. China has not acted to further militarize or otherwise bolster its presence in the Spratlys, and the Philippines has not demanded immediate Chinese withdrawal. Bilateral negotiations may indeed occur. And it looks like all parties are going to stay relatively calm at least until after the upcoming September G-20 summit in China is finished. I have seen surprisingly little discussion of economic sanctions in the numerous South China Sea articles published since the award was issued. Yet imposing targeted economic sanctions is one of the U.S. government's favorite tools of international statecraft and it could be quickly employed here. The model for such "South China Sea" sanctions would be the sanctions imposed by President Obama after the Russian annexation of Crimea and subsequent incursions into eastern Ukraine. It is hard to predict how much of an effect such sanctions would have. It hasn't exactly rolled back Russian encroachments on Ukraine. But it has definitely caused pain for Russia and it would likewise impose non-trivial costs on the Chinese elite. For instance, Chinese nationals invest billions of dollars every year in the U.S. real estate market. Presumably, some of those assets would be frozen and others would be blocked under a South China Sea sanctions regime. Banning Chinese officials from traveling to visit their fancy New York apartments might also cause some teeth-gnashing and further signal the United States's seriousness on this issue. Perhaps more importantly, such sanctions would serve as a warning signal to U.S. and other non-Chinese investors who might be tempted to economically support Chinese activities in the Spratlys. At the same time, regular trade with China could continue unabated and unaffected. To be sure, there are many drawbacks to this approach. China would obviously retaliate in kind by imposing similar sanctions on U.S. corporations and individuals. A sanctions war, if not a trade war, could ensue. Indeed, the United States could suffer from the loss of investment and Chinese payback against U.S. businesses operating in China. Moreover, relations on the South China Sea issue, already tense, would become much more openly hostile. But none of this means that targeted economic sanctions should not be seriously considered if the situation in the South China Sea worsens. There are not many tools that would allow the United States to push back against China's actions in this region without directly risking armed conflict. Every one of these tools should be on the table.

## A2 Courts and Law Making

Turn: **Spring** 2008 anti-American sentiment would mean that rather than working multilaterally, anti-American nations would work against the US and would therefore be undermining its attempts to curb Chinese Aggression.<sup>33</sup>

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<sup>33</sup> Spring, Baker. "All Conservatives should Oppose UNCLOS." [Texas Review of Law & Politics](#). Vol. 4, No. 12 (April 2008): 453-457. **(no link cuz it's a book)**  
Neoconservatives have been concerned about rampant anti-Americanism in the United Nations system. And make no doubt about it: this particular treaty is part of the broader United Nations system. Are we creating yet another institution among many that are already there that will pursue essentially this kind of agenda? I think that we are. And I think that **the international institutions this Convention establishes, such as the International Seabed Authority, are going to be subject to the same procedural shenanigans that we see in the United Nations system regarding this anti-American agenda.**  
Thus, I think it was not coincidental that, prior to her passing, **former U.N. Ambassador Jeane Kirkpatrick warned strongly against the United States rushing to join this particular Convention. I have no doubts that the U.N.'s systematic anti-Americanism will be pursued in the Law of the Sea institutions.**

## A2 Royalties Developing Countries

1. **De-link** ISA doesn't get funds anyway - **Harrison 2017 from Oxford University Press** writes To date, Article 82 has not been triggered<sup>34</sup>
2. **Turn** - corrupt governments - **Brookes<sup>35</sup> of the New York Post in 2011** as ISA members the US would only get one vote, so those royalties could go to any number of corrupt regimes where the majority thinks it should go. This just entrenches oppression and pushes people further into poverty.
3. **Delink**. The US would not have "veto power". **Steven Groves states in 2011** that while the US would be a member of a 36-member council that oversees the Authority, the Council only has the power to make recommendations, which the Authority can accept or decline.
4. **Turn**. These royalties would exacerbate corruption for three reasons.
  - a. **Donald Rumsfeld states in 2012** that countries like Sudan, which the UN classifies as "state sponsors of terrorism", and who carried out a mass extermination of its people, would be a recipient of the money.
  - b. **Rumsfeld** continues that the UN has proven to be "notably unskilled at financial management", citing the UN's Food-for-Oil program, which funneled hundreds of millions of dollars into Saddam Hussein's regime.
  - c. **Iain Murray furthers that current aid programs to these countries are already concentrating in the governing class, fueling terrorism, and overall hurting the poor people of these countries, and says that the added royalties from the US would have the same function. (NH)**

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<sup>34</sup> Harrison Oxford University Press **Article 82 of UNCLOS: The day of reckoning approaches** <https://academic.oup.com/jwelb/article-abstract/10/6/488/4060652> 2017 Article 82 of the United Nations Convention on the Law of the Sea (UNCLOS) obligates coastal states to make payments to the international community in respect of the exploitation of non-living resources of the extended continental shelf beyond 200 nautical miles. Payments are to begin at the rate of 1 per cent in the sixth year of production, increasing by 1 per cent per year to a maximum of 7 per cent in the twelfth year. The payments are to be made through the International Seabed Authority to parties identified by the Authority "on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and land-locked among them."  
**To date, Article 82 has not been triggered.** Recent petroleum discoveries beyond 200 nautical miles off Canada's east coast, however, have the potential for commercial development and may well be the first in the world to trigger Article 82. If so, Canada's approach to the implementation of Article 82 could be precedent-setting, with significant implications for the international offshore industry and for potential recipients of required payments.  
The implementation of Article 82 presents many issues. The most significant is: Who will bear the cost of satisfying the coastal state's obligation: the coastal state or industry? Several other issues with practical implications for industry arise from specific elements of Article 82.  
The goal of this article is to identify and generate discussion of the issues within industry, with a view to contributing to their resolution by government.

<sup>35</sup> Corrupt Regimes get money from ISA (Brookes – NY Post)  
Peter Brookes (NY Post). On treaty, team O is lost at sea. Accessed 7/3/18. Published 6/12/11. <https://nypost.com/2011/07/12/on-treaty-team-o-is-lost-at-sea/>  
**Worse, as only one of some 160 ISA members, we'd have only one vote as to where that money went — so those royalties could go to any number of bad-actor, corrupt or anti-American regimes.** Plus, LOST considers the deep seabed as the "common heritage of mankind." So if you want to harvest Davy Jones' locker you'd need to ask pretty please of — tahdah! — the ISA. This mother-may-I approach would likely limit or discourage private-sector economic opportunities in the deep seabed — keeping this likely significant bounty out of global markets.

A2 Miscellaneous

## A2 IUU Fishing

The US joining UNCLOS will not stop China from continuing its practice of IUU fishing

Jacobs NYT 2017

**“For China’s leaders, ensuring a steady supply of aquatic products is not just about good economics but social stability and political legitimacy.”<sup>36</sup>**

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<sup>36</sup> Jacobs NYT China’s Appetite Pushes Fisheries to the Brink <https://www.nytimes.com/2017/04/30/world/asia/chinas-appetite-pushes-fisheries-to-the-brink.html> 2017  
“We are facing an unprecedented crisis,” said Alassane Samba, a former director of Senegal’s oceanic research institute. “If things keep going the way they are, people will have to eat jellyfish to survive.”  
When it comes to global fishing operations, China is the indisputable king of the sea. It is the world’s biggest seafood exporter, and its population accounts for more than a third of all fish consumption worldwide, a figure growing by 6 percent a year.  
Buyers and sellers at Zhoushan fish market. China has depleted the seas close to home.  
The nation’s fishing industry employs more than 14 million people, up from five million in 1979, with 30 million others relying on fish for their livelihood.  
“The truth is, traditional fishing grounds in Chinese waters exist in name only,” said Mr. Zhang of Nanyang University. **“For China’s leaders, ensuring a steady supply of aquatic products is not just about good economics but social stability and political legitimacy.”**

## A2 Global Trade Routes

1. Turn, “Innocent passage” which would be used for trade is actually harmful to the US

**Rubin, Alfred 1994, The National Interest.** Monster of the Deep: Return of UNCLOS

<http://nationalinterest.org/article/monster-from-the-deep-return-of-unclos-995>

“Most obviously, and possibly what President Reagan's advisors had in mind, coastal states' rights under UNCLOS include the so-called "Pueblo clause." It says that **it is not "innocent passage" for any foreign ship in the twelve-mile territorial sea to perform "any act aimed at collecting information to the prejudice of the defense or security of the coastal state"** (article 19.c). But American naval vessels underway routinely take soundings and keep their radio receivers turned on, and any coastal state can claim that receiving information about the approaches to a harbor or the configuration of a coast is prejudicial to its security. **Although it is possible with some ingenuity to argue that the provision does not mean what it says, foreign states are not bound by the ingenuity of American lawyers.** And other provisions of the same article, like the clause forbidding "research or survey activities" (article 19.j) also contain undefined terms that can be interpreted to end American naval rights of passage. **Indeed, it is also forbidden to undertake "any other activity not having a direct bearing on passage"** (article 19.1). I have never understood how the United States negotiators could accept this language.”

2. Turn, America sacrifices some control over its economic practices, meaning US trade can actually decrease in the aff world

**Hatch, John 2012. Wall Street Journal.** The Law of the Sea Treaty Is a Bad Deal for the U.S.

<https://www.wsj.com/articles/SB10001424052702303830204577446760485127778>

“I respect the wisdom and views of the former secretaries of state, but their arguments in favor of ratification of UNCLOS fail to address the principal objection to the treaty. Few would argue that the provisions and objectives of the treaty are positive. The problem is that **the treaty is to be enforced by a U.N. court or tribunal.** Experience has shown that such international tribunals are too often subject to the Achilles' heel of international democracy: demagoguery. **Once the treaty has been accepted, there is nothing to prevent a coalition of anti-American interests** from taking Over the tribunal and ruling against us. **When it comes to use of the seas, America is fully capable of protecting its own interest. We have no reason to trust our security and economic health to the whims of an international tribunal.**”

3. Non-unique, America already abides by the Customary International Law

Finally, **it is not** essential or even **necessary for the United States to accede to UNCLOS to protect and preserve its navigational rights and freedoms.** The navigational and maritime boundary provisions of the convention either codify **customary international law that existed** well before the convention was adopted in 1982 or “refine and elaborate” **navigational rights and regimes that are now widely-accepted as binding international law.**

4. Non-unique, innocent passage already exists in the squo, accession is an unnecessary risk  
**Rubin, Alfred 1994, The National Interest.** Monster of the Deep: Return of UNCLOS  
<http://nationalinterest.org/article/monster-from-the-deep-return-of-unclos-995>

“In sum, the argument against ratification of the whole UNCLOS seems to be overwhelming, but for reasons that have not been fully argued in public. The deep sea-bed mining provisions seem almost irrelevant: **the supposed virtues of a free exploitation approach are obviously impossible to implement; the supposed virtues of a cartelized control model of economic development are obviously overstated** and, if the states members of the Authority really have an interest in mankind, it seems a safe bet that the United States can participate in modifications of the regime to better suit the needs of the world. Of the other provisions of UNCLOS, some might be useful to the United States and they can continue to be cited as persuasive of the law, even if not formally binding. But many, such as the **innocent passage provision and the provisions relating to a special law of the sea tribunal, seem potentially pernicious.** Since the UNCLOS must be accepted as a whole or rejected as a whole, rejection seems the wiser course.”

5. All rights of passage codified in the UNCLOS has already been established in the Customary International Law  
**Fellow, Bernard 2012. Margaret Thatcher Center for Freedom.** Hearing before the United States Senate Committee on Foreign Relations on The Law of the Sea Convention (Treaty Doc. 103-39)  
[https://www.foreign.senate.gov/imo/media/doc/Groves%20prepared%20testimony%20for%20UNCLOS%20hearing%20\(final\).pdf](https://www.foreign.senate.gov/imo/media/doc/Groves%20prepared%20testimony%20for%20UNCLOS%20hearing%20(final).pdf)

Most of the UNCLOS navigational provisions have long been recognized as customary international law. **The convention’s articles on navigation on the high seas (Articles 86–115, generally) and passage through territorial waters (Articles 2–32, generally) were copied almost verbatim from the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone,** both of which were adopted in 1958. **The United States is party to both conventions, which are considered to be codifications of widely accepted customary international law.** Similar to other multilateral conventions, such as the Vienna Convention on Diplomatic Relations, UNCLOS is said to “have codified settled customary international law or to have ‘crystallized’ emerging customary international law.” UNCLOS codified customary law relating to navigation on the high seas and through territorial waters and “crystallized” emerging customary law, such as the concepts of “transit passage” through international straits and “archipelagic sea-lanes passage.” As summarized by Defenrevenue Department official John McNeill in 1994, UNCLOS “contains a comprehensive codification of long-recognized tenets of customary international law which reflect a fair balance of traditional ocean uses.” **In short, the convention’s navigational provisions have attained such a status that all nations—UNCLOS members and nonmembers alike—are expected to adhere to them.**

## A2 Generic Econ Benefits

1. **Turn - information sharing - Bandow<sup>37</sup> of the AEI reported in 2007** that UNCLOS mandates global redistribution of resources and technology which creates a monopolistic public mining entity that restricts competition. It is the opposite of a market oriented system imposing heavy costs on the US as it discourages widespread exploration and production.
2. **Weak Turn - lawsuits cost \$\$\$ - Groves<sup>38</sup> of the Heritage foundation explained in 2012** that the US is forced to defend itself against every lawsuit at a great expense to US taxpayers since its expensive for these lawyers i guess.
3. **Turn - royalties - According to Brookes<sup>39</sup> of the New York Post in 2011** that the US would have to fork over 7% of revenue due to the required royalties, tens of billions of dollars that would go to the US are given to the ISA where they only distribute an incredibly small percentage to developing countries.

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<sup>37</sup> Econ harms (Bandow – Competitive Enterprise Institute)

Doug Bandow (Competitive Enterprise Institute). LOST: Impeding American Entrepreneurship. Accessed 7/3/18. Published 8/2007. <http://cei.org/pdf/6151.pdf>.

An analogous separation of the ocean resource into navigational rights and ocean floor rights poses no serious difficulties. This would allow us to achieve the useful, if redundant, gains promised in the navigational area, without hindering the creative and ongoing institutional innovations. Innovation is rare when resources are relegated to "common property" status. Indeed, as the materials supplied to this Committee make clear, the development goals of this treaty could far more effectively be advanced - without the risks of over-regulation and over-litigation - by simply creating a claims office to allow ocean floor rights to be catalogued and titled. **Private property would do far more than UN bureaucracies to encourage the development of the ocean's resources in mankind's interest. The Law of the Sea Treaty mandates global redistribution of resources and technology, creates a monopolistic public mining entity, and restricts competition** just the sort of statist panaceas that were discredited by the collapse of Soviet communism and that have been largely abandoned everywhere. **Far from being a market-oriented system**, as claimed by some conservatives who have been co-opted by treaty enthusiasts on this issue, **the treaty will forever discourage widespread exploration and production. The treaty's purported benefits are illusory: the treaty's features would impose heavy costs on America and the world. LOST is a heavily regulatory bill**, creating a body charged with protecting the seas. But, everything eventually flows into the seas. Thus, the UN gains the power to look upstream and into the skies to ensure that everything that has - or might have - impact on the seas be scrutinized and disciplined. The unintended consequences of this regulatory overreach cannot be under-estimated; its potential for damage is massive. This Committee has not done "due diligence" on this topic. And, for the complacent, note that the proponents of this bill - environmental alarmists and legal enthusiasts - are adept at converting hortatory language into legal prohibitions. Did anyone expect the Endangered Species Act to become a national land use planning act? Did anyone expect Superfund to become one of the most costly green pork barrel measures in history or that the Clean Water Act would compel the Corps of Engineers to ban development throughout any area that might have been or might become at some time a "wetland?" **The treaty's regulatory approach would be guided by the precautionary principle, the serious application of which would halt economic development**, since it is impossible to prove a negative that a new process or technology involves no risk

<sup>38</sup> Lawsuits cost taxpayer money (Groves – Heritage)

Steven Groves (Heritage). LOST: Bad for American Energy Policy. Accessed 7/3/18. Published 6/9/2012. <https://www.heritage.org/report/law-the-sea-treaty-bad-american-energy-policy>. **Acceding to UNCLOS would create an opportunity to pursue environmental lawsuits against the U.S. based on virtually any maritime activity**, such as alleged pollution of the oceans from a land-based source or even through the atmosphere. **Regardless of the case's merits, the U.S. would be forced to defend itself against every such lawsuit—at great expense to U.S. taxpayers.** Not only that, but **any adverse judgment in a climate change lawsuit that imposes penalties or forces the U.S. to curb greenhouse gas emissions would be extremely costly for American consumers.** Since a large majority of our energy use comes from carbon-emitting fossil fuels, any emission control measures would increase costs for businesses that would then pass those costs on to consumers. To make matters worse, **any adverse judgment would be final, not subject to appeal, and enforceable in the United States.** [2]

<sup>39</sup> Lose money to ISA (Brookes – NY Post)

Peter Brookes (NY Post). On treaty, team O is lost at sea. Accessed 7/3/18. Published 6/12/11. <https://nypost.com/2011/07/12/on-treaty-team-o-is-lost-at-sea/>.

The US government now can collect royalty revenues from oil and gas companies that wish to drill on our extended continental shelf — the undersea areas beyond 200 miles of our coast. **But if we ratify LOST, we'd have to fork over as much as 7 percent of [drilling] that revenue. This means that tens (or even hundreds) of billions of dollars that would otherwise benefit Americans or even reduce our debt would be given to the ISA for "redistribution" to landlocked and developing countries.** Hardly pocket change.

## A2 Undersea Cables

1. **Turn - Borgia of Leincester reports in 2013**, "The majority of the cable damages are caused by human intervention, but there is no obligation under the UNCLOS on coastal States to adopt laws and regulations to protect submarine cables in the territorial sea. Moreover, even if Article 113 UNCLOS requires States to establish rules on the breaking or injury of cables in the high seas or EEZ by their nationals or by a ship flying their flag, if such break was done wilfully or with negligence, ,this provision is inadequate, as there is no countermeasure if States do not implement it. Furthermore, it does not deal adequately with the threat as well as theft of cables by terrorists or other voluntary acts."
2. **Impact Turn** - There is NO IMPACT, because in the status quo, companies repair cables regardless of UNCLOS regulations to keep data flowing.
3. **Non-Unique** The internet operates on redundancy, which means that when a connection is cut, it just reroutes to a stronger connection **(Selyukh 2015 – NPR)<sup>40</sup>**

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<sup>40</sup> Alina Selyukh, 15, "What Would It Take To Cut U.S. Data Cables And Halt Internet Access?" NPR.org, 10-26-2015, <https://www.npr.org/sections/alltechconsidered/2015/10/26/451992422/what-would-it-take-to-cut-u-s-data-cables-and-halt-internet-access>, DOA-7-3-2018, (ORB) Actually, one submarine per each cable, says Tim Stronge, researcher at TeleGeography, which tracks the commercial submarine cable industry. He says the cables run closer when they're near the shore but track different paths, especially out in the ocean. That would make it 15 submarines for the 15 cables connecting the eastern U.S. to Europe (the 16th is going into operation soon). "And if you eliminated all the trans-Atlantic connectivity, well, there's trans-Pacific connectivity you would have to address as well. To cut all those is even more of a fanciful proposition," Stronge says. The reason is that each cable alone, while hugely important to the company that owns it, isn't detrimental to your Internet connection. "Normally, the traffic is diverted if a cable is cut, because clearly any commercial operator wants to ensure their customers still have service...And so the traffic is just automatically re-routed to a good route," Schofield tells All Tech. "It's a bit like saying, 'We're going to intercept every interstate highway in the United States, all at the same time, then you'd have a problem with traffic.' If you intercept one, or two, or 10, you can still reroute around it." (NH)

## A2 Gen. Multilateralism

1. **Turn - anti-Americanism** - While multilateralism may seem like a good idea in theory, the fact of the matter is that the US will not have full cooperation from the rest of UNCLOS. **Spring writes in the Texas Review of Law and Politics in 2008** that UNCLOS will be subjected to the same anti-American procedural shenanigans that we see in the United Nations system. This anti-American sentiment would mean that rather than working multilaterally, anti-American nations would work against the US.
2. **Turn - prevents naval backing – Ridenour of the National Policy Analysis Center explained in 2006** that article 88 of the treaty ensures that the high seas can only be used for peace which directly constrains US naval operations and opens up the door for suing.
3. **Turn - Legitimacy is the link into multilateralism**, and legitimacy is created by deterring and responding to threats, which we prove to you is near impossible with UNCLOS limiting our options.
4. **De-link - Multilateralism doesn't increase**, unless they can prove that no one wants to work with the US right now, they have no offense. Glaser, explains that with multilateralism external of UNCLOS, conflicts decrease 60% since 1940.
5. **De-link - They believe in something that has no grounds**, the United States has a strong precedent of dodging away from international commitments, one agreement isn't enough to boost our credibility to the point that any impact manifests

# Indicts

**Franki** Emory University

[http://law.emory.edu/eilr/\\_documents/volumes/31/recent%20developments/franki.pdf](http://law.emory.edu/eilr/_documents/volumes/31/recent%20developments/franki.pdf)

Concludes that while cooperation with China may be possible it means an amendment to UNCLOS is necessary (which u can de-link and say it's not possible b/c courts are bad)