# Clements KG September-October 18’ Elkins NEG

**We Negate- Resolved: The United States should accede to The United Nations Convention on The Law of The Sea.**

[**Berkeley Law**](http://berkeleytravaux.com/un-convention-law-sea-u-s-hasnt-ratified-stands-today/) **defines the Convention on The Law of the Sea, or UNCLOS, as an international treaty establishing global norms governing the use of the world’s oceans and their resources. They continue that the U.S. has declined to ratify, and we advocate to keep it this way.**

## Contention 1 is Lethal Litigation

**Groves of The Heritage Foundation explains that U.S. accession to UNCLOS would expose the U.S. to lawsuits regarding virtually any maritime activity** **such as alleged pollution from a land-based source. He continues that regardless of the lack of merits of such a case, the U.S. would be forced to defend itself against every lawsuit. The US would be targeted swiftly. Strauss of The Environmental Law Institute writes that the U.S. rejection of the Kyoto Protocol makes America the most logical target of a global warming lawsuit in an international forum. In fact, Murray at the C.P.A finds that in lawsuits, there is no requirement to prove that the emissions actually cause significant harm. He notes that If the substance emitted is harmful to any degree, states are required to minimize emissions to the fullest extent. These lawsuits would be enforced, as the ruling in Medellin V. Texas decided that if the U.S. were in UNCLOS, it would be obligated to comply with the judgements of the convention’s tribunals. Therefore, Murray concludes that acceding would require the closure of all coal-fired electricity in America.**

**The impact is devastating. Ingraham of The Washington Post quantifies that the coal industry employs 76 thousand people, all of whom would lose their jobs if America accedes. Unfortunately, McKechnie of Drexel University finds that being unemployed increase the risk of death by 73 percent.**

## Contention 2 is Promoting Peace

**The world’s once most dangerous hotspot is becoming safer daily. Bo of The National Interest explains this August that the South China Sea is cooling down, as no one has lost the sea and no one will. Thus, Valencia of The Diplomat reports that the situation has reached a “new normal” that neither China nor America will disturb. While there may be small displays of force, nobody will make the jump to full scale war. This is for two reasons.**

**First is China’s decisions. Hayton of The Chatham House reports that that Beijing is preparing to accept a legal regime in the South China Sea closer to UNCLOS. Mogato of Reuters reasons that China Is trying to strengthen Asian relations. He concludes there is a new way to get along that prohibits occupation of new islands. For example, Xiping at the Institute of Asian-Pacific Studies finds that current political trust is going to help reach a joint exploration plan.**

**Second is ASEAN. The Japan Times this August reports that China and the ASEAN group of 10 countries are creating a code of conduct in order to reduce tensions. It is seeing success, as there has been a joint maritime exercise. These negotiations can create peace. Koh of The South China Morning Post explains that joint exercises signify the common desire of ASEAN and China to ensure peace and stability in the region. Koh notes that it is a precursor to more institutionalized, substantial forms of cooperation between the navies.**

**Overall, Velasco of The University of Florida finds that regional organizations in negotiations double the chance of peace.**

**America’s accession to UNCLOS only ruins stability. Houck of Penn State explains that as an UNCLOS party, the U.S. would assume a natural leadership role and facilitate coalitions to gain support. This will end negotiations. Scimia of The South China Morning Post writes that the US is likely to try to sabotage any agreement that could weaken its position in the region. Historically, Ford of The Diplomat writes that by putting Asia at the center of its security strategy, the Obama administration led China to respond by becoming more aggressive, helping to undo the general tranquility that existed before 2008.**

**The impact is ruining a long term solution. Diel of UT Dallas explains that repeated diplomatic failure sours the parties on future initiatives because it convinces them that differences cannot be resolved. He concludes this leads to armed conflict to reach one’s goals.** [**Nguyen of Texas A&M**](https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1125&context=lawreview) **puts it simple. If the South China Sea dispute escalates, the livelihoods of millions of people and the economies of many countries are at stake.**

**Don’t let millions die. Affirm.**

**Sorokin**, Iosif. “The UN Convention on the Law of the Sea: Why the U.S. Hasn't Ratified It and Where It Stands Today.” **Berkeley Journal of International Law** Blog, 30 Mar. **2015**, berkeleytravaux.com/un-convention-law-sea-u-s-hasnt-ratified-stands-today/

**The UN Convention on the Law of the Sea (UNCLOS III) set down international norms governing the use of the world’s oceans and their resources by states.** Also known as the Law of the Sea Treaty, UNCLOS III replaced two prior attempts in 1956 (UNCLOS I) and 1960 (UNCLOS II) to define the rights of states with respect to their territorial seas, continental shelves, use of the high seas, and management of marine natural resources. Since its adoption in 1982, 167 states have joined the treaty, including Russia, China, and the European Union. **But despite its acceptance in much of the world, the U.S. has not joined the treaty, with the most recent ratification attempt failing to get the requisite two-thirds of votes in the Senate.**

<https://www.foreign.senate.gov/imo/media/doc/Groves%20prepared%20testimony%20for%20UNCLOS%20hearing%20(final).pdf>

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

In 2003, the Washington, D.C.-based Environmental Law Institute published “The Legal Option: Suing the United States in International Forums for Global Warming Emissions” by **law professor Andrew L. Strauss. According to Strauss, the U.S. rejection of the Kyoto Protocol “makes the United States the most logical first country target of a global warming lawsuit in an international forum.”** **The article proposed various forums for initiating a lawsuit against the United States, including UNCLOS tribunals**, but Strauss lamented, “As the United States has not adhered to the Convention, however, a suit could not be brought directly against it under the Convention.”

**http://www.ncpathinktank.org/pub/bg167**

However, consider what the Treaty text implies. **There is no requirement to prove that the emissions actually cause significant harm. If the substance emitted is “harmful” to any degree, states are simply required to minimize emissions “to the fullest possible extent.” To all practical purposes, taking the Treaty at its word would require the closure of most if not all coal-fired electricity generation in the United States.** This kind of activism has not taken place in any of the other signatory states, likely because they offer fewer opportunities for concerned citizens to require their governments to follow the spirit and word of the Treaty. In the United States, however, environmental groups would probably sue the day after formal ratification, and the courts would be unlikely to throw out their challenges.

The domestic enforceability of UNCLOS tribunal judgments was confirmed by U**.S. Supreme Court Justice John Paul Stevens in the landmark 2008 case, Medellin v. Texas. In Medellin, Justice Stevens, writing a concurring opinion, cited Article 39 of Annex VI for the proposition that UNCLOS members—presumably including the United States if it accedes to the convention—are obligated to comply with the judgments of the convention’s tribunals.**

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**https://www.washingtonpost.com/news/wonk/wp/2017/03/31/8-surprisingly-small-industries-that-employ-more-people-than-coal/?noredirect=on&utm\_term=.17a745af2a21**

<http://drexel.edu/now/archive/2014/July/Unemployment-Study/>

<https://nationalinterest.org/feature/no-one-lost-south-china-sea-and-no-one-will-win-29337>

“South China Sea Stakes Not Limited to China, ASEAN.” **The Japan Times**, 6 Aug. **2018**, [www.japantimes.co.jp/opinion/2018/08/06/editorials/south-china-sea-stakes-not-limited-china-asean/](http://www.japantimes.co.jp/opinion/2018/08/06/editorials/south-china-sea-stakes-not-limited-china-asean/)

**China and the 10 members of the Association of Southeast Asian Nations are making progress in efforts to reduce tensions and build a less contentious relationship. The 11 governments produced a draft code of conduct for the South China Sea,** a document nearly two decades in the making. In addition, **last week they held the inaugural ASEAN-China maritime exercise**, which is intended to become a regular feature of their relationship. These developments are welcome. At the same time, however, those parties must also recognize that the South China Sea is an international waterway that has great significance for many other countries. They, too, must have some say in the legal regime that emerges.

It is the culmination of long-standing confidence-building efforts and made possible only by the easing of a political atmosphere that was especially acrimonious amid the earlier spike in South China Sea tensions.

That said, as symbolic as it might be, this **joint exercise would signify the common desire of Asean and China to ensure peace and stability in the region. It could be a potential precursor to more institutionalised, substantial forms of cooperation between the navies**, such as broader implementation of CUES. And where China is concerned, it might mark the beginning of a more comprehensive relationship with Asean and its member states – beyond one that is characterised chiefly by diplomatic, economic and sociocultural interactions. **It would also add to defence diplomacy efforts** that have been maturing over time, in line with the growing capabilities of the People’s Liberation Army Navy.

**Mogato**, Manuel. “Philippines Says China Agrees on No New Expansion in South China Sea.” **Reuters**, Thomson Reuters, 16 Aug. **2017**, [www.reuters.com/article/us-southchinasea-philippines-china-idUSKCN1AV0VJ](http://www.reuters.com/article/us-southchinasea-philippines-china-idUSKCN1AV0VJ)

MANILA (Reuters) - **China has assured the Philippines it will not occupy new features or territory in the South China Sea, under a new “status quo” brokered by Manila as both sides try to strengthen their relations,** the Philippine defense minister said. Philippine Foreign Secretary Alan Peter Cayetano also said the Philippines was working on a “commercial deal” with China to explore and exploit oil and gas resources in disputed areas of the South China Sea with an aim to begin drilling within a year. The defense minister, Delfin Lorenzana, told a congressional hearing the **Philippines and China had reached a “modus vivendi”, or a way to get along, in the South China Sea that prohibits new occupation of islands.**

Xu Liping, a professor at the Institute of Asian-Pacific Studies, which comes under the auspices of the Chinese Academy of Social Sciences, said the political trust developed between China and the Philippines would help them to reach agreement on the joint exploration plan. “Joint exploration requires political trust,” he said. “Now is the best time to do it, with the smooth progress over the negotiations for a code of conduct for the South China Sea.”

The next regression tests Hypothesis 4 – regional organizations will be less successful at intractable issues such as ethnic, ideological, or religious conflicts. As seen in Table 3, regional organizations and “other” organizations are, despite not falling within traditional measures of significance, are relatively likely to have an effect on the dependent variable. Their presence roughly increases the chance of peace by about 2 times when compared to a lack of a third party

**Ford**, John. “The Pivot to Asia Was Obama's Biggest Mistake.” **The Diplomat**, The Diplomat, 24 Jan. **2017**, [thediplomat.com/2017/01/the-pivot-to-asia-was-obamas-biggest-mistake/](http://thediplomat.com/2017/01/the-pivot-to-asia-was-obamas-biggest-mistake/)

First, it is simply wrong that the United States was ignoring the Asia Pacific when Barack Obama came to office. Far from being neglectful, the Bush administration’s Asia policy was a success. The Bush administration helped get tensions between China and Taiwan to a historic low. It concluded free trade agreements with Australia, South Korea, and Singapore and began talks on what became the Trans-Pacific Partnership (TPP). It also concluded a civilian nuclear agreement with India and forged a new relationship with that country while simultaneously managing to build a partnership with Pakistan to deal with Afghanistan. Some of these policies were later repackaged by the Obama administration as part of the pivot. The pivot did include some new diplomatic initiatives (such as the rapprochement with Myanmar) but the real problem was the shift in security and defense policy. **By putting Asia at the center of its security strategy, the Obama administration inadvertently made the entire enterprise seem to Beijing like an effort to contain China militarily. This led China to respond by becoming more aggressive, helping to undo the general tranquility that existed before 2008.**

<https://www.chathamhouse.org/expert/comment/china-moving-towards-compromise-south-china-sea>

<https://elibrary.law.psu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1000&context=jlia>

<https://www.scmp.com/comment/insight-opinion/united-states/article/2158455/south-china-sea-progress-between-china-and>

The Philippines’ arbitration relates to the dispute over the sovereignty of islands and reefs in the South China Sea, and to maritime delimitation. But these territorial issues are not regulated by — and therefore beyond the scope of — the U.N. Convention on the Law of the Sea (UNCLOS). **And in 2006, China declared it would exclude “disputes concerning maritime delimitation” from compulsory arbitration, under Article 298 of UNCLOS.** Second, the Philippines’ unilateral initiation of compulsory arbitration did not meet UNCLOS preconditions for such initiation. The “no arbitration without the existence of a dispute” principle requires that before resorting to compulsory arbitration, there must have existed a real dispute between the parties. However, China has not yet presented specific claims with individual islands: Instead, it has always treated them as part of its Zhongsha Islands or Nansha Islands in the South China Sea.