

Why Conservatives Support Prompt Senate Advice and Consent for the Law of the Sea Convention

As conservatives who worked for Republican Presidents, including President Ronald Reagan, we are troubled that some conservatives are opposing Senate advice and consent to the vitally important Law of the Sea Convention. The Convention is *overwhelmingly* in the national interest of this great nation and is particularly important for our naval mobility, our economic interests, and our future effectiveness in oceans leadership.

The reality is that the Convention is a conservative treaty. The United States won *big* in 1982 and 1994. Indeed, the original negotiation, and then the 1994 Reagan conditions renegotiation, were among America's greatest negotiating successes. The renegotiation *specifically met all Reagan conditions* and will facilitate access by U.S. companies to mining in seabed areas beyond U.S. jurisdiction. Of particular importance:

- Our military got strong and vital navigational rights for U.S. vessels, including warships. The Convention allows our vessels to get around the world free and clear, and the Defense Department will greatly benefit from the Convention for critical navigation and overflight rights.
- Our industries got exclusive U.S. rights to fisheries out to 200 nautical miles; exclusive rights to oil/gas resources out to 200 nautical miles and beyond, including out as far as 600 miles off Alaska; the right to lay pipelines and communications cables around the world; a framework for property rights to deep seabed minerals, and more.

And we get these rights through the plain words of a treaty and without having to rely on theories of customary international law that can come back to haunt the United States.

What will we lose if we do not ratify the Convention?

Plenty! Unlike the hypothetical "risks" that critics raise about becoming a Party, the United States is running a real risk as a non-Party that the rights we depend upon for our global maritime mobility—and therefore our security—will erode. While Russia and others are quickly maximizing their rights over oil and gas in the Arctic, as non-participants we cannot use the Convention's procedures to maximize ours. Moreover, we will lose our important deep seabed mining sites. Most importantly, we will weaken Uncle Sam and lose United States leadership in oceans policy.

Below we list eight key reasons why conservatives should support the treaty. For more detailed information, including letters of support for the convention from our top military leaders, please see the website of the University of Virginia Center for Oceans Law and Policy, the premier oceans law center in the world: <http://www.virginia.edu/colp>.

1. The Convention preserves and expands American SOVEREIGN RIGHTS as President Reagan foresaw.

Reagan's Secretary of State Shultz wrote in 2007: "It surprises me to learn that opponents of the treaty are invoking President Reagan's name, arguing that he would have opposed ratification despite having succeeded on the deep sea-bed issue. During his administration, with full clearance and support from President Reagan, we made it very clear that we would support ratification if our position on the sea-bed issue were accepted." *All* President Reagan's objections to the International Authority and the deep seabed regime were successfully renegotiated and embodied in the 1994 Agreement.

2. The Convention is controlled by nations that are Parties to it, NOT the United Nations. The three small organizational entities set up by the Convention SUPPORT U.S. interests.

President Reagan's "Victory at Sea" through a renegotiation accepting his conditions included *iron-clad constraints* on the International Seabed Authority whose small administrative staff ensure deep seabed miners have bankable property rights to resources beyond national jurisdiction. Important decisions of the entity require *consensus*, and the U.S. will have a veto once we join. The continental shelf commission set up by the Convention confirms the outer boundary continental margin resources for State Parties. This international recognition provides the security of tenure required to finance drilling in frontier areas. Every major oil and gas company in the United States supports Senate advice and consent to the Convention with the 1994 Reagan modifications.

3. The Convention codifies global naval mobility guaranteeing the freedom of the seas for our Navy and Coast Guard to fight terrorism around the world.

Our military forces are at war with global terrorism. *Every* past Chairman of the Joint Chiefs of Staff, *every* Chief of Naval Operations and *every* Commandant of the Coast Guard support ratification because the Convention allows our military forces the freedom to thwart terrorists and to protect America. Conservatives should trust the professional judgment of our military leaders who wholeheartedly seek Senate advice and consent to the Convention as modified.

4. The Convention does NOT provide for or authorize "taxation" of individuals, corporations, or otherwise.

The Convention does not authorize any taxes. No payments go to the United Nations.

Concerning revenues from mining in the deep seabed beyond national jurisdiction, a cost of access to minerals not owned by the U.S., any assessment of royalties or administrative fees would be decided in the International Seabed Authority's Council, the decision-making body on which the U.S. would have a permanent seat, and which operates by consensus. *The Authority would distribute the funds, if any, to Parties to the Convention in accordance with a formula that the U.S., by virtue of its voting rights on the Council, would have a veto over.*

5. The Convention more than doubles the resource jurisdiction of the United States and EXTENDS OUR SOVEREIGN RIGHTS to continental margin oil and gas desperately needed to decrease our dependence on foreign energy sources.

The Convention confirms a 200-mile resource zone larger than U.S. land territory and provides the way to acquire legal recognition for huge U.S. continental margins beyond 200 miles in the Arctic and elsewhere. The United States, in fact, gets the *largest resource zone in the world* under the Convention. As a Party to the Convention, Russia is perfecting claims to “the Arctic Ocean which may hold as much as 25% of the world’s oil and gas resources.” As a non-Party, the United States has no representative on the Continental Shelf Commission which will be officially reacting to the Russian claim.

6. The Convention dispute settlement procedures contain NO role for the International Court of Justice.

The draft resolution to accompany Senate advice and consent identifies quite ordinary and usual arbitration (not the I.C.J.) for the narrow category of disputes for which the United States will accept third party settlement. Arbitration is a standard function in many U.S treaties and is the mode of choice for our businesses. Importantly, *all military activities will be excluded* from any dispute settlement procedures.

7. Ratification provides an opportunity to make it clear that the Convention does NOT provide a legal basis for private causes of action or legal rights in U.S. courts.

The draft resolution to accompany Senate advice and consent will make it clear that *no private rights of action are created by the Convention*. Thus, if the Senate gives its advice and consent, the Convention cannot form the basis of a private law suit under the Alien Tort Statute. (Recently, the Ninth Circuit Court of Appeals allowed a claim based on the customary international law it found in the Convention.)

8. Customary Law is a completely inadequate basis for protection of our vital oceans interests.

We agree with General John Handy, U.S. Air Force (ret.), a former commander of the United States Transportation Command (USTRANSCOM) who recently wrote to Senator Lugar in support of the Law of the Sea Convention, that “In my professional judgment, relying on customary international law as the basis for the navigation rights and freedoms that are so necessary for us to deploy and sustain our combat force is an unwise and unnecessary risk. The Convention provides the legal certainty that we need to reliably accomplish our mission. It furthers the National Security Strategy of the United States and I urge the Senate to expeditiously provide its advice and consent.”

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