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The Top Five Reasons Why Conservatives Should Oppose the U.N. Convention on the Law of the Sea

Baker Spring, Steven Groves, and Brett D. Schaefer

The Senate Foreign Relations Committee will hold hearings this week on whether the United States should ratify the U.N. Convention on the Law of the Sea. Twenty-five years ago, President Ronald Reagan rejected the treaty—and rightly so. Today, the convention remains a threat to American interests.

Reason #1: The Treaty Will Undermine U.S. Sovereignty.

President Reagan rejected the Law of the Sea Convention in 1982 and cited several major deficiencies, none of which have been remedied. Reagan was concerned that the U.S., though a major naval power, would have little influence at the International Seabed Authority that the convention created. Although the Authority is supposed to make decisions by consensus, nothing prevents the rest of the “international community” from consistently voting against the United States, as regularly occurs in similar U.N. bodies, such as the General Assembly. In addition, President Reagan was troubled by the fact that the International Seabed Authority has the power to amend the convention without U.S. consent. That concern has also not been remedied in the intervening years.

Another issue is that the convention requires states to transfer information and perhaps technology to mandatory dispute resolution tribunals. Under the convention, parties to a dispute are required to provide a resolution tribunal with “all relevant documents, facilities and information.” This amounts to a blanket invitation for unscrupulous foreign competitors to bring the U.S. and American companies before a tribunal for the sole

purpose of obtaining sensitive data and technologies that would otherwise be unavailable to them. The safeguards against such practices that President Reagan demanded have never come to pass.

Reason #2: The Treaty Will Become a Back Door for Environmental Activists.

The Executive Director of Greenpeace International, Thilo Bode, has explained how the environmentalist movement plans to leverage the treaty to advance its agenda, which often runs counter to U.S. interests: “Global warming is likely to have a big impact at sea.... Solving the environmental problems facing the oceans... is one of the greatest challenges facing humankind.... No single action or region can do this alone: It will require comprehensive international cooperation as required by the United Nations Convention on the Law of the Sea.” President Clinton—a major supporter of the treaty—did not mince his words when he stated that the convention was “the greatest environmental treaty of all time.”

Indeed, the treaty states that convention participants must “take... all measures consistent with this Convention that are necessary to prevent, reduce, and control pollution of the marine environment from any source,” (Article 194). This provision goes

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on to require that such measures address “all sources of pollution of the marine environment...including those from land-based sources, from or through the atmosphere, or by dumping...” Signatories are also required to “adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere...” (Article 212).

The convention’s provisions and mandatory dispute resolution mechanisms will create new opportunities for environmental activists and like-minded governments to bring action against the U.S. for violating the Kyoto Protocol, even though America is not a party to that accord. American opponents of the Kyoto Protocol should be under no illusion: U.S. accession to this convention risks embroiling the U.S. in a plethora of legal actions, even if the Senate does not ratify Kyoto.

Reason #3: America Should Not Participate in Yet Another U.N. Bureaucracy.

International institutions created by multilateral treaties spawn unaccountable international bureaucracies, which in turn inevitably infringe upon U.S. sovereignty. The convention creates a bureaucracy known as the International Seabed Authority Secretariat. Like all international bureaucracies, the Secretariat has a strong incentive to enhance its own authority at the expense of state sovereignty. When international bureaucracies are unaccountable, they—like all unaccountable institutions—seek to insulate themselves from scrutiny and thus become prone to corruption. The International Seabed Authority is vulnerable to the same corrupt practices that have riddled the U.N. for years. The United Nations Oil-for-Food scandal, in which the Iraqi government benefited from a system of bribes and kickbacks involving billions of dollars and 2,000 companies in nearly 70 countries, is a prime example. Despite ample evidence of the U.N.’s systemic weaknesses and vulnerability to corruption, the U.N. General Assembly has resisted efforts to adopt serious transparency and accountability reforms.

Reason #4: American Participation Will Undermine U.S. Military and Intelligence Operations.

Under the convention, the United States assumes a number of obligations at odds with its military practices and national security interests, including a commitment not to collect intelligence. The U.S. would sign away its ability to collect intelligence vital for American security within the “territorial waters” of any other country (Article 19). Furthermore, U.S. submarines would be required to travel on the surface and show their flags while sailing within territorial waters (Article 20). This would apply, for example, to U.S. submarines maneuvering in Iranian or North Korean territorial waters; they would be required to sail on the surface with their flags waving.

Reason #5: The U.S. Does Not Need the Convention to Guarantee Navigation Rights.

The U.S. enjoys navigation rights by customary international practice. The fact that the U.S. is not a convention member does not mean that other states will begin to demand notification by U.S. ships entering their waters or airspace. Indeed, the U.S. is not a signatory to the convention today and yet has freedom of the seas because current participants are required to grant the U.S. navigation rights afforded by customary international practice. In addition, these states have reciprocal interests in navigation rights that will discourage them from making such demands on American ships in the future.

Conclusion. For these reasons and many others,¹ conservatives who are concerned about U.S. sovereignty and national security should oppose ratification of the U.N. Convention on the Law of the Sea.

—*Baker Spring is F. M. Kirby Research Fellow in National Security Policy in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation. Steven Groves is Bernard and Barbara Lomas Fellow, and Brett D. Schaefer is Jay Kingham Fellow in International Regulatory Affairs, in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.*

1. See, e.g., Edwin Meese, III, Baker Spring, and Brett D. Schaefer, “The United Nations Convention on the Law of the Sea: The Risks Outweigh the Benefits,” Heritage Foundation *WebMemo* No. 1459, May 16, 2007, at www.heritage.org/Research/InternationalOrganizations/wm1459.cfm.