

Myths about the Law of the Sea Convention

Myth: Joining the Convention would surrender U.S. sovereignty.

Reality: On the contrary. Some have called the Convention a “U.S. land grab.” It expands U.S. sovereignty and sovereign rights over extensive maritime territory and natural resources off its coast. It provides a 12 mile territorial sea subject to U.S. sovereignty, U.S. sovereign rights over resources within a 200-mile exclusive economic zone, and U.S. sovereign rights over offshore resources (including minerals) to the outer edge of the continental margin, which extends well beyond 200 miles in several areas, including up to 600 miles off Alaska. It’s rare that a treaty actually increases the sovereignty of a country, but this treaty does. The Convention does not harm U.S. sovereignty in other respects either. The dispute resolution mechanism provides appropriate flexibility in terms of both the forum and the exclusion of sensitive subject matter. The deep seabed mining provisions do not apply to any areas in which the U.S. has sovereignty or sovereign rights. Further, these rules will facilitate mining activities by U.S. companies. And the navigational provisions ensure that U.S. military and commercial vessels have worldwide maritime mobility – without a permission slip.

Myth: The Convention is a “UN” treaty and therefore doesn’t serve our interests.

Reality: The Convention is not the UN – it was just negotiated there, as are many agreements. Just because a treaty was drawn up at the UN does not mean it doesn’t serve our interests. For example, the U.S. benefits from UN treaties such as the UN Anti-Corruption Convention and the UN Convention for the Suppression of Terrorist Bombings. The Law of the Sea Convention is another such treaty that serves our interests.

Myth: The Convention would permit an international tribunal to second-guess the U.S. Navy.

Reality: No international tribunal would have jurisdiction over the U.S. Navy. U.S. military activities, including those of the U.S. Navy, would not be subject to any form of dispute resolution. Disputes concerning military activities are completely excluded from dispute resolution, and the U.S. has the exclusive right to determine what constitutes a military activity.

Myth: The Convention is being pushed by “one-worlders” whose goal is to undermine U.S. sovereignty and subject the United States to “supranational” institutions.

Reality: The Convention enjoys very broad support, from the U.S. military to affected industries, including oil/gas, fisheries, communications, maritime transportation, ocean manufacturing, etc. In any event, it enhances U.S. sovereignty and sovereign rights, not undermines it.

Myth: The International Seabed Authority has the power to regulate seven-tenths of the Earth's surface.

Reality: The Convention addresses seven-tenths of the earth's surface. But the International Seabed Authority (ISA) does not. First, the ISA does not address activities in the water. Second, the ISA has nothing to do with the ocean floor that is subject to the sovereignty or sovereign rights of countries. Third, the ISA only addresses mining. So its role is limited to mining activities in areas of the ocean floor beyond national jurisdiction. It has no other role and no general authority over the uses of the oceans, including freedom of navigation and overflight.

Myth: The Convention gives the UN its first opportunity to levy taxes.

Reality: This is not the UN -- and there are no taxes on individuals or corporations. Concerning oil/gas production within 200 miles of shore, the U.S. gets exclusive sovereign rights to seabed resources within the largest such area in the world. There are no finance-related requirements in the treaty. Concerning oil/gas production beyond 200 miles of shore, the U.S. is one of a group of countries that is potentially entitled to extensive continental shelf beyond its 200 mile zone. Countries that benefit from extra continental shelf have no requirements for the first 5 years of production at a site; in the 6th year of production, they are to pay 1% of production, capped at 7% in the 12th year of production. If the U.S. were to pay royalties, it would be because U.S. oil and gas companies are engaged in successful production beyond 200 miles. But if the treaty is not passed, U.S. companies will likely not be willing or able to engage in oil/gas activities in such areas, i.e., in the absence of clear legal means to secure tenure. Concerning mineral activities in the deep seabed, which is beyond U.S. jurisdiction, an interested company would pay an application fee for the administrative expenses of processing the application. Any amount that did not get used for processing the application would be returned to the applicant. The Convention does not set forth any royalty requirements for production; the U.S. would need to agree to establish any. In no event would any royalties go to the UN, but rather would be distributed to countries in accordance with a formula that the U.S. would have to agree to.

Myth: The Convention was drafted before – and without regard to – the war on terror and what the U.S. must do to wage it successfully.

Reality: The Convention enhances, rather than undermines, our ability to wage the war on terror. Maximum maritime naval and air mobility that is assured by the Convention is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for our forces, weapons, and materiel to get to the fight without hindrance. It is essential that key sea and air lanes remain open as a matter of international legal right and not be contingent upon approval from nations along the routes.

Myth: The Convention would prohibit or impair U.S. intelligence and submarine activities.

Reality: The Convention does not prohibit or impair intelligence or submarine activities. Joining the Convention would not affect the conduct of intelligence activities in any way. This issue was the subject of extensive hearings in 2004 before the Senate Select Committee on Intelligence. Witnesses from Defense, CIA, and State all confirmed that U.S. intelligence and submarine activities are not adversely affected by the Convention (which we already follow) and would not be adversely affected if we joined.

Myth: The U.S. can rely on customary international law and doesn't need the Convention.

Reality: The Convention provides clear legal rules in a written treaty, as opposed to reliance on customary international law, which is too easily challenged by unilateral claims of other countries and changed by the practice of countries over time. Customary law is an inadequate basis upon which to protect navigational rights vital to our national security. The U.S. needs additional tools in its arsenal, including the firm legal footing that joining the Convention would provide.

Myth: The U.S. can rely on use or threat of force to fully protect its navigational interests.

Reality: The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights. But these operations entail a certain degree of risk, as well as resources. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the U.S. in a strong position to assert our rights.

Myth: Joining the Convention would hurt U.S. maritime interdiction efforts under the Proliferation Security Initiative (PSI).

Reality: Joining the Convention would not affect applicable maritime law or policy regarding the interdiction of weapons of mass destruction. PSI specifically requires participating countries to act consistent with international law, which includes the law reflected in the Convention. Almost all PSI partners are parties to the Convention. Further, joining the Convention is likely to strengthen PSI by attracting new cooperative partners.

Myth: President Reagan thought the treaty was irremediably defective.

Reality: President Reagan pointed solely to certain deep seabed mining provisions of the Convention as flawed. He considered that those provisions could be fixed and specifically identified the elements in need of revision. In a 1983 Ocean Policy Statement, President Reagan directed the U.S. government to abide by the non-deep-seabed provisions of the Convention and encourage other countries to do likewise. The 1994 Agreement fixed the flawed deep seabed mining provisions in ways that meet each one of President Reagan's objections.

Myth: The Convention provides for mandatory technology transfer.

Reality: No technology transfers are required by the Convention. Mandatory technology transfer was eliminated by the 1994 Agreement that fixed the original Convention.