

Source: Wikipedia

## United Nations Convention on the Law of the Sea (UNCLOS)

### Pro-ratification arguments

- *The environment:* Oceans cover over 70% of the Earth. In the U.S., there are laws to keep marine resources available for future generations. UNCLOS sets a legally binding international standard which aims to protect the marine wildlife and environment.
- *National security:* The U.S. military, which relies heavily on its ability to freely navigate on and fly over the sea, has been a strong advocate of UNCLOS. In the absence of treaty law, the US relies on customary law that can change as states' practices change. Also, under this customary law, the Pentagon claims that countries often make unreasonable and irresponsible claims on marine territory that frustrate U.S. military action. The U.S. has tried to work around these claims, but without a legal framework to support them, the Pentagon believes it risks compromising its intelligence and military operations at sea.
- *International diplomacy and peaceful dispute resolution:* The Convention offers a peaceful way to resolve territorial and natural resource disputes through the International Tribunal for the Law of the Sea (ITLOS), based on agreements to which signatory parties have already committed. In contrast, without ratification, the US has no peaceful recourse if another non-signatory party decides to close its straits to navigation except through the Permanent Court of Arbitration which was established in 1902 to allow States to settle disputes in a manner other than war.
- *It helps American businesses:* Each country has exclusive rights to manage the resources in areas near its coast. Under the terms of UNCLOS, which maps out the boundaries of these areas, the American zone is larger than that of any other country in the world. The size of this zone is 3.36 million square miles — bigger than the lower 48 states combined. In addition, under UNCLOS, coastal states can exercise sovereign rights over natural resources within the extended continental shelf area beyond this territory. It would also give US companies an opportunity to apply for licenses with the ISA, which manages claims to resources in the deep seabed, an area over which no country has sovereign rights.

## Anti-ratification arguments

- *National sovereignty:* The treaty creates the International Seabed Authority (ISA) with its own dispute resolution tribunal. However, should the U.S. stop its current compliance with the U.S.-negotiated laws of the Convention, the U.S. could not be taken to the Law of the Sea Tribunal since the U.S. has indicated that it would choose binding arbitration rather than availing itself of the International Tribunal on the Law of the Sea.
- *The environment:* Some of the Convention's conservation provisions would provide new avenues for non-U.S. environmental organizations to affect domestic U.S. environmental policies by pursuing legal action in both US and international courts. In addition, requirements that nations either harvest their entire allowable catch in certain areas or give the surplus to other nations could result in mandated overfishing.
- *Taxation:* The license fees and taxes levied on economic activities in the deep seabed area by the ISA would be, in effect, a form of 'taxation without representation'. Citizens would be indirectly taxed through business and governmental activities in the area.
- *Economics:* Businesses can already exploit resources from the international area; ratifying the treaty would force them to buy licenses for that right and pay taxes on the proceeds.
- *Navigation rights not threatened:* One of the treaty's main selling points, legally recognized navigation rights on, over, and under straits, is unnecessary because these rights are not currently threatened by law or by any military capable of opposing the U.S.
- *Harm to de-militarizing operations:* The treaty would require all undersea ocean vessels, including submarines used for mine detection to protect ships exercising the right of innocent passage, to navigate on the surface in territorial waters to be entitled to the right of innocent passage. The operative language is identical to that contained in the 1958 Convention on the Territorial Sea and Contiguous Zone to which the U.S. is already a party.
- *Limited control over funding:* The U.S. would have no direct control over how the money is used.
- *Eminent domain:* The treaty applies eminent domain to intellectual property giving the UN the power to seize technology and share it with potentially enemy states.
- *Lack of need:* The U.S. already honors almost all the provisions of the treaty. For practical purposes, there is no pressing need to ratify it that outweighs the negatives of the remaining provisions.