



Law of the Sea Treaty Topic Primer

THE RESOLUTION

Resolved: The United States should accede to the United Nations Convention on the Law of the Sea without reservations.

LAW OF THE SEA TREATY AND US ACCESSION/RATIFICATION

Throughout the 1970s and the early 1980s, the US led the negotiation of the United Nations Convention of the Law of the Sea Treaty (UNCLOS/LOST) to establish some basic laws and governance norms for the ocean. Most countries in the world thought this was necessary because the ocean was basically the “wild west,” as there was no agreement over what rights of access navies had, what ocean-based economic resources countries could develop, and how disputes can be resolved. Although there is no supranational enforcement body for international law, international treaties often become binding out of self-interest – countries have a mutual interest in following them, and countries negotiated what they considered to be an important agreement that was in the self-interest of all countries.

After LOST was negotiated, many countries moved to ratify the treaty to make it binding as part of their own law. By 1994, 60 countries ratified it, making it binding international law across the world. As of September 1, 167 countries had ratified it, but the US was not one of them. Had the US decided to ratify it, it would have acceded to the treaty, as the treaty is already in force. According to the UN, “accession” is, “the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification.”

Although the US has not ratified it, it has signed the treaty. Signing a treaty signals an intent to comply, but compliance is not legally required. Beyond intending to comply, though, the US is arguably bound by it since it is “in force” (60+ countries have ratified it). Beyond whether or not the US is bound by it, the US also follows most of the treaty provisions as part of customary international law – law that other countries follow simply because it has become “customary” to do so. Since it is customary international law, the US can follow it without being bound by it (as it would if it acceded to it).

The resolution calls for the US to accede to the treaty without reservations. However, countries ordinarily ratify treaties “with reservations,” meaning they ratify it but state they will not comply with a particular part. This is meaningless in this case because LOST does not allow reservations. The resolution also asks whether the US should ratify it, not whether or not it would ratify it.

The treaty is quite long, but there are a number of key provisions, all of which are widely accepted in international law and by which the US mostly abides.

KEY TREATY PROVISIONS

12 mile territory/200 mile EEZ. LOST establishes that countries’ territory extends 12 miles beyond their respective shorelines. Countries have no rights in other countries’ territory. Although countries’ territory stops at 12 miles, they do have the exclusive right to develop resources (fishing, energy) within 200 miles of their own coastlines. Where EEZs overlap, countries should negotiate joint development agreements. This 200 mile EEZ is widely accepted international law, including by the US, though advocates of accession argue that it will provide clarity/legal certainty to any US claim. The treaty also establishes a 27 mile contiguous zone – an expanded area where countries can tax and regulate.

Freedom of Navigation. Outside of the 12 mile territory, all countries have the ability to freely navigate commercial and military ships in all non-territorial waters.

Dispute Resolution. LOST supports establishing dispute resolution mechanisms to help countries resolve conflicts related to mutual territorial and EEZ claims.

International Seabed (Authority). The International Seabed Authority (ISA) was established to regulate the mining of the deep seabed outside of countries’ EEZs. Although countries anticipated substantial seabed mining

when the treaty was negotiated, very little has occurred due to technical and economic constraints. The ISA has also been slow to issue regulations governing the mining. Some Pro teams may claim that ratification facilitates US access to seabed mining.

Environmental regulation. LOST contains some provisions that support regulations that are aimed to limit environmental damage, such as overfishing.

BENEFITS OF ACCESSION

Debaters are likely to claim a number of different advantages to US ratification and of that, mostly all stem from the application of LOST’s provisions.

Economic Development. Many Pro teams will claim that US accession will promote economic development of the US EEZ, including the development of offshore wind power, oil, and natural gas resources in the Arctic. These teams will claim that accession promotes “legal certainty” that will make it more likely for US companies to invest in these energy resources. Other teams will claim that accession will make it possible for US companies to access valuable resources that will power the economy in the future. Specifically, some teams will claim they support the seabed since it has rare earth minerals (REMS) that the US currently depends on China for (both economically and militarily).

Military Power Projection. Teams will claim that LOST provides clear freedom of navigation rights for the US military to go wherever it wants outside of the 12 mile territory of other countries. The US often conducts Freedom of Navigation (FONOP) patrols to enforce these provisions.

Multilateralism/Soft Power. “Multilateralism” simply refers to the idea of many countries working together. Since LOST is a treaty, ratification could signal to other countries that the US is at least willing to cooperate with others in a limited way (Trump has significantly reduced international cooperation). Such a signal could make it possible to work together to solve other global problems. Similarly, “soft power” is concept developed by Harvard’s Joseph Nye who argues that an important part of a country’s overall leadership is determined by how much it is liked by other countries. Since most of the rest of the world has ratified LOST, accession would likely increase US soft power.

International Law. Since LOST is an example of international law, some teams may argue that US accession would serve to strengthen the overall significance and enforceability of international law and may read general impacts to the value of international law.

US leadership/hegemony/Liberal World Order. Accession could boost overall US global leadership by increasing its economic power, its military power, and its soft power (or at least one to three). There is a substantial debate about the overall value of US leadership, but it is easy to find evidence that says US leadership helps to dampen global conflict.

A related argument is US support for the “international order.” After World War II, the US led the development of the “international order” – free trade and its associated multilateral agreements, complex alliance systems, and a willingness to defend this “international order.” With the election of Trump, a lot has been written about the durability and value of this system, and Pro teams can argue that LOST accession would at least be a symbol of some support for that order.

Conflict Resolution. Debaters can argue that US ratification will facilitate conflict resolution of various global disputes. Although the disputes vary, debaters may argue (even if this isn’t obvious) that the disputes can be resolved through increasing US military power projection/detering conflict, facilitating conflict resolution through strengthening international negotiating mechanisms, and bolstering overall US diplomatic credibility.

South China Sea (SCS). As you may have heard on the news, China has been engaging in an aggressive military build up that includes the development of artificial islands in the SCS area. The SCS is a sea in the Pacific Ocean that encompasses an area between the Malacca Strait and the Strait of Taiwan (1,400,000 square miles). One third of the world’s trade (\$3 trillion USD)

passes through this strait and it contains extensive fisheries and resources as well as oil and gas reserves. China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, and Taiwan all claim that parts of the SCS are part of its territory and respective EEZs. China claims that it exclusively controls the majority of the territory based on pre-LOST history and has made active efforts to deny fishing rights to countries such as Vietnam and the Philippines. Since China considers the EEZs to be its own territory, it also opposes the US FONOPs that protect freedom of navigation outside of 12 miles of a country's territory.

In November 2016, an international tribunal ruled against China's territorial claims, largely relying on LOST's support for the 200 mile EEZ. China rejected the ruling, claiming that the 200 mile EEZ interpretation under the EEZ is not correct, that it's history pre-dates LOST. China wasn't involved in the early stages of LOST negotiations, and, despite the fact that China ratified LOST, LOST is part of the Western liberal order that it opposes. Of course, it also pokes fun at the US for trying to enforce LOST when it has not itself ratified it.

Pro teams will argue that ratification will boost US credibility in attempting to resolve the SCS dispute with China and that it will increase its authority for FONOPs. Pro teams may point more towards the need to deter China's aggression or to resolve risks of war through accident or miscalculation. Some may argue that it will help bind China to the liberal international order and constrain China's rise.

Arctic. As you've also likely heard on the news, global warming (whatever the cause) is contributing to the significant melting of ice in the Arctic. This has opened up shipping lanes and makes oil and gas resources more accessible. Arctic powers such as the US (because of Alaska, portions of it are in our EEZ) and Russia want to protect their interests. Russia has been aggressively pursuing its resources in the Arctic – it has a number of icebreakers, has established military outposts, and has aggressively established oil and natural gas development operations. China, despite the lack of a territorial claim to the Arctic, is also pursuing its interests. US efforts have been more limited, as it is the US government currently only has two icebreakers and the Trump administration does not have an Arctic policy.

Just as with the SCS, Pro teams will argue that US ratification will protect US economic interests (by clarifying the legality of its EEZ), strengthening the case for FONOPs, and boosting its overall diplomatic legitimacy to engage in conflict resolution with access to LOST's dispute resolution mechanisms, reducing the risk of conflict.

Strait of Hormuz. The Strait of Hormuz is a narrow strait (only 54 km at its narrowest point) of water between the Persian Gulf and the Gulf of Oman that approximately 20% of the world's oil passes through, making it a strategically important passage. Recently, tensions between the US and Iran have increased significantly (Trump cancelled the Iran nuclear agreement) and Iran has threatened to militarily close the strait. Some teams will argue that US ratification will help produce conflict resolution between the US and Iran on the issue. Iran has also not ratified LOST.

Ship boarding. LOST provides mechanisms to support efforts to board ships in open/non-territorial waters for security purposes. Some teams will argue this will make it possible to board ships to stop pirates and to interdict the transfer of nuclear weapons technology, which is an object of the US Proliferation and Security Initiative (PSI).

Environmental Protection. Debaters will claim that environmental standards in LOST will reduce overfishing and protect coral reefs.

PROBLEMS WITH ACCESSION

Debaters are likely to identify a number of problems with LOST ratification.

Resource transfer. Teams will argue that ratification will bind any US deep seabed mining to rules established by the ISA that could be detrimental to US interests. They can also argue that royalty payments to the ISA could end up being transferred to terrorist-supporting states (one of the purpose of the ISA royalty payments is to transfer money from the “global commons” to land-locked countries). Others generally object that this is an “international tax” and that US taxpayers should not pay taxes to international bodies.

Military constraints. Some fear that US military operations could be subject to foreign court jurisdiction.

Sovereignty. Exposing the US to resource transfer requirements and military constraints could limit the US exercise of its sovereignty. A contemporary spin on this could include an articulation of “America First” claims.

South China Sea Interference. Increased US meddling in the SCS will alienate China and undermine current efforts to resolve the conflict.

Renewable Energy Development. Increasing oil and natural gas exploration in the Arctic will flood the market with cheap energy, making renewable energy less cost competitive and triggering dangerous global warming.

Oil Spills. Increased oil and natural gas development in the EEZ and/or the Arctic could trigger dangerous oil spills that threaten marine life.

US Hegemony Bad. Some teams may concede Pro claims that accession boosts US leadership and argue that US leadership is bad because it alienates other countries, increases terrorism, encourages aggressive military action, displaces China's leadership, which may be better, and promotes counterbalancing – other countries aligning to undermine US power. “Hegemony bad” had been a popular Policy debate argument for years and will likely make its way into many PF debates this fall.

Politics. Politics arguments have not had much play in PF debate, but they did during the gun control topic and the last election cycle, so it is possible that they could on this topic as well. If they do, the basic argument will likely be that LOST ratification will alienate parts of Trump's conservative base, making it more unlikely that Republicans will not be able to maintain control of the House of Representatives. Loss of House control could increase the risk of impeachment and a dangerous Trump military lash-out.

A NOTE ON BENEFITS AND DISADVANTAGES

LOST is already binding international law. The resolution is not meant to facilitate a debate about the overall merits of the treaty but of US accession to the treaty.

ACRONYMS AND VOCABULARY

EEZ. The EEZ is the *Exclusive Economic Zone*. Nearly all countries interpret the Law of the Sea Treaty to say that countries have the exclusive right to develop economic resources within 200 miles of their coast.

FONOPs. FONOPs are *Freedom of Navigation Patrols* that are designed to ensure freedom of navigation in the open ocean and within EEZs, up to the 12 mile border limit that is considered to be the territory of other countries.

ISA. The ISA is the *International Seabed Authority*. The ISA is designed to manage deep seabed mining that occurs outside the EEZ/ in the open ocean. Companies are supposed to pay royalties to the ISA on resources they use.

MPAs. MPAs are *Marine Protected Areas*.

PSI. PSI is *Proliferation and Security Initiative*.

REMS. REMS are *rare earth minerals* that make up many electronic devices.

UNCLOS. *United Nations Convention on the Law of the Sea*. Used interchangeably with LOST.

Contiguous Zones. Areas up to 27 miles where countries have the power to tax and enforce limited regulations.

Coral Reefs. A coral reef is an underwater ecosystem that is largely sustained through natural corals.

Customary International Law. Law that other countries follow simply because it has become “customary” to do so. This includes bilateral and multilateral treaties as well as generally accepted customs that have developed over time.

Hegemony. Hegemony refers to the overall power of the strongest country.

Multilateral. Multilateral means countries cooperating together.

Soft Power. How attractive a given country is to other countries.

Liberal World Order. Constructed after World War II through US leadership, the liberal order includes alliance systems, free trade agreements, and multilateral bodies such as the UN.