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High Seas Ditherers

Conservatives who oppose the Law of the Sea treaty only help their own worst enemies.

BY CMDR. JAMES KRASKA | FEBRUARY 13, 2009



John Frankenheimer's classic 1962 movie, *The Manchurian Candidate*, parodied McCarthyism by depicting a far-right politician as a secret tool of the far left. The film reflected Cold War-era paranoia, but it could also be used as an exquisite metaphor for the debate U.S. President Barack Obama is about to enter over U.S. accession to the Law of the Sea Convention, a debate that could kick off within the next few months. With this treaty, the president has a golden opportunity to burnish the United States' multilateral credentials and promote U.S. economic and military interests. Unfortunately, as the Senate debates this strangely controversial measure, he will also encounter conservative Republican palace intrigue straight out of classic film noir.

The convention delineates the rights and duties of coastal states and maritime countries throughout the world's oceans. One-hundred fifty-six countries have already signed on. Despite being involved in the treaty's creation, the United States declined to sign because of a part that stipulates that minerals under

the high seas be considered the common heritage of mankind and leases for mineral extraction be awarded by an international organization, the International Seabed Authority. However, this section has since been amended to language that closer adheres to free market principles.

Since 1994, the United States has considered joining the convention, but U.S. accession has been held up by a small group of right-wing activists who are convinced it will lead the United States down a slippery slope toward world government, U.N. taxes, a U.N. Navy, and other fanciful specters. Even former President George W. Bush, who vocally supported the treaty, was unable to assuage the critics and grab this low-hanging fruit.

The task might be even harder for Obama. But, in the midst of a global economic downturn, it is critical that he take this step to facilitate efficient world merchant shipping and protect the U.S. Navy's right to operate unimpeded on the world's seas. By holding the treaty's progress up, right-wing critics are inadvertently aiding hostile governments and environmental activists at the expense of military and economic interests.

The real threat to U.S. oceans interests is not the United Nations, but the relentless campaign by nongovernmental organizations (NGOs) such as Greenpeace in conjunction with certain coastal countries, including close U.S. allies such as Canada and Australia, to unilaterally impose maritime rules to restrict international shipping on the oceans and aircraft overflight of the seas for purported environmental reasons. For example, a group of Western European states pushed for a ban on single-hull tankers from a vast area of international waters in the Eastern Atlantic, and in 2006 the European Commission suggested in a report that the navigational freedoms in the Law of the Sea Convention should be revised to expand coastal state jurisdiction over transiting vessels.

John Bolton, former U.S. ambassador to the United Nations, describes this type of partnership between NGOs and some like-minded governments as norming ... the idea that the U.S. should base its decisions on some kind of international consensus, rather than making its decisions as a constitutional democracy. He adds, It is a way in which the Europeans and their left-wing friends here and elsewhere try and constrain U.S. sovereignty. The rules emerging from this process weaken the navigational freedoms the United States relies on to ensure submarines can transit through the world's choke points and ships serving as sea bases in coastal waters can launch military operations.

Similarly, less friendly countries such as China, Iran, and North Korea have sought to impose control over the ocean out to 200 miles off their coastlines by establishing security zones. Both types of proposed coastal-state regulations place at risk U.S. economic prosperity and national security by attempting to close off to U.S. ships and aircraft vast swaths of ocean, allowing coastal states at their whim to deny use of the global commons. These proposed restrictions by coastal states attempt to diminish or impair the right of freedom of navigation enjoyed by mariners for two millennia.

All of the countries mentioned above already belong to or have signed the convention, but are trying to change it through reinterpreting its terms. China, for example, is a party to the Law of the Sea, but denies that foreign warships have the right to enjoy high-seas freedom and overflight in the East China Sea. Beijing is patiently but steadily pushing to change standard interpretations of international law. By declining to become a member of the treaty, the United States has so far ceded the opportunity to influence and shape international norms, thereby yielding to states trying to popularize their restrictive approach to navigational rights.

South Carolina Sen. Jim DeMint, when leading the opposition to the treaty as it was being debated in 2007, said We know from international groups like the

U.N. that many signers of these agreements do not act in the best interest of the United States or the world. He is correct, of course, but the United States' failure to ratify only empowers these states to set maritime rules without a U.S. seat at the table. DeMint's argument is akin to refusing to engage in debate on the future direction of the U.S. Constitution because one's political opponents have already staked out objectionable positions.

Furthermore, the treaty's critics badly misunderstand history in trying to paint the measure as somehow un-American. The United States has long championed freedom of the seas. President Thomas Jefferson built a navy to resist the Barbary pirates when European governments paid tribute to safely transit the Mediterranean. The War of 1812 was fought largely over the right of U.S. merchant ships to ply the seas freely, engaging in nascent global trade. Freedom of the seas was a feature of Wilson's Fourteen Points in World War I and was one of the war aims included in the Atlantic Charter by Winston Churchill and Franklin D. Roosevelt during World War II.

During negotiations of the Law of the Sea Convention, U.S diplomats were successful in ensuring that these time-honored principles were incorporated into the treaty in 1982, advancing U.S. interests in naval power and fueling the trade globalization of the 1990s. This is a core U.S. national interest in the oceans, and the Law of the Sea locks in generous navigational provisions that apply throughout the globe -- both for naval vessels and merchant shipping.

Without a legal framework in place, Washington will increasingly have to rely on the U.S. Navy to guarantee freedom of movement for U.S. ships. Does the United States want its only option to be gunboat diplomacy? Or would it rather operate with the agreement and support of the global community? The United States achieved a diplomatic victory in the Law of the Sea Convention by obtaining its most important interests in freedom of navigation. By ratifying the treaty, the United States will be able to play a key role in its future development.

The conservatives who argue that the Law of the Sea Convention would undermine U.S. national security add a surreal dimension to this debate. Their arguments are based on an ideological distaste for the United Nations, rather than realistic calculation of U.S. military and economic interests. The treaty is the country's most effective means for resisting efforts by NGOs and hostile states to diminish U.S. navigational freedom. The conservatives who claim to have the United States' best interests at heart ought to be the ones insisting that the president and the Senate make the treaty their first order of business.

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Cmdr. James Kraska is a professor of international law at the Naval War College, a guest investigator at the Marine Policy Center at the Woods Hole Oceanographic Institution, and a former oceans policy advisor with the U.S. Joint Chiefs of Staff. The views expressed in this article are those of the author and do not reflect the official policy or position of the U.S. Department of Defense or the U.S. government.