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Why Hasn't the US Signed the Law of the Sea Treaty?

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[William Gallo](#)



FILE - A Philippine flag flutters a dilapidated Philippine Navy ship that has been aground since 1999 and became a Philippine military detachment on the disputed Second Thomas Shoal, part of the Spratly Islands, in the South China Sea, March 29, 2014.

Sometime in the next several weeks, an international tribunal in The Hague will announce its long-awaited ruling on a territorial dispute in the South China Sea between China and the Philippines. The court is expected to rule at least partially in favor of Manila. China already has said it will ignore the ruling of the tribunal, which it claims is biased. If China does disregard the decision, the United States almost certainly will portray the case as yet another instance in which Beijing flouts international law. But any U.S. attempt to pressure China over its rejection of the ruling will be complicated by the fact that Washington itself has not ratified the treaty on which the Philippine complaint is based — the United Nations Convention on the Law of the Sea, or UNCLOS.

The vast majority of the world's nations have signed onto UNCLOS, which is known as the "constitution for the oceans." The treaty provides guidelines for how nations use the world's seas and their natural resources. It also contains mechanisms for addressing disputes, such as the current one between the Philippines and China.

The U.S. has not accepted UNCLOS because of opposition from Republicans in the Senate, where treaties must be approved by a two-thirds' vote. Failure to act on the treaty has drawn regular critiques from U.S. President Barack Obama.

Last week, Obama specifically linked the issue to China.

"If we're truly concerned about China's actions in the South China Sea ... the Senate should help strengthen our case by approving the Law of the Sea convention, as our military leaders have urged," Obama said in a commencement speech to the U.S. Air Force Academy.

Arguments against signing

Steven Groves, a senior research fellow at the conservative Heritage Foundation who has written extensively on the Law of the Sea treaty, says that argument is "completely ridiculous."

"There's no evidence to support it," Groves told VOA.

"China is going to disregard any negative outcome from the arbitration whether or not the U.S. is party to the treaty or not."

Groves is among the camp of conservatives who are generally skeptical about U.S. participation in international treaties and systems, viewing them as undermining U.S. sovereignty. He also is concerned that UNCLOS will subject the U.S. to stricter and, in his view, unnecessary environmental standards.

"All indications are that if we joined the Law of the Sea treaty, that all kinds of meritless environmental lawsuits would be brought against us," Groves said.

Arguments for signing

Other analysts argue that ratifying UNCLOS would give the U.S. more leverage on the international scene, especially in relation to China.

The U.S. "could say a lot more, and probably much more convincingly" if it were a party to the treaty, says Andrew Chubb, a China expert at the University of Western Australia. "As it stands, they have to talk about more abstract terms like 'accepted rules' of international law and 'rules-based order,'" he said.

Any diplomatic damage is limited to some extent because almost all the provisions in UNCLOS reflect customary international law, which is binding on all states.

"In fact, the irony is that the United States already scrupulously follows the rules in the convention," said James Kraska, an international law expert at the U.S. Naval War College.

But Kraska says the U.S. has more to gain by formally joining UNCLOS, including a more stable legal framework for accessing resources on the extended continental shelf of the U.S. He also says joining the treaty would give the U.S. more credibility on the world stage.

"I'm not willing to say it's going to make all the difference, because China is not going to suddenly change their mind, just because we join the convention," he said. "But I think it helps."

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