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13. SUPPLEMENTARY NOTES A paper submitted to the faculty of the NWC in partial satisfaction of the requirements of the curriculum. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.

14. ABSTRACT
As the United Nations marked the 40th anniversary of the UN Convention on the Law of the Sea (UNCLOS) in 2022, the United States remains on the short list of nations – 15 Member States – that are not parties to this convention. However, as Arctic ice melts at increasingly rapid rates and China's excessive claims in the South China Sea (SCS) threaten freedom of the seas, sovereignty, and stability of regional neighbors, the economic and national security implications of the United States' conspicuous absence on the list of State Parties to UNCLOS merit reexamination. Advocates in favor of the status quo claim U.S. accession to UNCLOS would, at best, not meaningfully contribute to enhancing national security or economic prosperity, and at worst, forfeit U.S. sovereignty and exclusive rights to natural resources, incur financial losses, and put national security at risk. However, an analysis of these arguments reveals that these concerns range from short-sighted to cavalier and this paper ultimately concludes that accession to the convention would safeguard U.S. sovereign rights over natural resources, enhance international credibility and diplomatic power, boost the economy, and stabilize the world order to harden the United States against future disputes from revisionist powers and threats to national security.

15. SUBJECT TERMS (Key words)
United Nations Convention on the Law of the Sea (UNCLOS), national security, natural resources, international law, Arctic, China, United States, ratification, sovereignty, EEZ

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"A Constitution for the Oceans"

How would U.S. ratification of the United Nations Convention on the Law of the Sea (UNCLOS) affect U.S. national interests?

BACKGROUND: WHY REVISIT UNCLOS NOW?

As the United Nations marked the 40th anniversary of the UN Convention on the Law of the Sea (UNCLOS) in 2022, the United States remains on the short list of nations – 15 Member States – that are not parties to the convention. Although a leader in the nine-year, complex negotiations that resulted in this "constitution for the oceans," the United States did not sign the treaty following the 1982 Conference, citing concerns with the deep seabed mining provisions.[1] The following year, President Reagan affirmed the U.S. commitment to "act in accordance with the balance of interests reflected in the convention" (freedom of navigation/overflight and high seas freedoms) and claimed a 200 nautical mile (nm) Exclusive Economic Zone (EEZ) consistent with the provisions of the convention.[2] In practice, over the last 40 years as a non-party, the United States has recognized UNCLOS' provisions relating to traditional uses of the oceans as customary international law (CIL). The United States has also been a global leader in challenging unlawful claims of other nations under the Freedom of Navigation Program, upheld international law and order as codified by the convention, and has continued to exercise rights over natural resources without challenge.[3]

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[1] Tommy T. B. Koh, "A Constitution for the Oceans," (address, Third United Nations Conference on the Law of the Sea, Montego Bay, 10 December 1982), https://www.un.org/depts/los/ convention _agreements/texts/koh_english.pdf.; James Kraska and Raul Pedrozo. *International Maritime Security Law* (Boston: Martinus Nijhoff Publishers, 2013) 197; U.S. President, "Statement on United States Participation in the Third United Nations Conference on the Law of the Sea," 29 January 1982, *U.S. Navy Judge Advocate General's Corps*, accessed 06 January 2023, https://www.jag.navy.mil/organization/documents/Reagan%20statement%20on%20US%20participation%20in%20the%20Third%20United%20Nations%20Conference%20on%20the%20Law%20of%20the%20Sea.pdf.

[2] U.S. President, "Statement on United States Oceans Policy," 10 March 1983, *Ronald Reagan Presidential Library & Museum*, accessed 03 January 2023, https://www.reaganlibrary.gov/archives/speech/statement-united-states-oceans-policy; Third United Nations Conference on the Law of the Sea, 11th Session, *United Nations Convention on the Law of the Sea 1982*, 10 December 1982, Article 58, accessed 30 November 2022, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf. Note: In accordance with UNCLOS, coastal states have sovereignty and exclusive rights over all living and non-living resources within the EEZ.

[3] Raul (Pete) Pedrozo, "Artic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea," *International Law Studies* 757, no. 89 (2013), 768-769, accessed 12 December 2022, HeinOnline.

However, as Arctic ice melts at increasingly rapid rates and China's excessive claims in the South China Sea (SCS) threaten freedom of the seas, sovereignty, and stability of regional neighbors, the economic and national security implications of the United States' conspicuous absence on the list of State Parties to UNCLOS merit reexamination. Advocates in favor of the status quo claim U.S. accession to UNCLOS would, at best, not meaningfully contribute to enhancing national security or economic prosperity and, at worst, forfeit U.S. sovereignty and exclusive rights to natural resources, incur financial losses, and put national security at risk. However, close inspection of these arguments reveals that these concerns range from short-sighted to cavalier – dependent on a world order in which the United States remains an unchallenged international leader with the means to unilaterally wield diplomatic and military power in perpetuity. U.S. accession to UNCLOS would safeguard and, in some cases, expand U.S. sovereign rights over natural resources, enhance international credibility and diplomatic power, boost the economy, and stabilize the world order to harden the United States against future disputes from revisionist powers and threats to national security in the long term.

THE CRITICS: THE UNITED STATES HAS NOTHING TO GAIN

There are four primary arguments for maintaining the status quo in which opponents of accession claim that UNCLOS neither benefits nor harms the United States. The critique of each point below demonstrates the near-sighted nature of these claims.

1. Customary International Law and Existing Treaties Sufficiently Protect U.S. Interests

Critics claim the United States already enjoys the legal protections of UNCLOS as a matter of CIL (sovereignty within a 12 nm territorial sea (TTS), 200 nm EEZ jurisdiction, rights

of innocent/transit/archipelagic seal lanes passage, high seas freedoms, etc.) and exercises those rights unchallenged.[4] Additionally cited sources of U.S. legal legitimacy include both the 1945 Truman Proclamation (claiming jurisdiction over natural resources on the continental shelf) and the 1958 Geneva Convention on the Continental Shelf, which grants sovereign rights to seabed and natural resources "to a depth of 200 meteres or, *beyond that limit,* to where the *depth of the superjacent waters admits the exploration of the natural resources* of said areas."[5] Neither treaty limits U.S. continental shelf claims to 200 nm. If the United States desired to submit extended continental shelf (ECS) claims under the provisions of UNCLOS, the United States is not required to be a party to the convention to do so.[6]

However, this argument discounts the nature of CIL as an evolving body of law, subject to changes in state practice, the concept of *opinio juris* ("a sense on behalf of a state that it is bound to the law in question"), and the changing landscape of the Arctic due to climate change.[7] While the United States has exercised high seas freedoms and enjoyed unchallenged sovereignty over natural resources in its Arctic waters, as ice melts, the United States becomes more vulnerable to disputes that could arise due to changes in state practice if it continues to operate outside of UNCLOS. Excessive baseline claims of Russia and Canada already stand to restrict transit passage rights as international straits become increasingly hospitable to trade (Northwest Passage, straits in the Northern Sea Route, etc.).[8] China is also joining the race to develop

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[4] Raul Pedrozo, "Is It Time for the United States to Join the Law of the Sea Convention," *Journal of Maritime Law and Commerce* 41, no. 2 (April 2010), 155-156, accessed 12 December 2022, HeinOnline.
[5] 1958 Geneva Convention on the Continental Shelf and U.S. President, "Proclamation 2667 – Policy of the United States with Repsect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf," quoted in Raul Pedrozo, "Is It Time," 151-152.
[6] Raul Pedrozo, "Is It Time," 152, 156.
[7] Cornell Law School Legal Information Institute, "Customary International Law," Wex Legal Dictionary, accessed 05 January 2023, https://www.law.cornell.edu/wex/customary_ international_law. https://www.law.cornell.edu/wex/customary_international_law
[8] Raul (Pete) Pedrozo, "Artic Climate Change and U.S. Accession to the United Nations Convention on the Law of the Sea," *International Law Studies*, no. 89 (2013), 768, accessed 12 December 2022, HeinOnline.

economic interests in the Arctic through its observer status on the Arctic Council. Through this venue, China intends to assert itself as a "near Arctic State," pursuing the development of new shipping routes and invoking UNCLOS to justify researching and exploiting access to natural resources in the Arctic as "inherited wealth for all humankind."[9] All three nations – Russia, Canada, and China – intend to maximize ECS claims as access and industrial development beyond 200 nm become more feasible as the ice melts and technology improves.[10] The resultant conditions for ambiguity cannot be adjudicated by CIL alone as it is less predictable, less measurable, and "certainly not as efficient in resolving disputes between sovereigns for maintaining global order."[11] Because the International Seabed Authority (ISBA) has regulatory power beyond 200 nm under UNCLOS, U.S. failure to sign the convention could allow competing nations to "undercut U.S. claims and receive ISBA license to extract resources in areas that otherwise could be under exclusive jurisdiction."[12] While the United States can make ECS claims as a "coastal state" without being a party to the convention, signing UNCLOS would provide the added benefit of shielding the United States with legal protections to prevent future diplomatic entanglements that could escalate to military conflict.[13]

2. The United States Should Continue to Influence Oceans Policy Through Existing Institutions

Citing a winning U.S. track record for negotiating within the existing International Maritime Organization (IMO) and the success of bilateral maritime agreements, opponents of

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[9] Raul (Pete) Pedrozo, "Artic Climate Change," 767.
[10] Raul (Pete) Pedrozo, "Artic Climate Change," 767.
[11] John A. C. Cartner and Edgar Gold, "Commentary in Reply to 'Is it Time for the United States to Join the Law of the Sea Convention'," *Journal of Maritime Law & Commerce*, 1, no.42 (January 2011): 59, 66, accessed 07 January 2023, HeinOnline.
[12] Raul (Pete) Pedrozo, "Artic Climate Change," 767.
[13] Kevin A. Baumert, "Article 76 of the UN Convention on the Law of the Sea: Parties and Non-Parties," *International Law Studies*, no.99 (2022): 987. Accessed 21 March 2023, HeinOnline.

UNCLOS claim that membership in an additional governing body is superfluous to advancing U.S. interests. Through the IMO (a "one nation-one vote" body) and despite opposition from some NATO allies, the United States successfully secured exemptions for warships and government vessels from mandatory routing and position reporting regulations under the Safety of Life at Sea Convention (SOLAS) that would limit freedom of movement and compromise security.[14] U.S. bargaining power is also the bulwark sustaining current bilateral agreements regarding deep-seabed mining and maritime boundary claims (most significantly with Russia and Canada). From this position of diplomatic strength, opponents argue that a seat on the Commission on the Limits of the Continental Shelf (CLCS), as provided by UNCLOS, is not needed to influence maritime policy, as business can and should be conducted as usual within the IMO and on a state-by-state basis.[15]

The United States should continue exerting influence through the IMO. But, bilateral agreements are a half-measure compared to the solid legal standing provided by UNCLOS in international negotiations to ensure U.S. maritime claims remain unchallenged in the future. While the United States has an existing maritime boundary agreement with Russia regarding the North Pacific Ocean, Bering and Chukchi Seas, and Arctic Ocean, this agreement is only "provisionally applied through an exchange of diplomatic notes pending ratification by the Russian Duma."[16] With no guarantee, given the deteriorating diplomatic relationship with Russia since the invasion of Ukraine, U.S. interests in the Arctic are anything but secure. Failure

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[14] Raul Pedrozo, "Is It Time," 161-162.
[15] Ibid, 151-153, 162; Ted R. Bromund, James Jay Carfano, and Brett D, Schaefer, "7 Reasons U.S. Should Not Ratify UN Convention on the Law of the Sea," *The Heritage Foundation*, 04 June 2018, https://www.heritage.org/node/4953381/print-display. Note: CLCS is the deliberating body for ECS claims.
[16] U.S. President, *The Agreement with the Union of Soviet Socialist Republics on the Maritime Security Boundary* quoted in Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary on 'Is it Time for the United States to Join the Law of the Sea Convention?'," *Journal of Maritime Law & Commerce,* 4, no. 42 (2011), 492, accessed 07 January 2023, HeinOnline.

to ratify UNCLOS and take a seat on the CLCS is contrary to national security and economic interests. It opens the U.S. up to security risks stemming from unresolved disputes in the Arctic. The United States is forgoing an "opportunity to extend its national jurisdiction over a vast amount of ocean area on its Arctic [coasts]" – the Extended Continental Shelf (ECS) of the U.S. – "while simultaneously abdicating an opportunity to have a say in deliberations over other nation's claims elsewhere."[17] The concern is less about what the United States can enforce now, but rather how to best diplomatically position itself to assert territorial sovereignty and effectively counter excessive claims in the Arctic (and other strategically significant contested areas like the SCS) in the future.

3. The U.S. Navy is the Most Effective Tool to Protect U.S. Rights and Defend High Seas Freedoms

Similarly short-sighted is the argument that the U.S. Navy will continue to carry the water enforcing jurisdiction over marine resources and exercising freedom of navigation on the high seas. From think tanks and legal experts, to Donald Rumsfeld during Senate Foreign Relations Committee testimony on U.S. accession to UNCLOS in 2012, time and again, U.S. naval superiority is invoked as a guarantee: "…our Navy has done quite well without this treaty for the past two hundred years, often relying on centuries-old, well-established customary international law to assert navigational rights. Ultimately, it is our naval power that protects international freedom of navigation."[18]

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[17] Scott G. Borgerson and Thomas R. Pickering, "Climate Right for U.S. Joining Law of the Sea Convention," *Council on Foreign Relations*, 22 December 2009, https://www.cfr.org/expert-brief/climate-right-us-joining-law-sea-convention.

[18] Donald Rumsfeld, "UNCLOS Advocates Mistaken," *Hampton Roads International Security Quarterly*, 01 July 2012, 56, accessed 07 January 2023, ProQuest; Ted R. Bromund,"7 Reasons,"; Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary," 509-510.

But, reliance on the U.S. Navy is an "all-eggs-in-one-basket" approach that assumes unchecked naval superiority and ignores other instruments of national power. Rapid modernization required to check the rise of revisionist powers like China costs money, but in an era of unstable funding, keeping a competitive edge at sea is at risk. As the Chief of Naval Operations assessed in 2020: "our competitors are not slowing down…the answer has been to study the competition, create a plan, adequately fund the plan, then execute the plan. But the lack of stable and predictable funding has taken a 'tremendous toll on the ability to execute'."[19] Given the funding environment, the U.S. Navy cannot go-it-alone. While the Freedom of Navigation Program (FON) is effective in preventing excessive claims from becoming carved into CIL with "frequent operational challenges by DoD ships and aircraft," the United States must build diplomatic credibility for this approach to remain effective.[20] Failure to sign UNCLOS "undercuts US credibility internationally as a reliable negotiating partner" giving the impression "that the US propounds, urges, uses its bully pulpit, negotiates strongly, and then fails to follow through."[21] Signing UNCLOS would give the United States leverage during the "routine, firm and targeted diplomatic protests" that accompany FON operations, and build credibility when enlisting international partners to join naval enforcement efforts. [22]

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[19] Ian Livingston, "Order From Chaos: How to ensure that the U.S. Navy remains effective." *Brookings* (blog), 03 May 2017, https://www.brookings.edu/blog/order-from-chaos/2017/05/03/how-to-ensure-that-the-u-s-navy-remains-effective/.
[20] Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary," 494.
[21] John A. C. Cartner and Edgar Gold, "Commentary," 63, accessed 07 January 2023, HeinOnline.
[22] Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary," 494.

4. The United States Already has Legitimate Claim and Access to the Majority of Natural Resources within its Territorial Seas (TTS) and Exclusive Economic Zone (EEZ)

This final argument is based on the near-sighted assertion that most U.S. resources are already located in undisputed territory within the existing 200 nm EEZ. However, as geological surveys and studies evolve, estimates are changing. Whereas the 2002 US Geological Survey (USGS) Arctic report placed "the overwhelming majority of likely oil and gas reserves…on land, in the 12 nm territorial sea or within the 200 nm EEZ," a 2008 USGS assessment estimated that potential resources beyond 200 nm – and potentially overlapping with Russian claims – are not insignificant.[23] According to these updated estimates, the portions of these undiscovered resources that the United States could claim on its ECS beyond 200 nm "account for over 40 million barrels of oil, 284 billion cubic feet of natural gas, 6.5 million barrels of natural gas liquids and 94 million barrels of oil and oil-equivalent natural gas."[24]

Coupled with accelerated ice melt in the Arctic, ease of access to trade routes and resources is rapidly opening possibilities for economic development, but also for potential competition and conflict with Russia and China. The United States is in a race to the drawing board not only for natural resources in an area that contains "an estimated quarter of the world's remaining hydrocarbon reserves," but also to establish the rules for an Arctic regime of either increased regulation or free navigation and unimpeded trade.[25] The criticality of U.S. accession to UNCLOS, in this case, is two-fold, as it would allow the United States to: 1) establish a legal, internationally recognized ECS claim that would "forestall encroachment of U.S. ocean

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[23] Raul Pedrozo, "Is It Time," 154.
[24] Raul (Pete) Pedrozo, "Artic Climate Change," 763-764.
[25] Scott G. Borgerson, "Climate Right for U.S."

resources by China or any other nation;" and 2) be best positioned to shape a "properly codified regulatory system" as a participant in the CLCS to continue to advocate for U.S. interests.[26]

THE CRITICS: THE UNITED STATES HAS EVERYTHING TO LOSE

On the more extreme end of the spectrum, opponents of UNCLOS claim that U.S. accession to the treaty would result in economic losses and a proliferation of security risks. Again, the following analyses critique each of these concerns in turn.

1. Loss of Sovereignty

Most damning, in the eyes of critics, is the perceived relinquishment of sovereignty that the provisions of UNCLOS demand from state parties to the treaty; specifically, fear of submitting dispute resolutions to a jurisdiction hostile to American interests during mandated arbitration procedures and the decision-making power granted to the International Seabed Authority (ISBA). Brought forward in the Minority Views of the Senate Committee on Foreign Relations in 2007, UN corruption scandals and General Assembly voting records (at rates of alignment with the United States under 20%), were cited as evidence of organizational bias against the United States.[27] Concerns regarding the ISBA were also raised and echoed five years later by Donald Rumsfeld, who viewed the organization as a "global governance institution that would regulate American citizens and business, but which would not be accountable politically

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[26] Raul (Pete) Pedrozo, "Artic Climate Change," 767; John A. C. Cartner and Edgar Gold, "Commentary," 60.
[27] Senate, *Convention on the Law of the Sea Report to Accompany Treaty Doc. 103-39,* 110th Cong., 1st sess., 2007, 26. Note: Provisions in UNCLOS allow the Secretary General to assign an arbitrator in the event the disputing nations cannot agree on an arbitrator.

to the American people," specifically regarding payment of fees for deep sea-bed mining and monetary contributions from profits made exploiting resources beyond 200nm.[28]

However, a critical nuance these concerns fail to address is that the United States, quite literally, gets a vote. Included in an implementing agreement to UNCLOS adopted in 1994, the United States would have a permanent seat on the ISBA – the key decision-making authority.[29] Interpreted as a net *gain* in sovereignty, while the United States would indeed submit to the jurisdiction of an international organization in the event of a dispute and pay fees to the governing body of ISBA (to be addressed in more detail in the following argument), it would, in fact, have significant ability to influence the deliberations as a part of that body. Not only would the United States be best positioned to advocate for *U.S.* claims, but also to adjudicate the claims of other nations, effectively extending national jurisdiction to other areas of strategic importance.[30] It can be further interpreted as a *loss* of sovereignty if the U.S. does not become a party to UNCLOS, as discussed in the preceding arguments – U.S. influence over the claims of other nations is diminished by self-imposed isolation as an ISBA absentee.[31]

2. Economically Disadvantageous

In addition to issues of sovereignty, critics of UNCLOS decry "taxation without representation" and cite objections from U.S. industry as insurmountable obstacles to ratification. UNCLOS opponents claim that accession to the treaty would penalize U.S. companies mining and drilling in the ECS by mandating the transfer of "a significant share of all royalties" to the

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[28] Ibid, 25; Donald Rumsfeld, "UNCLOS Advocates Mistaken," *Hampton Roads International Security Quarterly*, 01 July 2012, 56, accessed 07 January 2023, ProQuest.
[29] Senate, *Convention on the Law of the Sea Report,* 16.
[30] Scott G. Borgerson and Thomas R. Pickering, "Climate Right for U.S."
[31] John A. C. Cartner and Edgar Gold, "Commentary," 58-59.

ISBA. Further objections by these critics complain that the subsequent redistribution of profits to "landlocked countries" and "corrupt and undemocratic people" would be unfair and antithetical to U.S. values and result in a significant loss of billions of dollars in revenue to the U.S. Treasury.[32]

Not only is this a mischaracterization of where U.S. industry stands on UNCLOS and the extent and adjudication of fees due to the ISBA, but it is also excessively short-sighted considering the long-term economic gains that accession to the treaty would provide. In fact, U.S. oil and gas industries have stated they will not invest in offshore production unless the United States becomes a party to UNCLOS, citing a desire to have the legal assurance of a US seat on the ISBA.[33] Additionally, despite U.S. investments totaling more than $200 million to explore, obtain, and secure international recognition of five deep seabed mining sites, "three of those sites lie abandoned and the other two are on hold with zero chance of activity absent United States adherence."[34] By remaining a non-party, the United States loses out on opportunities in the Arctic that studies predict would "create an average of 54,700 new jobs per year, result in a total of $145 billion in new payroll nationwide, and generate a total of $193 billion in government revenue."[35] On balance, the cap on ISBA royalties at seven percent is arguably less costly than foreign oil dependence and the self-imposed economic losses the U.S. has inflicted on itself by effectively putting the "deep seabed mining industry out of business" and cutting off access to critical mineral resources.[36]

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[32] Senate, *Convention on the Law of the Sea Report,"* 25; Ted R. Bromund, "7 Reasons"; Donald Rumsfeld, "UNCLOS Advocates Mistaken."
[33] Raul (Pete) Pedrozo, "Artic Climate Change," 764.
[34] John Norton Moore, "Testimony," House, *United States Adherence to the Law of the Sea Convention: A Compelling National Interest: Testimony before the House Committee on International Relations,* 108th Cont., 2nd sess., 2004, accessed 31 March 2023, unclosdebate.org.
[35] Ibid, 764.
[36] Ibid, 764; John A. C. Cartner and Edgar Gold, "Commentary," 60; *United Nations Convention on the Law of the Sea 1982*, Article 82; John Norton Moore "Testimony."

As for the perceived unfairness of royalties and lack of representation, the United States would have a permanent seat in the ISBA to determine where that money is distributed. And if burdens on the taxpayer are genuinely a concern, the United States could wield influence on the ISBA to offset foreign aid commitments by distributing ISBA revenues to those countries vice levying a new requirement on U.S. taxpayers.[37] It follows that the United States – quite literally – can no longer afford not to ratify UNCLOS.

3. Damaging to National Security

While multifaceted, the major lines of this final argument posit that UNCLOS impedes military operations for mission sets like Maritime Interdiction Operations (MIO) and piracy, inhibits counter-proliferation efforts, and prioritizes environmental protection over military readiness. Frequently cited UNCLOS articles highlight that MIO enforcement operations are blunted when forces are unable to enter TTS (where these offenses most often occur) else they violate coastal state sovereignty (Article 2) and are required to "break off hot pursuit of a vessel engaged in piracy on the high seas when that vessel enters the territorial sea of its own state or of a third state" (Article 111).[38] Most damningly, opponents argue that UNCLOS significantly curtails nuclear counter-proliferation efforts under Article 92, which requires warships to have the permission of the flag state to board and search a vessel suspected to be in violation of UNSCRs banning arms transfers (e.g. the DPRK) – permission not likely to be granted.[39] Finally, critics maintain that compliance with environmental provisions in UNCLOS would preclude national security actions, open the United States up to "politically motivated lawsuits,"

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[37] Raul (Pete) Pedrozo, "Arctic Climate Change," 765.
[38] Raul Pedrozo, "Is It Time," 156-157.
[39] Ibid, 157-158.

and degrade military readiness by limiting the operating environment, thus restricting the ability to conduct realistic training.[40]

Not only are these narrow, short-sighted concerns, but they can be addressed by reviewing U.S. policy, harnessing the diplomatic leverage that ratifying UNCLOS would provide, and, in some cases, implementing changes domestically. Enforcement issues for MIO, piracy, and counter-proliferation efforts can be (and have been) overcome with bilateral agreements, including permission to board vessels, embark coastal nation ship riders onboard U.S. ships to assist with boarding efforts, and streamlining approvals for entering coastal nation TTS. The United States has over 40 counter-narcotics agreements in place, as well as ship boarding agreements with countries like Panama and the Marshall Islands (under whom the preponderance of shipping vessels register as "flags of convenience") as part of the Proliferation Security Initiative (PSI).[41] Signaling U.S. commitment to these missions by signing UNCLOS would only help further negotiations to increase our inventory of bilateral agreements and make these national security efforts more effective.

As for enforcement of UNSCRs against countries like the DPRK, the resolutions themselves are flawed in that they rely on flag state consent from countries that are not likely to give it (e.g. China, Iran, Russia, DPRK, etc.). While UNCLOS imposes a requirement for flag state consent, this limitation can be nullified by an appropriately worded UNSC resolution that

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[40] Ted R. Bromund, 7 Reasons,"; Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary," 500.
[41] Staff Judge Advocate, U.S. Southern Command, "Maritime Counter-Narcotics Agreements." *International Law Studies,* no. 89 (2022), 355, accessed 26 January 2023, HeinOnline; U.S. Department of State, "Ship Boarding Agreements," accessed 26 January 2023, https://2009-2017.state.gov/t/isn/c27733.htm; *Merriam-Webster.com Dictionary,* "s.v. "flag of convenience," accessed 27 January 2023, https://www.merriam-webster.com/dictionary/flag%20of%20convenience. NOTE: Flag of convenience is defined as the "registry of a merchant ship under a foreign flag in order to profit from less restrictive regulations." Agreements with Panama, the Marshall Islands, and other similar flag states allow broader access to enhance enforcement efforts.

authorizes boardings of these vessels without flag state consent to enforce sanctions.[42] While politically unlikely, since both Russia and China also have veto power in the UNSC, the ineffectiveness of sanction enforcement cannot be laid at the door of UNCLOS. As for environmental concerns, many of those limitations are self-inflicted and imposed via domestic legislation (i.e. designation of marine national monuments and protection of marine mammal habitats).[43] This tension between the environmental and national security priorities is due to uneven ocean policy across parties and spanning administrations, with both Congress and the Executive branch, in some cases, ignoring DoD recommendations when passing environmental legislation.[44] Again, in this case, the power to address the imbalance between national security concerns and environmental protection is within the sole jurisdiction of the United States and not inhibited by signing UNCLOS.

CONCLUSION AND RECOMMENDATIONS: ACCESSION TO UNCLOS IS IN THE BEST INTEREST OF THE UNITED STATES

UNCLOS "is not a panacea" for solving maritime disputes, protecting jurisdiction over natural resources, guaranteeing economic prosperity, or enhancing national security.[45] However, U.S. accession to UNCLOS would not inherently damage national interests but would, instead, be a force multiplier to most effectively achieve objectives outlined in the most recent National Security and Defense strategies – to maintain a "free, open, prosperous, and secure international order."[46] To achieve the strategic vision of "integrated deterrence" against adversaries like

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[42] Raul (Pete) Pedrozo, "DPRK Maritime Sanctions Enforcement," *International Law Studies*, no. 96 (2020), 110-112, accessed 26 January 2023, HeinOnline.
[43] Raul Pedrozo, "Is It Time," 160.
[44] Ibid, 159-160.
[45] Ibid, 160.
[46] U.S. President, *National Security Strategy, October 2022* (Washington, DC: White House, 2022), 10.

Russia and China, who challenge this goal – maximizing coordination and marshaling the capabilities of allies cross-domains, cross-agencies, and across regions – the United States needs to ratify UNCLOS.[47] However, while signing UNCLOS will better enable this integration through strengthening international legitimacy, growing the U.S. economy, and sharpening both diplomatic and military tools, the United States also needs to take several additional steps to make good on the deterrence it wishes to project.

Most critically – in addition to working through existing international institutions like the IMO, continuing to build our inventory of bilateral security agreements, and investing in naval modernization, the United States needs to develop a "coherent" and strategic oceans policy that is not subject to near-sighted political whims and allows for deliberation on policy priorities.[48] Any ocean policy needs to consider not only critical environmental protection concerns, but also national security. To that end, the NSC must share the lead on ocean policy development with environmental agencies like the Council on Environmental Quality (CEQ), the National Oceanic and Atmospheric Administration (NOAA), and the EPA.[49] Ratification of UNCLOS "would be a substantial step forward by providing a comprehensive globally-accepted document that will assist the United States in developing an appropriate and coordinated national maritime policy. It would also very likely eliminate some of the inter-departmental barriers, rivalries, and disputes that often plague U.S. maritime policy-making."[50] To achieve critical objectives in service of national strategy – "Shaping the Rules of the Road," "Promote a Free and Open Indo-Pacific," "Maintain a Peaceful Arctic," and "Protect Sea, Air, and Space" – it is imperative that the United States accede to UNCLOS as a demonstration of international leadership, to secure the benefits it

[47] Ibid, 22.
[48] Raul Pedrozo, "Is It Time," 156.
[49] Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary," 502.
[50] John A. C. Cartner and Edgar Gold, "Commentary," 62.

is entitled to under the convention, and to establish a guiding lodestar to navigate by in developing a comprehensive ocean policy.[51]

[51] U.S. President, *National Security Strategy, October 2022* (Washington, DC: White House, 2022), 32, 37, 44-45; Raul (Pete) Pedrozo, "A Response to Cartner's and Gold's Commentary," 488.

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