

# ISSUE BRIEF

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## Law of the Sea Treaty: Bad for American Energy Policy

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The Obama Administration is pushing for accession to the U.N. Convention on the Law of the Sea (UNCLOS), which would expose the United States to baseless environmental lawsuits, including suits based on alleged U.S. contributions to global climate change. Accession would also require the U.S. to transfer billions of dollars in oil and gas royalties generated on its continental shelf to UNCLOS member states, particularly landlocked states and states that are the least developed.

The U.S. does not need to join the convention in order to access oil and gas resources located on its extended continental shelf (ECS), the Arctic, or the Gulf of Mexico. Instead, it can and should use bilateral treaties with neighboring countries to demarcate the limits of its maritime and continental shelf boundaries.

**Climate Lawsuits Costly for Americans.** Carbon dioxide is a clear, odorless, nontoxic gas whose impact on climate change is very much a subject for scientific debate.<sup>1</sup> In recent testimony, Secretary of State Hillary Clinton declared that joining UNCLOS would not force the U.S. to regulate carbon dioxide emissions. Yet the widely accepted principle of international law known as the “no-harm rule” obligates a nation to use its territory in such a manner that injury is not caused to persons or property located in another nation. In the context of environmental protection, the principle prohibits a nation from allowing pollution to escape its territory and damage another nation’s air, land, water, ecosystem, living resources, or inhabitants’ health. This rule would provide the legal basis for international climate lawsuits.

Acceding to UNCLOS would create an opportunity to pursue environmental lawsuits against the U.S. based on virtually any maritime activity, such as alleged pollution of the oceans from a land-based source or even through the atmosphere. Regardless of the case’s merits, the U.S. would be forced to defend itself against every such lawsuit—at great expense to U.S. taxpayers.

Not only that, but any adverse judgment in a climate change lawsuit that imposes penalties or forces the U.S. to curb greenhouse gas emissions would be extremely costly for American consumers. Since a large majority of our energy use comes from carbon-emitting fossil fuels, any emission control measures would increase costs for businesses that would then pass those costs on to consumers. To make matters worse, any adverse judgment would be final, not subject to appeal, and enforceable in the United States.<sup>2</sup>

**UNCLOS Not Needed for Expanded Oil and Gas Production.**

Proponents of UNCLOS argue that without joining the convention, the U.S. would be unable to demarcate the extent of its continental shelf beyond 200 nautical miles. This is simply untrue. The U.S. regularly demarcates the limits of its continental shelf and declares the extent of its maritime boundaries with presidential proclamations, acts of Congress, and bilateral treaties with neighboring countries.

As a result of bilateral treaties between the U.S. and Mexico, the Department of the Interior’s Bureau of Ocean Energy Management currently leases areas of the U.S. ECS in the Gulf of Mexico to American

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and foreign oil and gas companies for exploration and development.

The U.S. maintains jurisdiction and control over its ECS on a global basis and will do so regardless of whether it ever accedes to UNCLOS. It should take every action necessary to secure oil and gas resources located on its ECS in the Arctic Ocean, in the Gulf of Mexico, and throughout the world. The U.S. can accomplish this as a sovereign nation instead of joining UNCLOS and seeking the approval of the Commission on the Limits of the Continental Shelf, an international committee of geologists and hydrographers located at U.N. headquarters in New York City.

Moreover, accession to UNCLOS will result in billions of dollars in revenue distributed away from the U.S. Treasury to an international bureaucracy that would transfer the wealth to developing nations. Under current U.S. law and policy, all royalties and other revenue generated from exploitation of the U.S. ECS belong to the U.S. and would be deposited into the U.S. Treasury and dispensed in the best interest of the U.S. and the American people. Accession to the treaty would mean transferring a large portion of those royalties to the International Seabed Authority, an international organization established by UNCLOS and

seated in Kingston, Jamaica, which would in turn distribute the royalty revenue to various developing nations in a manner that might not advance U.S. national interests.

**Actions for the Federal Government.** The U.S. should take every action necessary to develop the oil and gas resources on its extended continental shelf. Furthermore, additional analysis is needed to address the potential legal, economic, and political consequences that an adverse judgment from an UNCLOS tribunal would have for the U.S. The federal government should:

- Conduct an interagency review of the convention's compulsory dispute resolution mechanisms to determine both the extent to which acceding to UNCLOS would expose the U.S. to baseless lawsuits and the potential economic and political costs that could result from accession;
- Hold oversight hearings on potential lawsuits and how an adverse judgment would affect U.S. environmental, economic, and military interests; and
- Reject UNCLOS and negotiate a series of bilateral boundary delimitation treaties with nations

with which it shares maritime and ECS boundaries.<sup>3</sup>

### **Harmful for America.**

Accession to UNCLOS would sacrifice American sovereignty by exposing our nation to baseless environmental lawsuits that would punish Americans both as taxpayers and as consumers. The treaty would further sacrifice sovereignty by requiring the U.S. to forfeit billions of dollars in oil and gas royalty revenue.

The U.S. should pursue oil and gas development as a sovereign nation, continuing the tradition of American Presidents in proclaiming the nation's maritime and resource rights and without acceding to a deeply flawed treaty or seeking the approval of an international commission of experts housed at the United Nations.

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1. Nicolas D. Loris, "How the 'Scientific Consensus' on Global Warming Affects American Business—and Consumers," Heritage Foundation *Background* No. 2479, October 26, 2010, <http://www.heritage.org/research/reports/2010/10/how-the-scientific-consensus-on-global-warming-affects-american-business-and-consumers>.

2. For a comprehensive analysis of how UNCLOS would expose the United States to climate change lawsuits, see Steven Groves, "Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. to Baseless Climate Change Lawsuits," Heritage Foundation *Background* No. 2660, March 12, 2012, [http://www.heritage.org/research/reports/2012/03/accession-to-un-convention-on-the-law-of-the-sea#\\_ftn25](http://www.heritage.org/research/reports/2012/03/accession-to-un-convention-on-the-law-of-the-sea#_ftn25).

3. For a comprehensive look at U.S. established jurisdiction over ECS and negotiating bilateral ECS delimitation treaties with nations, see Steven Groves, "U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources," Heritage Foundation *Background* No. 2660, March 12, 2012, <http://www.heritage.org/research/reports/2012/05/us-accession-to-un-convention-on-the-law-of-the-sea-unnecessary-to-develop-oil-and-gas-resources>.