


# Isegora Briefs

**January/February 2025**

**Prepared by the Isegora Briefs Team**



**“Promoting equal  
opportunity in  
debate through  
accessible resources  
for all”**

## **January/February 2024**

**Resolved: The United States ought to become party to the United Nations Convention on the Law of the Sea and/or the Rome Statute of the International Criminal Court.**

# Notes

**Special thanks to everyone on our team who has contributed to make this possible:**

**Names:**

**Brendan Finnegan (Founder and Director)**

**Elijah Winners**

**George Shubitidze**

**Henry Zhang**

**Madeleine Yuan**

**Neeraj Rao**

**Zora Tugai**

**Get on the email list for updates by filling out the following google form:**

<https://docs.google.com/forms/d/e/1FAIpQLScN0DeOZ7c2I2eo6j45i4yPvp2BRPqMN1iJ2AvOIN-LdjF-A/viewform>

**Goodluck debating!**

# Table of Contents

<b>January/February 2024</b>	<b>2</b>
Resolved: The United States ought to become party to the United Nations Convention on the Law of the Sea and/or the Rome Statute of the International Criminal Court.	2
<b>Notes</b>	<b>3</b>
<b>Table of Contents</b>	<b>4</b>
<b>Affirmative Evidence</b>	<b>7</b>
<b>UNCLOS</b>	<b>8</b>
Environment	9
US Introduction into the UNCLOS is a major step for a sustainable future	10
Specifically, international law solves ocean pollution	11
The UNCLOS is a global framework for Marine Environmental Protection and Cooperation	16
UNCLOS protects the environment	17
UNCLOS prevents climate change – Necessary for enforcement	18
UNCLOS is key to prevent ocean collapse through cooperative research	21
New international agreements fail---only increasing the strength of UNCLOS solves	23
UNCLOS will subject the United States laws that prevent overfishing	24
UNCLOS has a set of specific restrictions proven to decrease pollution in sea and land	25
Environmental collapse causes extinction through food, water, pollution, and climate	26
Miscellaneous	27
Ratifying UNCLOS provides a laundry list of political and strategic benefits to the US.	28
South China Sea	31
Tensions are rising in the South China Sea; China is becoming more unpredictable and there is high risk of escalation.	32
Conflict with China goes nuclear.	34
Nuke war causes extinction – mass famine kills billions.	36
UNCLOS solves – provides a framework for navigating the conflict without escalating to nuclear war.	37
Arctic	39
Melting Arctic ice is creating territorial disputes in the Arctic – conflict becoming increasingly likely and Russia will use nukes.	40
One nuke leads to retaliation, nuke war is certain	42
UNCLOS k2 conflict resolution in the Arctic	43
<b>ICC</b>	<b>46</b>
Human Rights	47
Trump hates the ICC; that strains ICC legitimacy.	48
ICC empirically decreases human rights abuses – studies prove.	49
The US looks hypocritical now.	50
The ICC's deterrent effect against human rights violations is empirically verified but can be expanded.	52
Ratifying the ICC reduces domestic human rights violations – strengthens the US.	54
Strengthening the ICC leads to greater prosecutions that empirically promote human rights.	55
Joining the ICC by becoming party to the Rome Statute signals US commitment to international justice and strengthens the ICC.	56
Kant	57
To 'become party to' is binding.	58
To 'become party to' accepts jurisdiction.	59

Ethic's can't begin in the natural world – First, is the is-ought gap. Statements about how the world is, like 'most people desire to maximize their own pleasure,' don't necessarily give us conclusions about how the world ought to be. _____	60
Second is intrinsic uncertainty in all empirical knowledge that means different agents can all justifiably adopt completely-different worldviews, making the moral consequences of those external worldviews non-universal. _____	61
Thus, my value is constitutive practical reason. Since agents are defined by choosing courses of action, we are constituted by our ability to exercise reason and make decisions a priori. This morality is universal, since non-agents cannot be posed practical questions and are thus morally irrelevant. _____	62
Practical reason is an inescapable authority, but alternatives are non-binding, since they're either internal and thus subjective, or external and thus escapable. _____	63
The unit of moral analysis is a maxim —that's three parts: it's a circumstance which begets an action for a reason. Actions absent reasons can't be morally relevant since they're equivalent to cosmic randomness. _	64
Thus, my Criterion/Standard is consistency with the categorical imperative. That asks us to universalize our maxim and determine if its universality defeats the point. If it does, it's self-contradictory since it's nonsensical to take an action and then expect other agents in identical scenarios to not take it. _____	65
Consequences fail – They use induction to justify induction, which is circular. _____	68
Even if they win everything else, empirically predictions fail. _____	69
Vote off on promise-breaking. The US agreed to become party under conditions that have been fulfilled. This evidence is from the U.S. chief diplomat who conducted the original negotiations. _____	71
That means our continued violation is a violation of our duty to uphold our promises. _____	72

## **Negative Evidence \_\_\_\_\_ 73**

### **ICC Bad \_\_\_\_\_ 74**

The ICC only targets African nations, allowing developed nations to get away with war crimes. _____	75
The ICC increases human rights abuses by not allowing the U.S. to intervene in other nations. _____	76
ICC involvement increases conflict. _____	77
The ICC is slow and ineffective. _____	78
The ICC's lack of enforcement means they will impede peace negotiations with prosecutions. _____	79
The ICC doesn't have a deterrent effect. _____	80
The ICC is always subject to the whims of other powerful states like China and Russia who have vetoing powers, it is influenced by politicking, and it hurts smaller states the most. _____	81
The ICC will always be seen as illegitimate. _____	83
Affirming the Court is not only illegitimate but also undermines American Constitutionality _____	86
The threat of prosecution risks US national security. _____	88
The US would be prosecuted, giving powerful enemies an advantage. _____	89
Trump responds to unfavorable ICC decisions with sanctions. _____	90
The US will never follow the ICC but fights back and further damaging international law's rule. _____	91
When the US breaks ICC policy it agrees to, it sets the norm that ILAW is meaningless. _____	92

### **UNCLOS Bad \_\_\_\_\_ 93**

The US joining UNCLOS hurts the economy. _____	94
UNCLOS wrecks US seabed mining. _____	95
UNCLOS subjects all of American Interests in the Ocean to Committees and the International Community__	96
Ratifying UNCLOS forces the US to share resources and technology with other countries – decreases profit and implodes national security. _____	97

### **Settler Colonialism K \_\_\_\_\_ 99**

Settler colonialism is the permeating structure of the nation-state reliant on the elimination of indigenous life and land through the occupation of settlers turning Natives into ghosts and chattel slaves into excess labor. _____	100
---	-----

All of IR and foreign policy is built on settler colonialism. Indigenous peoples are erased by being cast as domestic, primitive, and landless. The aff's foundational assumptions around IR are complicit in the destruction of Native life and governance. _____	102
The 1AC's focus on human rights is an attempt to distract you from the underlying erasure of indigenous people. Their call for human rights within a settler schema only sustains the settler state. _____	107
The call to ratify UNCLOS is just another chapter in the story of indigenous marine dispossession where the setter independently creates their own claims to jurisdiction that exclude natives and justify the extension of power through western legal mechanisms. _____	108
Thus, decolonization is the only alternative. _____	111

## **Affirmative Evidence**

**UNCLOS**



## **Environment**

## US Introduction into the UNCLOS is a major step for a sustainable future

**Smith 17** [Leland Holbrook Smith, Investment Banking Associate at Jones Lang LaSalle Incorporated, Masters in Marine Affairs from Rhode Island University, J.D. from Georgetown University; September 2017, "To accede or not to accede: An analysis of the current US position related to the United Nations law of the sea," Marine Policy, Vol. 83, <https://doi.org/10.1016/j.marpol.2017.06.008>, MBA AM 5.3]

. Economics part 1 – natural resource access Riparian nations that rely on the resources off their coast typically desire to maintain ownership of their coastal waters often referred to under a principle known as Mare Clausum, or closed seas [66]. Aquaculture and fisheries assure livelihoods for 10–12% of the global population, and more than 90% of capture fisheries employees work for small-scale operations in developing nations [67]. Expert analysts argue that the US should protect the smaller nations of the world against larger more powerful nations, “by more aggressively defending 200- mile exclusive economic zones” [68]. The question is how to accomplish that objective. Some of these same analysts suggest using special operations military forces to conduct attacks on larger nations’ encroachment in smaller nations in conjunction with bilateral agreements between the US and smaller nations. Neither of those suggestions address the root causes or provide a sustainable long term solution for territorial expansion the way UNCLOS does. UNCLOS provides economic power simply by establishing a balanced, uniform, and agreed upon rule of law. Preserving UNCLOS enables the US and much smaller nations access to market through this agreed upon law. Economist Hernando de Soto Polar explained the influence of law over economic prosperity, “the moment Westerners were able to focus on the title of a house and not just the house itself, they achieved a huge advantage over the rest of humanity” [69]. In poorer countries, where the rule of law is less strict or uniform, a family can live in a house for generations, but never truly own the property. It is the law that gives that family the power and the wealth to meet basic needs. In an increasingly globalized world, it is therefore critical for UNCLOS to survive. In addition to enhancing economic growth, UNCLOS provides stipulations for pollution regulation and the preservation of natural resources. If countries are to continue to extract resources, we must have agreements on how to do so in a sustainable manner. UNCLOS Part VII Section 2 provides conservation practices for the high seas, while Part XII provides in-depth robust coverage of the protection and preservation of the marine environment. As the convention loses steam, so do these provisions. By signing UNCLOS the US will reinvigorate these laws and the many policies that have been derived from them, taking a major step toward a sustainable future for the resources of the ocean.

## Specifically, international law solves ocean pollution

**Zang et al 23** [Li, Siyu, Jinke Li, and Jinshuai Zhang 2023. "International Legal System: Marine Pollution." *SHS Web of Conferences* 174: 03020. <https://doi.org/10.1051/shsconf/202317403020>]

Since the mid-twentieth century, environmental issues have evolved into a global problem, whose diffuse and transboundary nature has led to a recognition of the limits of sovereignty and the inadequacy of government capacity, and the international community has begun to look at environmental issues as a whole. The habit and tradition of letting the oceans take in human waste has led to the fact that almost all of the planet's oceans are now filled with litter, from the poles to the equator, from coastal bays to submarine riverbeds. The accumulation of marine litter, and in particular plastic litter, is considered to be a global environmental problem that needs to be addressed, along with many more important issues of our time. Despite the international community's efforts over the last two decades to develop effective mechanisms to combat marine pollution, such as the use of markets, social management and administrative orders. However, the problem of marine litter pollution has not improved, and is tending to worsen. International law is an institutional arrangement of legal rights [6], obligations and responsibilities that provides a common system and framework for cooperation between states and enables them to conduct international relations in accordance with a commonly agreed 'consent'. In the conduct of international environmental affairs, international environmental law regulates transboundary environmental relations between states through rules, principles and the operation of various norms, usually in the form of international treaties, agreements and international documents such as soft law. Current plastic products are mainly produced from petroleum, a non-degradable material. It will take hundreds of years for plastic waste to completely degrade after entering the natural environment. In other words, plastic waste will exist in the marine environment for a long time and will weather and degrade into plastic fragments and microplastics under the action of solar radiation and seawater washing [1]. These plastic fragments and microplastics are causing serious damage to the marine environment, society, economy and human health. About 70% of plastic litter enters the sea floor, 15% floats on the surface and 15% washes up on beaches [8,6]. Firstly, plastic litter floating on the sea surface and beaches not only causes visual pollution of the marine landscape, but also degrades the quality of seawater. Secondly, plastic litter entering the seabed can degrade or destroy the habitat of marine organisms and can entangle marine animals, causing damage or even death, or be accidentally ingested by marine organisms, leading to blockage of their digestive tracts. The most obvious socio-economic impact of marine plastic litter is the economic damage it causes. In particular, marine fisheries, including marine fishing and mariculture, are an important industry for the economic development of countries around the South China Sea, and the annual loss due to marine pollution is approximately US\$69.25 million. In addition, the large amount of floating plastic litter can also damage the ship's power plant and hinder the ship's progress. Plastic debris that settles to the sea floor can form shoals and cause ship strikes. The annual cost of damage to ships, stoppages [3], port management and emergency operations caused by marine plastic litter to commercial shipping vessels is estimated at US\$297 million. In addition, plastic pollution can reduce the aesthetic value of coastal tourism and even its profitability. In Vietnam's world-famous tourist town of Da Nang, for example, thousands of plastic bags and bottles pile up on the beach after each high tide or high wave, making it less attractive to tourists. The degradation of plastic waste into plastic debris and microplastics in the ocean not only affects marine life, but most importantly, these plastic particles are ingested by marine life and remain in the bodies of these marine organisms, potentially allowing humans to ingest plastic when they consume plastic-contaminated food. The most common are aquatic products such as shellfish, mussels and oysters, which are consumed in conjunction with the ingestion of plastics, ultimately endangering human health. In Indonesia, 28% of fish and 33% of shellfish products assessed for human consumption were found to contain plastic. In 2018, the New York Times reported that microplastic particles of nine different materials were detected in humans, including the most common

polypropylene (PP) and polyethylene terephthalate (PET) [92]. In the long run, humans will eventually become "plastic people" in name only. Microplastics entering the human body can aggravate respiratory diseases, increase the risk of heart disease and damage the nervous system.

### 3 FRAGMENTATION IN THE LEGAL REGULATION OF MARINE POLLUTION

At a macro level, global international legal instruments dealing with marine plastic litter pollution are fragmented, either addressing only one source of marine plastic pollution or regulating only a specific activity that pollutes the oceans. Existing global-level rules to address marine plastic pollution are scattered across different types of multilateral environmental agreements or non-legally binding legal instruments. UNCLOS, GAP and the Honolulu Strategy are marine environment protection oriented instruments that address the issue of marine plastic litter from the perspective of protecting the marine environment. The London Convention and its Protocols and MARPOL are pollution-oriented instruments, the former regulating the pollution of the oceans by dumping plastic waste and the latter regulating plastic pollution from ships. These international legal documents, although they can provide legal support for the prevention and control of marine plastic waste pollution, do not take the reduction of marine plastic waste pollution as their legislative concept or legislative purpose, and cannot provide a mandatory, authoritative and comprehensive international legislative framework and governance mechanism. At a micro level, global legal instruments lack a specific international treaty to regulate land-based sources of pollution, the main source of marine plastic litter, and existing governance rules are either limited in scope or not legally binding, and fragmented. UNCLOS proposes to regulate land-based sources of pollution into the oceans, but only contains a simple provision in principle, with specific rules to be implemented by States Parties in their national legislation. Furthermore, there are exemptions and opt-out clauses in UNCLOS that further limit the effectiveness of this most obvious regulation of land-based sources of marine plastic litter. The London Convention and its Protocols only regulate the loading onto ships and intentional dumping of land-based plastic waste at sea, not the dumping of plastic waste in rivers and estuaries. The GAP is a non-binding intergovernmental mechanism that cannot fundamentally stop land-based plastic waste from entering the oceans if countries take action based on their own good intentions. Agenda 21, which provides for the prevention, mitigation and control of marine environmental degradation from land-based sources, also suffers from a lack of legal binding force and is inevitably limited in its effectiveness. In summary, whether analyzed at the macro level or at the micro level, the existing rules for the prevention and control of marine plastic litter pollution reflect a clear fragmentation. International legal instruments on marine plastic pollution prevention and control should comprehensively regulate marine plastic pollution from different sources and coordinate the actions of different stakeholders at international, regional and national levels [109]. This requires greater cooperation and coordination among relevant international legal instruments in combating marine plastic litter pollution, but coordination among them is not easy to achieve due to the lack of uniformity in the purposes, parties and actions of legal instruments to combat marine plastic pollution.

### 4 INADEQUATE OF REGULATION AND LEGAL ENFORCEMENT IN MARINE POLLUTION LEGISLATIONS

The Global Environment Report on the Rule of Law, published by UNEP, bluntly states that the lack of full implementation of environmental protection laws and regulations is one of the key challenges to continued environmental degradation. Existing global rules on the prevention and control of marine plastic litter, either due to inconsistent enforcement standards or inadequate disciplinary mechanisms, have not been fully implemented by countries and are not sufficient to prevent acts that lead to marine plastic pollution [9]. The existing international legal rules on the prevention and control of marine plastic litter pollution are not implemented to a uniform standard. For example, the UNCLOS places an obligation on States Parties to adopt domestic legislation to prevent, reduce and control pollution from six different sources of marine plastic litter. The London Convention, for example, requires parties to take "all practicable steps" to prevent pollution of the marine environment through the dumping of plastic waste. In addition, many countries are reluctant to acknowledge their own plastic emissions, with developed Western countries

arguing that it is the uncontrolled discharge of plastic waste into the oceans by developing countries that has led to the current increase in pollution, and developing countries arguing that it is the continued discharge of plastic waste into the oceans by developed countries in the early stages of development that has led to the increase in pollution, which has to some extent hindered the progress of implementation by countries. Existing international legal rules on marine plastic litter pollution have inadequate disciplinary mechanisms. MARPOL does not directly provide for disciplinary mechanisms, which are established by States Parties in their national legislation. However, an analysis of some of the countries that have established fines in their relevant domestic legislation under MARPOL is not sufficient to deter offenders. For example, the United States has adopted domestic legislation in accordance with MARPOL, but it has a number of shortcomings and plays a more limited role: first, it is limited in its application. The provisions of the disciplinary mechanism do not apply to non-commercial vessels providing services to the government, warships, and vessels that illegally dump in waters under their jurisdiction without flying their flag and refuse to provide relevant information when inspected cannot be inspected. UNCLOS provides for the prevention and control of marine plastic waste pollution at a macro level, but it is not clear how detailed the laws and regulations enacted by each country to reduce marine plastic waste pollution should be and how the effectiveness of the laws and regulations enacted by a country to reduce marine plastic pollution should be judged [8]. However, there is much room for interpretation as to how detailed the laws and regulations enacted by countries to reduce marine plastic pollution should be, how to judge the effectiveness of the laws and regulations enacted by a country to reduce marine plastic pollution, and how to assess whether the countries have reasonably fulfilled their obligations to prevent and control marine plastic waste pollution, and what international responsibility they should bear for not enacting these laws and regulations. These principles and ambiguities make the obligations set out in the Convention less likely to provide clear normative guidance for combating marine plastic litter pollution [5].

#### 5 ABSENCE OF LEGAL LEGISLATION IN THE MARINE POLLUTION

The lack of a legally binding treaty on the prevention and control of plastic waste pollution in the South China Sea makes the legal basis for cooperation on the prevention and control of marine plastic waste pollution very weak and the results are not satisfactory. The current series of declarations, action plans, declarations and other legal documents are highly flexible, but lack the legal force to create the necessary deterrence for countries around the South China Sea to ensure the orderly implementation of regional cooperation in the prevention and control of marine plastic waste pollution. The current action plan on marine plastic waste pollution in the South China Sea provides operational guidelines for neighboring countries [4], but it is only a small step in the fight against marine plastic waste pollution and is better than nothing in terms of reducing marine plastic waste pollution at the root. Some countries around the South China Sea have already introduced national action plans or management plans for marine plastic management, with specific targets for reducing marine plastic litter pollution. For example, Indonesia's National Action Plan on Marine Litter 2017 2025 proposes to reduce marine plastic litter by 70% by the end of 2025, while Vietnam's National Action Plan on Marine Plastic Litter Management by 2030 aims to reduce marine plastic litter by 75% by 2025 [2]. However, due to the lack of regional guidelines, countries can only act according to their own standards, without achieving synergies, resulting in uneven results. To reduce the amount of plastic waste entering the oceans by around 23% at a regional level, all countries would need to reduce their marine plastic waste by 80%. Currently, the vast majority of neighboring countries are focusing on improving solid waste collection and management to combat marine plastic litter pollution, however, improving waste management infrastructure requires significant investment, which is a challenge for low- and middle-income countries [7]. This is why cooperation on marine plastic litter prevention and control in the South China Sea, through the legally binding framework convention on marine plastic litter, is particularly necessary [9]. Regional cooperation to combat marine plastic litter is more advantageous than global multilateral cooperation or bilateral cooperation between countries. Although

global multilateral cooperation includes more participants, the willingness and capacity of each participant to take part in marine plastic litter pollution control varies, making it difficult and time-consuming to form a unified action at the global level. Bilateral cooperation between countries is more focused and easier to reach agreement on, but it is less applicable to the prevention and control of marine plastic waste pollution, which has a transboundary flow [5]. Regional cooperation is easier to agree on because of the common interests of countries, and it can also take into account regional geographic and political factors as well as the actual needs of the countries in the region, thus allowing for more personalized content.

6 “NATIONS CONVENTION ON THE LAW OF THE SEA” AS A LEGAL FOUNDATION TO LEGISLATIONS

LEGAL The United Nations Convention on the Law of the Sea (UNCLOS) is currently the most effective and direct international treaty regulating the conduct of States in the oceans, with more than 150 States having acceded to it, giving it added authority. The Convention specifically defines "pollution of the marine environment" in its Article 1, "Terms and Scope". As human understanding of marine microplastics grows, marine microplastics meet the Convention's definition of "pollution of the marine environment". The definition of "pollution of the marine environment" has also become more acceptable. It is clear that the discharge and management of marine microplastics is regulated by the Convention. Firstly, the UN Convention on the Law of the Sea creates an international obligation for international cooperation in the implementation of marine environmental protection activities. What are the obligations? The obligation to cooperate internationally requires States parties to the Convention to strengthen their cooperation with States or with international organizations when drafting and providing for international rules, plans of action or procedures consistent with the UN Convention on the Law of the Sea. International cooperation should be based not only on a global but also on a regional basis, taking into account the regional dimension. It should also be based on a regional basis, taking into account the specificities of the region. This international obligation not only requires States to protect the marine environment, but can also serve as a reference for cooperation between States on marine protection. Secondly, the United Nations Convention on the Law of the Sea contains detailed provisions on the types of marine pollution sources. In particular, the different sources of pollution in the marine environment are classified into six categories, namely, pollution from land based sources, pollution from activities on the seabed, pollution from activities in the Area, pollution from dumping, pollution from ships and pollution from the atmosphere. In addition, the United Nations Convention on the Law of the Sea also sets out specific provisions for the prevention and control of these six types of marine pollution by the Contracting States. Thirdly, the UNCLOS provides more detailed provisions on dispute resolution and offers a variety of solutions to resolve conflicts arising from international marine environmental problems in a peaceful manner. Firstly, the parties to the UNCLOS may settle their disputes by negotiation or mediation, the choice of which method of settlement is left to the agreement of the parties. In addition to the settlement of disputes by agreement between the parties, if there are bilateral or regional agreements between the parties which provide for other methods of dispute settlement, the parties may also choose the means of settlement by negotiation on the basis of these concluded agreements. In addition to moderate means of settlement such as negotiation, the UNCLOS also provides for compulsory settlement procedures. There are four main types of compulsory dispute settlement procedures in the Convention, namely, special arbitration, the International Court of Justice and proceedings before the International Court of the Law of the Sea. The choice of these four compulsory dispute settlement procedures is also at the discretion of the parties, other than that only one or more of these procedures may be applied to the settlement of disputes. Such compulsory settlement procedures provide a strong safeguard for the resolution of marine environmental disputes and are of great importance for cooperation in the protection of the marine environment.

7 CONCLUSION The level of marine pollution has its roots in human industrial civilization. Natural scientific research has shown that the oceans are the ultimate home of pollution from human life and industry. All land-based sources of pollution can eventually be found in the oceans.

Since the founding of the United Nations, the oceans have been a focus of attention and concern. Many of the disputes over state power have been over the rights and interests of the oceans, while marine pollution has become a major concern for coastal states and a subject of debate. The enactment of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 marked a fundamental agreement in international law on the protection of the world's largest body of water, and the conduct of states in the global oceans was not only reflected in the enjoyment of legal rights and interests in the oceans, but also in the assumption of obligations. The United Nations Convention on the Law of the Sea ushered in the era of the rule of law for the comprehensive management of global marine pollution and has been the cornerstone of international law for subsequent cooperation on the oceans among regional states. Guided by the theory of regional governance, coastal states in different regions have also developed different mechanisms for cooperation in marine pollution management, such as regional bilateral and multilateral treaties, and soft law action plans. These mechanisms have provided a platform for combating marine pollution in the region and enhancing cooperation on maritime rights and interests and have also provided a meaningful exploration of institutional models for regional management of marine pollution.

## The UNCLOS is a global framework for Marine Environmental Protection and Cooperation

**Bluebird Electric**[Bluebird-electric (n.d.) UNCLOS UNITED NATIONS CONVENTION ON THE LAW OF THE SEA [https://www.bluebird-electric.net/oceanography/Ocean\\_Plastic\\_International\\_Rescue/United\\_Nations\\_Convention\\_On\\_The\\_Law\\_Of\\_The\\_Sea\\_UNCLOS.htm](https://www.bluebird-electric.net/oceanography/Ocean_Plastic_International_Rescue/United_Nations_Convention_On_The_Law_Of_The_Sea_UNCLOS.htm)]

UNCLOS: Opened for signature on 10 December 1982, in Montego Bay, Jamaica, UNCLOS entered into force on 16 November 1994. It sets forth the rights and obligations of states regarding the use of the oceans, their resources and the protection of the marine and coastal environment. It is commonly regarded as establishing the legal framework for all activities in the oceans. MARPOL : The International Maritime Organization (IMO) adopted the International Convention for the Prevention of Pollution from Ships in 1972. This Convention is known as MARPOL and has been amended by two Protocols and several amendments. The MARPOL Convention addresses pollution from ships by garbage among other pollutants. A revised Annex V generally prohibits the discharge, from ships, of all garbage into the sea. LONDON CONVENTION: The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 197, also known as the “London Convention,” has been in force since 1975. It is one of the first global conventions to protect the marine environment from human activities, and seeks to promote the effective control of all sources of marine pollution and to take steps to prevent pollution of the sea by dumping of wastes and other matter. The “London Protocol” was agreed to in 1996 and entered into force in 2006. Under the Protocol, all dumping is prohibited, except for possibly acceptable wastes on a “reverse list”. GPA: The Global Programme of Action for the Protection of the Marine Environment from Land-based Activities was created in 1995. This agreement seeks to protect and preserve the marine environment from the impacts of land-based activities, and deals with all land-based impacts on the marine environment, including those resulting from sewage and litter. REGIONAL SEAS: In addition, 18 Regional Seas Programs, Conventions and Protocols, 13 of which administered by UNEP, also contain provisions relevant to the prevention of marine pollution, including marine litter. PLASTIC WASTE WORLD MAP - This world map derived from a National Geographic source, shows that the North Pacific Gyre is by far the largest - and divided into three regions, the western, sub-tropical-convergence zone and eastern garbage patches. We estimate these patches collectively to be around 80,000 tons in mass.



## **UNCLOS protects the environment**

**Sandalow 04** [David B. Sandalow, "Ocean Treaty Good for U.S. ." The Washington Times. (May 16, 2004) <https://www.unclosdebate.org/argument/287/us-should-ratify-un-convention-law-sea-unclos>]

The treaty protects the ocean environment. Provisions addressing marine pollution and fisheries help promote conservation of scarce marine resources.

## UNCLOS prevents climate change – Necessary for enforcement

**CIL 18** [The Centre for International Law (CIL) at the National University of Singapore (NUS) hosted a two-day international conference on Climate Change and the Law of the Sea: Adapting the Law of the Sea to Address the Challenges of Climate Change on 13-14 March 2018. The objective of the conference was to bring together leading legal and scientific experts to discuss the impacts of climate change on the marine environment and on uses of the sea and the challenges they pose to the law of the sea. The conference also aimed to examine how the law of the sea could be used both to respond to climate change impacts on the oceans and also to support mitigation and adaptation measures.] 13-14 March 2018, Center for International Law, "Climate Change and the Law of the Sea: Adapting the Law of the Sea to Address the Challenges of Climate Change" <https://cil.nus.edu.sg/wp-content/uploads/2018/04/Climate-Change-Law-of-the-Sea-Final-report.pdf>

Panel 7 – Development and Adaptation of UNCLOS to Address the Impacts of Climate Change

Professor Alan Boyle of Essex Court Chambers gave a presentation on ‘Addressing Climate Change Impacts through UNCLOS Part XV Dispute Settlement Mechanisms’. He began by introducing the value of litigation. He stated that litigation can have a transformative effect by strengthening the hand of weak states and may put pressure on UNCLOS parties to deliver on their climate change obligations. However he cautioned that litigation can be politically difficult and expensive, and that it is risky as the applicant may lose. Professor Boyle outlined the three types of possible cases, being non-compliance with UNCLOS pollution control obligations, non-cooperation as required by UNCLOS, or damage to a coastal state caused by a violation of UNCLOS obligations. Regarding the threshold question of whether climate change is marine pollution as defined in UNCLOS, Professor Boyle considered that it clearly is, either in the form of direct introduction of CO<sub>2</sub> as a ‘substance’ into the oceans or as ‘energy’ due to temperature increase. He also concluded that there is an abundance of scientific evidence to establish deleterious effects from either the direct or indirect effects of GHG emissions. Professor Boyle then outlined the relevant obligations in UNCLOS, already discussed by other presenters, including Articles 192, 194, 207 and 212. He stated that there is no doubt that UNCLOS deals with marine pollution coming from the air, and that it does not matter which of these provisions is relied on to found a case. Articles 207 and 212 require states, in adopting laws and regulations to prevent, reduce and control pollution, to take into account internationally agreed rules, standards and recommended practice and procedures. In the climate change context, the internationally agreed rules and standards are found in the Paris Agreement, and therefore Professor Boyle concluded that UNCLOS requires states to comply with the Paris Agreement. The fundamental duty of cooperation is also interpreted in the context of the Paris Agreement, so that parties must cooperate to implement the Paris Agreement. Having identified the content of the UNCLOS climate change obligations, Professor Boyle turned to apply the UNCLOS Part XV system. An issue arises concerning whether an UNCLOS climate change case would in fact be a dispute concerning the interpretation or application of UNCLOS or whether it would be more properly characterised as a UNFCCC case. Professor Boyle stated that there would be a case under both UNCLOS and the UNFCCC, and therefore the question is which case prevails. There is no compulsory dispute settlement jurisdiction under the UNFCCC and therefore the UNCLOS dispute settlement system is comparatively attractive. Following the approach taken by the South China Sea arbitral tribunal, only an express agreement excludes the jurisdiction of UNCLOS Part XV, and provided that the case is pleaded as an UNCLOS case, an UNCLOS court or tribunal has jurisdiction to hear the case. A violation of UNCLOS could be argued by reference to the Paris Agreement, which is in accordance with Part XII’s expectation that its obligations be interpreted and applied in accordance with other instruments. Professor Boyle identified two further issues, first the need to establish that a dispute exists, and second the question of whether it is necessary to sue all GHG emitting parties. These issues arose in the recent cases initiated by the Marshall Islands at the ICJ, where there was found to be no dispute between the various parties prior to the commencement of the case. Further Judge Tomka in the case against the United Kingdom concluded that the obligations the subject of the proceedings were not of a bilateral nature between the Marshall Islands and the UK, as there were many other states whose conduct was the same as that of the UK. Similar issues could arise in the context of a climate change dispute. Under UNCLOS there is a choice of forum, with ad hoc arbitration being the default option. Most developing states have opted by default for ad hoc arbitration, which presents issues as it is more expensive than a standing court or tribunal, and each party has the right to appoint an

arbitrator, meaning that there could potentially be a large number of arbitrators. Although the ICJ or ITLOS would be a better option for a case with multiple respondents, ad hoc arbitration due to its default status is likely to be the only realistic option unless the parties agree to a transfer. On the question of who would be able to initiate the proceedings, Professor Boyle stated that the obligations in UNCLOS Part XII are erga omnes and therefore any party can sue. Finally turning to remedies, Professor Boyle identified options including negotiation, restitution, or the most useful outcome of an order to comply with the obligations. Regarding the potential for damages, Professor Boyle considered that there would be multiple problems, such as joint responsibility, proving causation and proving damage. He also stated that potentially it would only be damage caused beyond a 1.5oC temperature rise that would be relevant. Professor Boyle ended by concluding that UNCLOS Part XV would provide a compulsory mechanism for a climate change case and would not be trumped by the UNFCCC if pleaded properly. A case alleging non-compliance with UNCLOS climate change obligations would likely be the best option, with a non-cooperation case likely to be without practical utility. Professor Catherine Redgwell of the University of Oxford gave a presentation on 'Treaty Evolution, Adaptation and Change: Is UNCLOS 'enough' to address Climate Change Impacts on the Oceans?' In her presentation Professor Redgwell recognised the central role of UNCLOS in addressing impacts and consequences of sea level rise, warming and acidification. She described UNCLOS' provisions as ambulatory and capable of dynamically evolving. Complemented by an array of other instruments, UNCLOS does not stand in isolation. Professor Redgwell began by briefly outlining the relevant UNCLOS provisions including Articles 192 and 194 and the definition of marine pollution in Article 1. Like the other speakers she concluded that climate change is clearly marine pollution. The obligations in UNCLOS Part XII must be read in light of external rules and standards. For provisions such as 207 and 212, the benchmark is very weak, with states only required to take into account external rules and standards. For Article 211 the benchmark is much stronger as the laws must have at least the same effect as the international rules and standards. Further, for example in the context of pollution from land-based sources (Article 207), the benchmark is meaningless as there are no generally accepted international rules and standards to take into account at all. For Article 212 (pollution through or from the atmosphere) the independent source of the legal obligation, whether or not the UNCLOS party is party to it, would be the UNFCCC or the Paris Agreement. Compliance with the UNFCCC and Paris Agreement is relevant for the interpretation and application of Article 212. Professor Redgwell stated that the NDC obligation in the Paris Agreement is one of conduct, but the temperature goal is one of result. On the other hand the NDCs and compliance with them is clearly tied to each state, whereas the temperature target is more difficult to extrapolate in terms of individual obligations. Professor Redgwell stated that perhaps the global stocktaking may lead to a merging of the two different situations. Professor Redgwell then highlighted several examples of environmental developments linked to Part XII of UNCLOS that directly or indirectly serve to mitigate climate change impacts. The Polar Code was adopted to address the effects of international shipping, however indirectly it is reducing stressors on vulnerable ecosystems. PSSAs designated by the IMO are contributing to adaptation and enhance resilience, and are linked to the obligation in Article 194(5) relating to rare and fragile ecosystems. The establishment of MPAs more generally can be considered as an important measure to enhance resilience of marine ecosystems. Areabased management tools including MPAs and also EIAs could be a significant tool to emerge from the BBNJ negotiations. Professor Redgwell then discussed the development of the law of the sea outside of UNCLOS, including through the UN General Assembly annual review of the state of the oceans and the law of the sea, with its annual resolution reiterating concerns over current and projected climate change. The UN plays a catalytic role in raising awareness of the impact of climate change on the oceans, as a global forum for law of the sea issues as a surrogate for a regular UNCLOS COP, and through dynamic evolution of UNCLOS such as the adoption of the 1994 Implementing Agreement and the BBNJ negotiations. Professor Redgwell also discussed the ongoing work of the ILA

Sea Level Rise Committee that had been discussed by earlier presenters. She outlined the possible mechanisms to respond to the issue of climate change and the oceans such as development of customary international law, a new protocol to the UNFCCC, an amendment of UNCLOS or a decision of the UNCLOS states parties. She stated that other treaty instruments can be influential in their own right such as the CBD, including the decision of its COP on the designation of MPAs as a strategy to adapt to climate change. Professor Redgwell concluded by stating that UNCLOS is central to the regulation of the impact of climate change on the oceans but it is not enough. External rules and standards can be brought within UNCLOS given its inclusive language to effectively regulate for climate change mitigation and adaptation. During the discussion session the point was made that although UNCLOS has long been read by reference to other instruments, it would represent a quantum leap to read in the substantive Paris Agreement obligation directly into UNCLOS as an obligation enforceable under Part XV compulsory procedures. A comment was made on the need for UNCLOS states parties to revisit their dispute settlement choice under UNCLOS so that they are cognisant of the choice that they have made and its implications. The idea of using special chambers as a more cost-effective option than ad hoc arbitration was also mentioned. The practical question of whether states would in practice bring a case such as this to an international court or tribunal was also raised. It was acknowledged that in many situations an UNCLOS climate change case would involve the applicant suing a state that they do not want to sue due to political or other reasons. Regarding the issue of obligations of conduct in UNCLOS and obligations of result in the Paris Agreement, it was not considered to necessarily be an issue, as although UNCLOS is fundamentally conduct-based there are some result-based obligations such as the prohibition on dumping. The question is how to identify the obligation, and whether the UNCLOS and Paris Agreement obligations are different. The point was raised that at a 1.5oC temperature rise we are not 'protecting and preserving the marine environment', however the international community at the Paris Conference has accepted this increase. In MOX Plant the court did not accept the argument that UNCLOS meant stricter obligations than had been agreed to under OSPAR, and a similar outcome was reached in the Pulp Mills case. The possibility of suing under UNCLOS procedural obligations such as EIAs, rather than substantive obligations, was raised as a greater avenue towards success or awareness, and potentially a way around the relationship between UNCLOS and the Paris Agreement. The prospect of incorporating regional agreements on climate change into UNCLOS was discussed, with no barrier identified for doing so. Regarding the work of the ILA Sea Level Rise Committee, comments were made about whether rules in UNCLOS on the EEZ and territorial sea that are recognised to be customary norms will evolve to reflect the new reality. The question was asked how important the breadth of those zones is to the customary rule. The option of organic evolution of UNCLOS by practice or interpretation as a middle ground rather than seeking to establish a new general or regional customary rule was suggested. Pursuant to Article 311(3) a new agreement on baselines could be concluded on a regional level provided that the rights of third states are not affected. However it was also commented that it is clearly undesirable to have different rules on something as fundamental as baselines.

## UNCLOS is key to prevent ocean collapse through cooperative research

**Swilling et al 20** [Mark Swilling is Distinguished Professor of Sustainable Development and Co-director of the Centre for Complex Systems in Transition, Stellenbosch University, Mary Ruckelshaus is Managing Director of the Natural Capital Project and a Senior Research Scientist at Stanford University, Tanya Brodie Rudolph is a Research Fellow at the Centre for Complex Systems in Transition, Stellenbosch University, "The Ocean Transition: What to Learn from System Transitions," <https://oceanpanel.org/sites/default/files/2020-06/The%20Ocean%20Transition%20Full%20Paper.pdf>]

Up until this point we have described the key regime dynamics (with overviews in Appendix B of shipping, ocean-based food extraction, offshore oil and gas, ports, marine and coastal tourism, marine and seabed mining, marine biotechnology, cabling and maritime equipment and offshore renewable energy), the various relevant landscape pressures and a sample of niche innovations (see Chapter 4 and Appendix C). In summary, it is clear that there are a set of landscape pressures that could result in the collapse of the ocean's key ecosystem functions, with negative implications for humanity and, specifically, the global economy. Despite the strong governance framework provided by the UNCLOS system, the existing regimes are institutionally misconfigured for this challenge. They are locked into path dependencies at odds with what is required to face the landscape pressures. However, some regime dynamics respond positively to these landscape pressures. These sustainability-oriented regime dynamics are suggestive of future trajectories. Similarly, there is a mushrooming of niche innovations as constellations of actors (primarily, but not exclusively, at the local level) respond to landscape pressures and the inadequacy of current regimes. What is distinctive about these niche innovations is that they entail forms of stakeholder collaboration that are driven by an overriding concern to protect and regenerate the commons. As Nobel Prize winner Eleanor Ostrom (1990, 2000) has argued, humans have collaborated for millennia to protect the commons that they recognise they are dependent on. The niche innovations, therefore, suggest future trajectories that valorise the commons. They also provide signposts for the 'anticipatory thinking' (Poli 2018) that is needed in order to chart a course for the future. Transdisciplinary research methodologies will be required to conduct research on the constantly changing interactions between landscape pressures, regime dynamics and niche innovations in order to grasp the emergent properties of the sustainability-oriented ocean transition (van Breda and Swilling 2018; van Breda 2019).

### 5.2 Capacity and Incentives for Transitions

Transition dynamics are dependent on three key factors: whether or not existing regimes access new knowledge from external sources; whether or not they have the capacity to integrate new knowledge in order to facilitate substantive change processes; and whether or not there are incentives, initiatives or other enabling conditions that activate change. In simple terms, if within a given regime (e.g. a car-based fossil fuel-dependent transport system in a given country) there is sufficient capacity to manage change (among, in this transport case, the policymakers, regulators, transport company managers, etc.) coupled to rapid learning about alternatives (derived from experimental examples), the chances are high that a transition will occur over time (in this example, to a decarbonised transport system). However, actual changes will only take place if some catalytic event instigates the need to activate the capacity for managing change. This could be anything from price hikes to protest movements to an electoral shift that brings a new party to power with an anti-car agenda. Following Smith et al. (2005), there are four possible transition pathways, depending on how these knowledge, capacity and catalytic factors combine. When a particular regime can access new external knowledge, when it has the capacity to manage change and when enabling conditions are present, a 'purposive transition' can occur. Such transitions can be quite radical, including the transcendence of the mainstream regime itself in the process (e.g. the renewable energy transition in Germany). A purposive transition, however, is not inevitable. If the capacity to manage change exists but only 'internal knowledge' is relied on to envision alternatives, the result will be a reform of the regime rather than its replacement (i.e. an 'endogenous renewal'). Conversely, if there is limited capacity to manage change and external knowledge is sourced, the result will be an 'emergent transformation', that is, the internal breakdown of the regime followed by the mushrooming of alternatives with limited capacity for implementation. Where there is both limited capacity for change and a reliance on internalised knowledge sources, the result will be a 're-orientation of

trajectories' as the old regime becomes dysfunctional but viable alternatives fail to emerge. The above analysis is more appropriate for understanding transitions in particular sectors, such as the transition to renewable energy or to organic food. Ocean governance is an amalgam of sectoral and spatial regimes, loosely assembled within—and beyond—the UNCLOS framework. However, as revealed in the sections above (and in Appendix C), as our understanding of regime dynamics and niche innovations improves, emergent change is unfolding. In brief, there is evidence in the ocean system that all four of these transitions are underway. A system-wide 'purposive transition' that builds on emergent regime responses to landscape pressures and transformative niche innovations is the most effective pathway to ocean sustainability. These Blue Papers have instigated the process of sourcing external knowledge that helps stakeholders to reimagine the future of the ocean. Key governments, business and civil society can now lead the way in developing the coordination capacity to manage a 'purposive transition' based on the accelerated learning emerging from the Blue Papers.

## **New international agreements fail---only increasing the strength of UNCLOS solves**

**Lodge 11** [Michael W. Lodge is a Legal Counsel, International Seabed Authority, Arctic Science. Published March 2011 , International Law and Climate Change Legal Aspects of Marine Science in the Arctic Ocean] Chapter 18: "The International Seabed Authority and the Arctic," accessible via Springer Nature, DOI 10.1007/978-3-642-24203-8]

VI. Conclusions: The Role of the ISA in Arctic Ocean Governance Whilst recognizing the need to pursue strengthened cooperation in order to fully implement the relevant provisions of the UNCLOS framework, it seems doubtful that there is a need for new international instruments or regimes. There would appear to be ample opportunity to strengthen international cooperation in a manner that is complementary to the implementation of existing instruments and that does not undermine the role of existing mechanisms. In this regard, as envisaged by the relevant provisions of Part XI UNCLOS, the Authority may act not only as a vehicle for the dissemination of the results of marine scientific research and analysis, particularly on the marine environment of the Arctic, but also as an intermediary for the development of the programs referred to in Art. 143 UNCLOS that aim to strengthen the research capabilities of developing States and technologically less developed States. One way in which this could be achieved in practice is through a memorandum of understanding between the Authority and a competent regional organization or institution, such as the Arctic Council. The Arctic Council is not an international organization per se, but a form of cooperation sui generis. Nevertheless, its main functions of ensuring the protection of the environment and coordination of 'common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic' are fully consistent with the responsibility of the Authority to ensure the effective protection of the marine environment from the harmful effects of deep seabed mining. A number of organizations are already observers to the Arctic Council, including several United Nations programs and bodies. A good example of how regional cooperation within and between States and competent international organizations can be organized in order to effectively combine sustainable management and use of resources with environmental protection can be seen in the North-East Atlantic. Here, the Convention for the Protection of the Marine Environment of the North-East Atlantic ('OSPAR') establishes a regional mechanism for the protection of the marine environment. As part of this mechanism, the OSPAR Commission cooperates closely with other relevant organizations in the region, including the North-East Atlantic Fishery Commission ('NEAFC') and the Authority. In this regard, a memorandum of understanding between OSPAR and the Authority was signed in 2010 following approval by the governing bodies of both organizations. Also in 2010, as a result of a lengthy process of consultation and cooperation, both OSPAR and NEAFC put in place innovative measures to manage a number of maritime areas beyond national jurisdiction. Discussions are ongoing as to how the Authority should respond, in respect of the Area, to the measures adopted by OSPAR for the water column beyond national jurisdiction, but the point is that a framework exists for such discussions. Moreover, the framework that has been established through the mechanism of a memorandum of understanding fully reflects the respective competences of each organization. In this way, States with an interest in the region are in a better position to give effect to the obligations of cooperation inherent in the UNCLOS.

## UNCLOS will subject the United States laws that prevent overfishing

**Sarah 10** [Ashfaw, Sarah. "Something for Everyone: Why the United States should Ratify the Law of the Sea Treaty ." Journal of Transnational Law and Policy. Vol. 19, No. 2(Spring 2010): 357-399.]

Another sovereignty-related issue that the Convention addresses is conservation and pollution on the seas, a pressing concern given the widespread exploitation of the sea and its resources. Part XII of the Convention, entitled Protection and Preservation of the Marine Environment, imposes upon states the "obligation to protect and preserve the marine environment." The Convention also includes detailed provisions that explicitly require state parties to take measures to prevent, reduce and control pollution. States are required to cooperate with global and regional efforts in combating pollution by setting standards, rules, and recommended practices, many of these through appropriate international organizations. Furthermore, the Convention requires states to take the affirmative step of implementing systems for monitoring and reporting the risks and effects of pollution to their marine environments. Conservation and pollution provisions are included in the 1966 Convention on Fishing and Conservation of the Living Resources of the High Seas, to which the United States is also a party. As mentioned previously, this convention permits high seas fishing while also requiring states take steps to conserve the seas' living resources.



## **UNCLOS has a set of specific restrictions proven to decrease pollution in sea and land**

**IMO 83** ["International Convention for the Prevention of Pollution from Ships (MARPOL)." (1983). Imo.Org. Accessed December 14, 2024.  
<https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-%28MARPOL%29.aspx>]

Annex I Regulations for the Prevention of Pollution by Oil (entered into force 2 October 1983) Covers prevention of pollution by oil from operational measures as well as from accidental discharges; the 1992 amendments to Annex I (makes) it mandatory for new oil tankers to have double hulls and brought in a phase-in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003. Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk (entered into force 2 October 1983) Details the discharge criteria and measures for the control of pollution by noxious liquid substances carried in bulk; some 250 substances were evaluated and included in the list appended to the Convention; the discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with. In any case, no discharge of residues containing noxious substances is permitted within 12 miles of the nearest land. Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form (entered into force 1 July 1992) Contains general requirements for the issuing of detailed standards on packing, marking, labelling, documentation, stowage, quantity limitations, exceptions and notifications. For the purpose of this Annex, "harmful substances" are those substances which are identified as marine pollutants in the International Maritime Dangerous Goods Code (IMDG Code) or which meet the criteria in the Appendix of Annex III. Annex IV Prevention of Pollution by Sewage from Ships (entered into force 27 September 2003) Contains requirements to control pollution of the sea by sewage; the discharge of sewage into the sea is prohibited, except when the ship has in operation an approved sewage treatment plant or when the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land; sewage which is not comminuted or disinfected has to be discharged at a distance of more than 12 nautical miles from the nearest land. Annex V Prevention of Pollution by Garbage from Ships (entered into force 31 December 1988) Deals with different types of garbage and specifies the distances from land and the manner in which they may be disposed of; the most important feature of the Annex is the complete ban imposed (imposed bans) on the disposal into the sea of all forms of plastics. Annex VI Prevention of Air Pollution from Ships (entered into force 19 May 2005) Sets limits on sulphur oxide and nitrogen oxide emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances; designated emission control areas set more stringent standards for SO<sub>x</sub>, NO<sub>x</sub> and particulate matter. A chapter adopted in 2011 covers mandatory technical and operational energy efficiency measures aimed at reducing greenhouse gas emissions from ships.

## Environmental collapse causes extinction through food, water, pollution, and climate

**Vidal 19** [John Vidal, Environmental Editor at The Guardian, "Shocking New Report On Loss Of Nature Paints A Terrifying Picture For The Future Of Humanity," Huffington Post, May 6, 2019, <https://tinyurl.com/y5c9ous9>]

Planet Earth has been put on red alert by hundreds of leading scientists who have warned that humanity faces an existential threat within decades if the steep decline of nature is not reversed. The conclusions of the greatest-ever stock-taking of the living world, published on Monday, show that ecosystems and wild populations are shrinking, deteriorating or vanishing completely, and up to 1 million species of land and marine life could be made extinct by humans' actions if present trends continue.

Food, pollination, clean water and a stable climate all depend on a thriving plant and animal population. But forests and wetlands are being erased worldwide and oceans are under growing stress, says the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), the United Nations' expert nature panel, in the landmark global assessment report. The three-year study, compiled by nearly 500 scientists, analyzed around 15,000 academic studies that focused on everything from plankton and fish to bees, coral, forests, frogs and insects, as well as drawing on indigenous knowledge. If we continue to pollute the planet and waste natural resources as we have been doing, it won't just affect people's quality of life but will lead to a further deterioration of earth's planetary systems, said the IPBES scientists. "The essential, interconnected web of life on Earth is getting smaller and increasingly frayed. This loss is a direct result of human activity and constitutes a direct threat to human well-being in all regions of the world," said professor Josef Settele, a research ecologist and co-chair of the 1,800 page report, the summary of which was agreed to by 132 governments meeting in Paris this weekend, including the U.S.

## **Miscellaneous**

## Ratifying UNCLOS provides a laundry list of political and strategic benefits to the US.

**Feinman 24** [Dean Feinman (Bachelor of Science in English and minor in grand strategy from the United States Military Academy; former infantry officer in the U.S. Army), Lost at the South China Sea: A Legal Rationale for Joining UNCLOS, 93 Fordham L. Rev. 945 (2024). Available at: <https://ir.lawnet.fordham.edu/flr/vol93/iss3/4/>]

As scholars and security experts have repeated, “the United States could not have obtained a better deal than that contained in the Convention.”<sup>365</sup> So long as FON remains the bedrock of U.S. maritime power and economic prosperity,<sup>366</sup> stability in the law of the sea will remain a top concern. UNCLOS, which is favorable in both the substance and stability of its content, is the best tool to achieve U.S. oceans policy. 1. A Remarkably Good Deal UNCLOS provisions are, practically speaking, the most favorable set of rules for the United States.<sup>367</sup> Although undoubtedly UNCLOS contains compromise, the value in stability and predictability of a comprehensive treaty outweighs the inherent indeterminacy of customary law.<sup>368</sup> The aggregate instrument, its widespread acceptance, and the constancy it provides are more significant than the marginal compromises required to achieve the treaty. This is especially true after the implementing agreement revoked contentious deep seabed mining provisions, a colossal concession from the international community.<sup>369</sup> The codification of a twelve nautical mile territorial sea, the right to a 200 nautical mile EEZ, innocent passage, transit passage through international straits, and freedom of navigation on the high seas are all fundamental to the U.S. policy of modern global FON. And all are central components of UNCLOS.<sup>370</sup> 2. A Firmer Foundation Than Customary Law UNCLOS provides a firmer foundation of law, which is to say it is less susceptible to erosion and evolution than customary law.<sup>371</sup> UNCLOS establishes a single, static, and authoritative instrument with a baseline of States’ rights and obligations.<sup>372</sup> Ratification would allow the United States to profit from this rule set while avoiding the constant evolution of custom and the perennial attention that is required to upkeep the customary status quo.<sup>373</sup> Opponents of ratification argue that the United States has prevailed in protecting its oceans policy without joining the treaty.<sup>374</sup> Therefore, they conclude, ratification is unnecessary.<sup>375</sup> The argument is logically attractive but misleading. First, the geopolitical status quo is changing. What worked in the past may no longer work as threats evolve.<sup>376</sup> The White House recognizes China’s unique potential and desire to shape the global order.<sup>377</sup> Given the SCS’s importance to China’s vision, it would be remiss to overlook its intent to reshape the law of the sea. Second, even if the U.S. policy has secured oceans interests in the past, this does not imply its policy has been optimal. Every FONOP the United States is forced to conduct is inherently a failure of less-than-military means of achieving the desired outcome.<sup>378</sup> FONOPS are demonstrations of U.S. power, but without other tools to reinforce the outcome, they run the risk of becoming banal. As Thomas Jefferson wrote, “I hope our wisdom will grow with our power, and teach us that the less we use our power the greater it will be.”<sup>379</sup> Third, FON is not an end in itself. It is a means to open oceans conducive to security and trade. To this point, it is relevant that both security and industry experts endorse ratification.<sup>380</sup> 3. A Consistent and Coherent Legal Strategy Ratification would allow the United States to maintain the beneficial status quo while avoiding the paradox introduced by an overreliance on customary law.<sup>381</sup> In most circumstances, the United States favors the strict approach to identifying customary law<sup>382</sup> because it tends to insulate the status quo and benefit developed States.<sup>383</sup> Indeed, the United States has traditionally argued for a strict jurisprudence over the objections of developing States, which accuse the international legal order of perpetuating Western imperialism.<sup>384</sup> However, in the context of the law of the sea, the strict approach is less likely to protect U.S. interests.<sup>385</sup> Therefore, the United States must tacitly endorse a flexible jurisprudence.<sup>386</sup> Of course the irony is that the flexible approach enables more rapid development of customary law, including developments inimical to U.S. interests,<sup>387</sup> which in the end may be self-defeating. To illustrate this dilemma, consider the ASEAN-China COC. Given China’s rising influence, especially its position to shape the COC, it can marshal State practice and opinio juris to present plausible customary norms and interpretations of the law to challenge those of the United States.<sup>388</sup> This is particularly true

in novel areas of the law of the sea where a convergence of practice has yet to materialize. The flexible approach that the United States would argue to assert that UNCLOS provisions have ascended as custom would similarly open the door for China and like-minded States to assert that their divergent practices have customary standing.<sup>389</sup> This reliance on customary law creates instability to the U.S. FON policy, but also jeopardizes other areas of international law which the United States relies on. Prevailing in asserting its rights under customary law may in the end prove to be a Pyrrhic victory. B. Position the United States to Challenge Divergent Practices Defense officials acknowledge that U.S. credibility is compromised since it is shut out of important multilateral venues.<sup>390</sup> This includes, of course, the ongoing COC negotiations. If concluded, the COC would offer a competing interpretation of the law of the sea.<sup>391</sup> Further, as a regional instrument, the COC would hasten the creation of customary norms because of the SCS's significance to global transit and UNCLOS parties' obligation to settle disputes through bilateral and regional means.<sup>392</sup> For example, it is possible the COC will codify a coastal State's right to require pre-authorization of warships to transit the territorial sea.<sup>393</sup> This provision will be binding on the SCS parties. Most other States will likely acquiesce to the new norm so as to maintain friendly relations with China, a significant regional power and trading partner.<sup>394</sup> The United States, however, is uniquely positioned, not merely because it can better afford the economic costs of challenging China, but because it offers an economic alternative for allies to rally behind. However, such allies will remain hesitant if the United States' only means of mounting a challenge is through gunboat diplomacy.<sup>395</sup> Without the legitimacy and stability UNCLOS provides, the United States is at a marked disadvantage for building a coalition to challenge divergent interpretations of the law.<sup>396</sup> Ratification would not single-handedly interrupt the COC's disruptive potential. But it would empower the United States and its allies with the tools needed to confront Chinese overreach.<sup>397</sup> In particular, it would offer diplomatic avenues to avoid conflicts as well as peaceful dispute settlement mechanisms to resolve them.<sup>398</sup> But more important, it would allow the United States to present a unified front along with its allies, backed by the authority of the law, with the real potential of prosecuting its interpretation of the law of the sea on the international stage. 1. Stronger Relations with Regional Allies Nonmembership impedes U.S. credibility.<sup>399</sup> As Admiral John M. Richardson noted, "[W]e undermine our leverage by not signing up to the same rule book by which we are asking other countries to accept."<sup>400</sup> But ratification would do more than simply avoid diplomatic sanctimony;<sup>401</sup> it would overcome concrete challenges that stand in the way of building meaningful relationships with international partners.<sup>402</sup> At the same time, China continually cites U.S. nonmembership to dismiss U.S. criticism off hand.<sup>403</sup> Strategic and diplomatic experts note that U.S. nonmembership inhibits its ability to cooperate, even with allies, in areas related to the law of the sea.<sup>404</sup> Because the United States cannot operate within the framework to challenge divergent behavior, its only practical recourse is FONOPS.<sup>405</sup> This leaves allies uneasy that they, not the United States, will bear the brunt of Chinese reprisals. The United States can assume the risk and attendant costs of such disruptive measures, but many of its allies cannot.<sup>406</sup> Thus, U.S. allies see U.S. nonmembership as a liability and as a condition more likely to disrupt and frustrate regional stability than achieve strategic goals.<sup>407</sup> Ratification would help accelerate the convergence of State practice by assuaging these concerns and enabling more meaningful coalitions. 2. Access to International Courts Ratification also provides useful tools to challenge divergent practices, most notably access to dispute settlement mechanisms. The Part XV regime provides an efficient mechanism to enforce the law in its current form.<sup>408</sup> The lack of access to dispute fora frustrates the United States' ability to weigh in when adversaries challenge its or its allies' interpretation of the law. For example, when the United States asked to participate in the South China Sea Arbitration in support of the Philippines, the tribunal denied Washington observer status.<sup>409</sup> Similarly, throughout the 2018 Kirk Strait incident,<sup>410</sup> the United States was unable to mount a direct legal challenge in defense of Kyiv after Russia seized three Ukrainian ships and their crew in violation of international law, even after the International Tribunal for the Law of the Sea (ITLOS) voted 19–1 in a provisional order that Russia must

return the ships and crews to Ukrainian custody.<sup>411</sup> Without access to international tribunals, the United States cannot obtain a conclusive answer on the interpretation of the law, which is functionally the most decisive means of both encouraging convergence of State practice and discouraging divergent practice.<sup>412</sup> 3. Reduce Tensions in the South China Sea Ratification would lend the United States legitimacy and credibility in the maritime domain. Ratification would signal U.S. seriousness in maintaining a robust FON policy while at the same time demonstrating its commitment to peaceful, nonescalatory, and nonprovocative means of managing great power competition, especially in the SCS where rising tensions have the potential of global implications.<sup>413</sup> The U.S. Navy boasts impressive size, capability, and competence. But this does not make it the only, or even the best, tool for effecting U.S. policy. As President Obama remarked, “Just because we have the best hammer does not mean that every problem is a nail.”<sup>414</sup> Defense experts continue to warn that “the force of arms does not have to be and should not be our only national security instrument.”<sup>415</sup> Further, FONOPS are deleterious to other avenues of resolution. They send confusing signals to allies and adversaries alike. Most obviously, FONOPS place disputing vessels in close proximity, increasing the potential for accidents, which are dangerous at sea but when coupled with the risk of escalation can quickly become catastrophic.<sup>416</sup> Ratifying the treaty would ensure that when the United States does resort to FONOPS, the message is credible and clear.<sup>417</sup> C. Shape the Future of the Law of the Sea UNCLOS provides a single framework for shaping development of the law of the sea through both settlement and amendment mechanisms.<sup>418</sup> As new issues arise, the UNCLOS framework, and the formal and informal channels between member States, will be the first place discussions take place. By choosing not to participate in these discussions, the United States is closing the door on the opportunity to shape the future of the law of the sea.<sup>419</sup> The law of the sea, as well as the global oceans themselves, is under constant stress. Climate change, for example, is opening new areas of the law, both physically and conceptually.<sup>420</sup> UNCLOS is the only legal framework to govern emerging disputes in the Arctic as melting icecaps expose navigable sea lanes; however, the United States is the only Arctic State that has not ratified the treaty.<sup>421</sup> Similarly, advancements in passive intelligence, surveillance, and reconnaissance (ISR) capabilities;<sup>422</sup> the emergence of uncrewed maritime vehicles;<sup>423</sup> shifting attitudes toward nuclear powered vessels;<sup>424</sup> and even high orbit satellites<sup>425</sup> are all law of the sea challenges that have direct effect on U.S. FON.<sup>426</sup> By not being a member, the United States has abdicated its seat at the table where these debates are taking place. UNCLOS establishes a conceptual starting point for balancing the principles of freedom and sovereignty to guide future development.<sup>427</sup> This balance, however, is susceptible to erosion.<sup>428</sup> U.S. ratification would signal its commitment to the balance struck in UNCLOS and provide like-minded States the diplomatic support to advocate for the same.

## **South China Sea**

## **Tensions are rising in the South China Sea; China is becoming more unpredictable and there is high risk of escalation.**

**Bautista 24** [Bautista, Lowell (Associate Professor, School of Law; and Staff Member, Australian National Centre for Ocean Resources). "Rising Tensions in the South China Sea: The Strategic Calculations at Play - Australian Institute of International Affairs." Australian Institute of International Affairs, 2024, [www.internationalaffairs.org.au/australianoutlook/rising-tensions-in-the-south-china-sea-the-strategic-calculations-at-play/](http://www.internationalaffairs.org.au/australianoutlook/rising-tensions-in-the-south-china-sea-the-strategic-calculations-at-play/).]

The South China Sea has long been a flashpoint for geopolitical rivalry, but 2024 has brought a sharper escalation of tensions. The region, one of the world's busiest maritime arteries and rich in natural resources, is now witnessing more frequent and confrontational encounters among China, the Philippines, and other claimant states. These incidents are reshaping regional dynamics and testing the resilience of international norms, global alliances, and strategic calculations in the Indo-Pacific. China's strategic calculus: dominance through incremental gains China's playbook in the South China Sea has shifted from mere assertion to active confrontation. Recent incidents, such as the August 2024 ramming of a Philippine vessel near Sabina Shoal, underline Beijing's willingness to engage in coercive measures under the guise of protecting its "historic rights." These actions are part of a broader strategy of "gray zone" operations, where China exploits ambiguity to achieve tactical objectives without sparking open conflict. What sets China's current approach apart is not just its aggressiveness but its calculated unpredictability. By utilising maritime militia, coast guard units, and civilian vessels, Beijing not only blurs the lines of international law but also tests the resolve of smaller claimant states. This strategy is not merely defensive; it is part of China's ambition to transform contested waters into de facto Chinese territory, backed by a militarised presence that rivals any other in the region. The stakes for China are not limited to territorial control but extend to the strategic leverage that dominance over the South China Sea offers. These waters are crucial not only for China's economic lifelines but also for its broader geopolitical aspirations, which include projecting power across the Indo-Pacific and beyond. Beijing's defiance of the 2016 South China Sea arbitral ruling is more than a legal stance; it is a statement about China's vision of a revised regional order, one that prioritises strength over rules. The Philippines: a new era of defiance In stark contrast to the appeasement strategies of previous administrations, the Philippines under President Ferdinand Marcos Jr. has adopted a posture of active resistance. Manila has shifted from quiet diplomacy to direct confrontation, calling out China's actions at major international forums, including ASEAN summits. The Philippines' response to China's harassment—public denunciations, bolstered military deployments, joint patrols, and closer defence ties with the United States, Australia, and Japan—signals a broader recalibration of its foreign policy. This shift is not merely reactive; it is a strategic choice to counter China's pressure through deterrence and alliances. Recent military drills like "Kamandag" and "Sama Sama" underscore the Philippines' intent to build credible deterrence capabilities. With support from Washington, Manila is upgrading its naval assets and expanding its surveillance capacity. This shift is both a pragmatic response to immediate threats and a signal of the Philippines' broader commitment to upholding international norms in contested waters. Yet, the Philippines faces a delicate balancing act. While strengthening ties with the US offers security advantages, it also risks deepening economic vulnerabilities with China, its largest trading partner. This dual challenge of resisting maritime coercion while maintaining economic stability defines Manila's current predicament. It is a gamble that aims to leverage international support while avoiding outright conflict—a gamble that could shape the region's strategic landscape for years to come. The United States: balancing credibility and restraint For Washington, the South China Sea represents not just a series of disputes but a strategic battleground for influence in the Indo-Pacific. Recent actions, including a \$500 million defence aid agreement with the Philippines, reflect a commitment to reinforcing regional partnerships. The US military presence in the region, marked by Freedom of Navigation Operations (FONOPs) and joint drills, serves both as reassurance to allies and deterrence to Chinese assertiveness. However, US strategy in the South China Sea is fraught with dilemmas. On the one hand, it must maintain a strong presence to uphold its credibility as a security guarantor; on the other, it must avoid



actions that could escalate tensions into a broader conflict. Washington's focus on "integrated deterrence"—a blend of military, diplomatic, and economic measures—aims to create a regional coalition capable of countering China's coercive tactics. But this approach is not without limits. While the US seeks to rally regional partners, the effectiveness of these alliances hinges on sustained commitment and the willingness of regional states to share the risks of potential confrontation. Washington's emphasis on rules-based order and adherence to UNCLOS contrasts sharply with Beijing's disregard for the 2016 arbitral ruling. This divergence underscores the broader ideological contest in the South China Sea: one that pits China's revisionist ambitions against the established principles of international law. The region, therefore, becomes a critical arena where the US must not only project power but also demonstrate its capacity to uphold international norms. ASEAN's challenges: between cohesion and constraints ASEAN's response to the South China Sea tensions is emblematic of its broader struggle for relevance in great power competition. While some member states, like Vietnam and the Philippines, have pushed for a more assertive stance, others remain hesitant, wary of economic repercussions from China. The protracted negotiations over a Code of Conduct (CoC) reflect these divisions, revealing ASEAN's inability to forge a unified policy amid competing national interests and external pressures. The CoC, which has been under negotiation for over two decades, remains more aspirational than operational. China's economic influence over certain ASEAN members, coupled with its diplomatic leverage, has stymied progress towards a binding agreement. This impasse raises questions about ASEAN's effectiveness as a regional mediator and its capacity to enforce stability in the South China Sea. As China continues to test ASEAN's cohesion, the regional bloc's relevance in shaping maritime security dynamics becomes increasingly uncertain. Broader implications: a strategic litmus test for the 21st century The South China Sea has become more than a battleground for territorial claims; it is a microcosm of the broader strategic rivalries redefining the geopolitical order of the 21st century. As Beijing asserts its dominance over strategic waters, Manila manoeuvres to protect its sovereignty, and Washington seeks to maintain its credibility as a security guarantor—the stakes extend beyond control of a sea. This is a contest of wills, one that intertwines national identity, regional stability, and global influence. The inability of existing diplomatic frameworks to contain these rising tensions reveals a deeper reality: the South China Sea conflict is not simply a matter of law or policy, it is a matter of strategic perception. For China, it is about reshaping the regional order. For its neighbours, it is about resisting that change without triggering disaster. Meanwhile, ASEAN's struggles underscore the limits of multilateral diplomacy in the face of raw power. If the region is to avoid slipping into crisis, the answer does not lie in rigid formulas or superficial dialogues, but in innovative diplomacy, strategic restraint, and a reinvigorated commitment to international norms. The South China Sea is not merely a maritime dispute—it is a litmus test for how the world will resolve, or fail to resolve, the complex tensions of a multipolar age.

## Conflict with China goes nuclear.

**Talmadge 17** [Talmadge, Caitlin. Caitlin Talmadge is the Raphael Dorman and Helen Starbuck Associate Professor of Political Science at the Massachusetts Institute of Technology. "Would China Go Nuclear? Assessing the Risk of Chinese Nuclear Escalation in a Conventional War with the United States." *International Security*, vol. 41, no. 4, Apr. 2017, pp. 50–92, [https://doi.org/10.1162/isec\\_a\\_00274](https://doi.org/10.1162/isec_a_00274).]

Escalation pessimists worry that the U.S. approach could lead inadvertently to Chinese nuclear use. Their arguments echo Barry Posen's contention that NATO's approach to conventional warfighting in the late Cold War could have generated pressures for Soviet nuclear use by unintentionally infringing upon vital components of the Soviet retaliatory capability, such as its SSBN force and ground-based early warning radars.<sup>6</sup> For example, Thomas Christensen writes that Posen's analysis "should apply even more clearly to attacks on the Chinese homeland in a future U.S.-China conflict."<sup>7</sup> As Christensen explains, "China is simultaneously developing conventional and nuclear coercive capabilities that overlap significantly." He points in particular to the dual nuclear and conventional relevance of Chinese submarines, missiles, space assets, and command and control systems, emphasizing that "if strikes by the United States on China's conventional coercive capabilities or their critical command and control nodes and supporting infrastructure were to appear in Beijing as a conventional attack on its nuclear retaliatory capability or as a precursor to a nuclear first strike, even a China that generally adheres to a No-First-Use posture might escalate to the nuclear level."<sup>8</sup> Avery Goldstein, too, argues that a U.S.-China conventional war could inadvertently escalate to the nuclear level. In his view, the use of conventional force is inherently unpredictable, and as two nuclear-armed states using force to bargain at the conventional level, the United States and China might miscalculate in ways that could eventually lead to "unanticipated nuclear catastrophe." A particular danger stems from the possibility that the United States might mistakenly sink a Chinese SSBN during the course of a conventional war, "inviting Chinese nuclear retaliation."<sup>9</sup> Furthermore, Goldstein argues that both the United States and China are generally overconfident about their ability to control escalation, which exacerbates the risk. Other experts also rate escalatory risks as high. For example, Joshua Rovner notes that there is a strong chance of inadvertent escalation given the targets that the United States likely would attack in a conventional first strike against China. "The targets. . . would include China's ballistic missiles and fixed and mobile launchers, as well as space- and ground-based facilities for targeting and guidance," he writes. "While U.S. planners might be confident that they can distinguish conventional from nuclear targets, Chinese officials might not be, especially because their ballistic missile stockpiles would be at the top of the target list."<sup>10</sup> Similarly, Wu Riqiang writes that "because of the co-mingling of Chinese conventional and nuclear weapons and the difficulty of discriminating between them, the U.S. military might attack China's nuclear weapons inadvertently in a conventional war, which would drive China's confidence of retaliation lower. Therefore, Chinese leaders would face high use-it-or-lose-it pressure, and might lose confidence, leading to a decision to escalate." Wu identifies three types of intermingling as particularly worrisome. First, China mounts both nuclear and conventional warheads on its medium-range DF-21 missiles, which could lead to the United States unintentionally targeting China's nuclear arsenal in an attempt to suppress China's conventional missile threat. Second, Wu notes that the United States might have difficulty distinguishing between China's attack submarines and its SSBNs, resulting in the sinking of the latter, which could look to China like the prelude to counter force. Third, Wu worries that U.S. efforts to degrade Chinese command and control over its conventional forces also could degrade China's ability to control or use its nuclear deterrent. In the larger context of what Wu sees as a vulnerable land-based Chinese intercontinental ballistic missile (ICBM) force, he worries that China might fear that it would soon lose its nuclear deterrent.<sup>11</sup> Other escalation pessimists express similar concerns. For example, Christopher Twomey notes that China's "conventional systems rely on command and control systems that also perform a role in nuclear operations. . . . Chinese long-range over-the-horizon radars used to find U.S. carriers for attack by conventional ballistic missiles might also provide early warning capabilities. China's Second Artillery Force is responsible for both conventional and nuclear-armed

missiles. The separation of command and control links between the two sides of the force is unclear.”<sup>12</sup> Likewise, a second recent RAND study that is less alarmist about nuclear risks overall than the one previously mentioned still frets about China’s decision to mount both nuclear and conventional warheads on the DF-21. As Eric Heginbotham and his coauthors warn, “The hunt for conventionally armed missiles could result in the attrition of China’s nuclear-capable missile force,” which “could ultimately create a ‘use-them-or-lose-them’ dilemma. . . , particularly if other parts of China’s strategic system (such as SSBNs) were under attack.”<sup>13</sup> Some pessimists are so concerned that they have proposed entirely different U.S. concepts of operation for war in the Western Pacific.<sup>14</sup>

## Nuke war causes extinction – mass famine kills billions.

**Xia 22** [Xia, Lili (Professor of Climate Science at Rutgers University), et al. "Global Food Insecurity and Famine from Reduced Crop, Marine Fishery and Livestock Production due to Climate Disruption from Nuclear War Soot Injection." *Nature Food*, vol. 3, no. 8, 15 Aug. 2022, pp. 586–596, [www.nature.com/articles/s43016-022-00573-0](https://doi.org/10.1038/s43016-022-00573-0), <https://doi.org/10.1038/s43016-022-00573-0>.]

Using state-of-the-art climate, crop and fishery models, we calculate how the availability of food supplies could change globally under various nuclear war scenarios. We combine crops and marine fish and also consider whether livestock and animal products continue to be an important food source. For a regional nuclear war, large parts of the world may suffer famine—even given the compensating behaviours considered in this paper. Using crops fed to livestock as human food could offset food losses locally but would make limited impacts on the total amount of food available globally, especially with large atmospheric soot injections when the growth of feed crops and pastures would be severely impaired by the resulting climate perturbation. Reducing household food waste could help in the small nuclear war cases but not in the larger nuclear wars due to the large climate-driven reduction in overall production. We find particularly severe crop declines in major exporting countries such as Russia and the United States, which could easily trigger export restrictions and cause severe disruptions in import-dependent countries<sup>24</sup>. Our no-trade response illustrates this risk—showing that African and Middle Eastern countries would be severely affected. Our analysis of the potential impacts of nuclear war on the food system does not address some aspects of the problem, leaving them for future research. In all the responses, we do not consider reduced human populations due to direct or indirect mortality and possible reduced birth rate. The total number and composition of population changes would affect available labour, calorie production and distribution. Also, we do not consider farm-management adaptations such as changes in cultivar selection, switching to more cold-tolerating crops or greenhouses<sup>31</sup> and alternative food sources such as mushrooms, seaweed, methane single cell protein, insects<sup>32</sup>, hydrogen single cell protein<sup>33</sup> and cellulosic sugar<sup>34</sup>. Although farmer adaptation<sup>35</sup> and alternative food sources could reduce the negative impact from a simulated nuclear war, it would be challenging to make all the shifts in time to affect food availability in Year 2, and further work should be done on these interventions. Current food storage can alleviate the shortage in Year 1 (ref. <sup>14</sup>) but would have less impact on Year 2 unless it were rationed by governments or by the market. Expanding or shifting cropping land to favourable climate regions would increase crop production. Further studies on adaptation and the impacts on short-term food availability are needed, but those topics are beyond the scope of this study. Adaptation in fisheries is also not considered, such as changes in the use of discarded bycatch and offal in fisheries. These include reduced availability of fuel, fertilizer and infrastructure for food production after a war, the effects of elevated ultraviolet radiation<sup>36</sup> on food production and radioactive contamination<sup>37</sup>. While this analysis focuses on calories, humans would also need proteins and micronutrients to survive the ensuing years of food deficiency (we estimate the impact on protein supply in Supplementary Fig. [3](#)). Large-scale use of alternative foods, requiring little-to-no light to grow in a cold environment<sup>38</sup>, has not been considered but could be a lifesaving source of emergency food if such production systems were operational. In conclusion, the reduced light, global cooling and likely trade restrictions after nuclear wars would be a global catastrophe for food security. The negative impact of climate perturbations on the total crop production can generally not be offset by livestock and aquatic food (Fig. 5a). More than 2 billion people could die from a nuclear war between India and Pakistan, and more than 5 billion could die from a war between the United States and Russia (Table 1). The results here provide further support to the 1985 statement by US President Ronald Reagan and Soviet General Secretary Mikhail Gorbachev and restated by US President Joe Biden and Russian President Vladimir Putin in 2021 that ‘a nuclear war cannot be won and must never be fought’.

## UNCLOS solves – provides a framework for navigating the conflict without escalating to nuclear war.

**Vuković and Alfieri 20** [Vuković, Siniša (Senior Lecturer of Conflict Management and Global Policy, Academic Director of the MA in Global Policy at the Johns Hopkins University), and Riccardo Alfieri (Political Affairs Officer at United Nations ). "Halting and Reversing Escalation in the South China Sea: A Bargaining Framework." *Global Policy*, vol. 11, no. 5, Nov. 2020, pp. 598–610, <https://doi.org/10.1111/1758-5899.12868>.]

Preventing war between China and the US and maintaining peace in the South China Sea is possible. Equally avoidable are precipitous and erratic violent confrontations. Drawing upon the historical record and an analysis of the effects of precedents in negotiations, this paper concludes with one prediction and one prescription. As history shows, freedom of the seas will prevail once it serves the challenger's interests. China's spectacular rise will eventually tip cost-benefit considerations in favor of this regime. Beijing already has a world-class merchant marine and fishing fleet, a large and effective coast guard, a globally renowned shipbuilding capacity, and the ability to harvest and extract economically important maritime resources (McDevitt, 2016). In 2015, two-thirds of container traffic passed through ports that were either Chinese-owned or recipients of large Chinese investments. China's five biggest carriers control 18 per cent of all container shipping handled by the world's top-twenty companies. Moreover, the PRC is investing billions of dollars in the further expansion of its wide network of ports, which are by all appearances commercial, but can be easily adapted to function in essential military missions. Outside of the East China Sea, China opened its first overseas military base in Djibouti in August 2017 (Cabestan, 2019; Kynge et al., 2017; Tweed and Leung, 2018). No regime other than freedom of the seas could yield higher returns for a seafaring power with global interests. China already avails itself of the freedom of navigation principles the US supports. It would not be in China's own interest to subvert a regime that underpins its capacity to project power globally and serves its growing ambitions. The Black Sea bumping incident may serve as an important precedent in any future Sino-American negotiations by increasing the perception of legitimacy and fairness, and providing a roadmap for the parties with more information about the cost and benefits of a deal. First, the assertion of freedom of navigation at a bilateral level would allow both sides to bypass existing legal constraints, allowing the authorities in Beijing to assess wider ramifications without immediately compromising their stance in the ongoing maritime and territorial disputes with their neighbors. Second, a deal like the one made in 1989 could be conducive to clinching other bilateral agreements and creating momentum towards a common interpretation of the law of the sea as codified by UNCLOS. Finally, a joint interpretation of the principle(s) of freedom of navigation would reduce the need for FONOPs in the South China Sea, and limit possible flashpoints. A deal based on the precedent of the Black Sea bumping would not directly address the many competing security and strategic interests of the parties. However, it would reduce risks, set the conditions for a system of interlocking bilateral agreements and produce positive externalities in the region. However, there would be costs to both parties. For the US, these costs involve a complete suspension of, or significant reduction in FONOPs in the South China Sea.<sup>15</sup> A bilateral and mutually acceptable interpretation of freedom of navigation would formally eliminate excessive maritime claims. Authorities in Washington would require a needs-assessment of whether or not FONOPs are uniquely valuable in terms of surveillance and reconnaissance activities or if other intelligence collection tools can provide sufficient information about the Chinese military. Considering Beijing's plan to acquire a second-strike capability, a reduced American naval presence would also diminish the US strategic advantage. However, strategic equilibrium could also yield the benefit of stability, especially if Washington were to consider the ratification of UNCLOS. The fact that the US conceives of its norms as being reflective of customary law, and thus binding on the community of nations, reduces American credibility and fuels the perception that it abides by international norms only when they align with its national interests. Ratifying UNCLOS would controvert these speculations and bolster the US image as a proponent of rules-based behavior. For China, the costs would involve abiding to the American-shaped and supported regime of the seas. Such acceptance would establish a new

paradigm for the authorities in Beijing, which may suit both China's rising political and economic status, and support its objectives as a great naval power, just as it did the Netherlands, the United Kingdom, the USSR and the US in the past. It would require Beijing cease further attempts to ignore internationally recognized norms of the sea to advance its own interests. For instance, it would sacrifice construction of new facilities and the militarization of its outposts.<sup>16</sup> By engaging in a good faith joint interpretation exercise of the sort the US conducted with the USSR, the Chinese leadership would preserve the interests of its future blue-water navy and world-class merchant fleet, therefore securing greater political capital among its domestic constituency. It would recognize Beijing's regional interests and allow it to save face in light of a sudden change in domestic legislation for the purpose of compliance with the new interpretation. Furthermore, China's participation in a joint interpretation exercise would require the PRC to clarify the legal status of, chain of command relevant to, and operations carried out by maritime militias. These forces blur the lines between fishing and naval vessels, thereby violating the principle of distinction enshrined in International Humanitarian Law that aims to protect civilians from armed attacks (Kraska, 2015). Finally, Beijing should consider broadening the scope of risk-reduction measures of its coast guard (between 2010 and 2016 its vessels were involved in 68 per cent of 45 major incidents in the South China Sea; see Torode, 2016)) and make the Code for Unplanned Encounters at Sea (CUES) legally binding. In 1989, the existence of a framework of military cooperation, combined with the momentum of having avoided a catastrophe, created the right conditions to reach a pragmatic settlement between Moscow and Washington. In the South China Sea, a comparable outcome may be attainable. Instead of relying on dangerous activities that can further exacerbate the conflict, the challenge is to encourage meaningful action through cooperation and interest alignment. Prolonging the tug-of-war while waiting for another 'bumping incident' to sort out the tensions is an unnecessary and dangerous gambit for two nuclear powers.

## **Arctic**

## Melting Arctic ice is creating territorial disputes in the Arctic – conflict becoming increasingly likely and Russia will use nukes.

**Wither 21** (Wither, James Kenneth. James K. Wither is a Professor of National Security Studies at the George C. Marshall European Center for Security Studies. "An Arctic Security Dilemma: Assessing and Mitigating the Risk of Unintended Armed Conflict in the High North." *European Security*, vol. 30, no. 4, 28 June 2021, pp. 1–18, <https://doi.org/10.1080/09662839.2021.1942850>.)

Following its war with Georgia in 2008, Russia embarked on a major military reform and modernisation programme. In the Arctic region, Russia has refurbished Cold War era 4 J. K. WITHER infrastructure, built new bases and returned to long-range bomber and sea patrols. Military enhancements include missile-armed submarines and surface vessels, the world's largest ice breaker fleet and a new, dedicated Arctic Brigade. Military readiness has been honed by an extensive programme of Arctic training and exercises. Most notably, Russia has created an integrated network of air defence, coastal missile systems, early warning radar and electronic warfare assets to create a new Anti-Access Area Denial (AA/AD) system covering the Arctic Ocean, northern Scandinavia and the Norwegian and Barents Seas. (Zandee et al. 2020, p.15) The area is vital for the security of Russia's sub-marine-based, second-strike nuclear deterrent forces based in the Kola Peninsula, hence Russia's so-called "bastion" policy that seeks to provide these essential strategic assets with defence in depth. (Boulègue 2019, pp. 6–8, Regehr 2020, pp. 200–203). Russia's military build-up has created what is referred to above as an "unresolvable uncertainty" (Wheeler and Booth 1992) for NATO and partner states that are challenged to interpret whether Russian motives are offensive or defensive in nature. Most analysts accept that Russia, as the state with the longest coastline and greatest economic interests in the Arctic, has legitimate, defensive strategic interests in the region and needed to enforce sovereignty over its vast Arctic territories following the rundown of its military capabilities in the 1990s (Boulègue 2019, pp. 25–26, Graham and Jaffe 2020, Sergunin and Konyshov 2017). Other commentators, including NATO officials, claim that Russia's increased military capabilities, infrastructure and activities in the Arctic indicate the determination to seek military dominance and intimidate neighbouring states (Farley 2020, Melino and Conley 2020, Woody 2020). Another criterion used in security dilemma analysis is the nature of weapons' systems deployed, although the characteristics of modern weapons' systems make distinctions between offensive and defensive armaments difficult. Technologies, intended primarily for defensive purposes, can also support offensive operations. Russia's extensive, defensive AA/AD systems would create an effective shield to prevent NATO counterattacks in the event of Russian regional aggression. The extended bastion defence concept threatens NATO states' operations well into the North Atlantic as Russian attack submarines are equipped with long-range anti-ship and cruise missiles (Boulègue 2019, p. 6, Regehr 2020, pp. 204–205). Arguably, even more threatening for strategic stability are indications that Russia plans to deploy Arctic-based hypersonic missiles and is developing nuclear-powered underwater drones with the potential to strike the United States (Melino and Conley 2020, Humpert 2021). From Russia's perspective, the United States' anti-missile deployments are inherently offensive in nature because of their potential impact on its nuclear strike capability. A more immediate threat is posed by NATO's anti-submarine activities. NATO's recently reinstated naval, anti-submarine patrols into the Norwegian and Barents Seas will likely spur yet more extensive bastion defensive measures on Russia's part (Economist 2020). Echoes of Jervis' "spiral model" (1976) security dilemma appear in the increasing action/reaction military dynamic between NATO and Russia in the High North. A view shared by a recent expert panel discussion by EUCOM's Russia Strategic Initiative concluded that a security dilemma in the region was "becoming a reality" (RSI 2021). Arctic military exercises, intended to signal resolve by one party, tend to be matched by similar measures from the other side, which increases tensions and the dangers of accidental conflict. In February 2021, for example, the temporary deployment of United States Air Force B-1B bombers to Norway led to a significant mobilisation of Russian air force fighter and bomber aircraft and a missile testing exercise north of Norway (Axe 2021, Nilsen 2021). Even if an armed conflict appears unlikely,



military planners in the region must prepare for worst-case scenarios. (Nyhamar 2019) A particularly unstable security dilemma occurs when an offensive strategy has an advantage over a defensive one. Regional geography and Russia's well-equipped, theatre-ready forces provide it with local superiority over NATO and its partner states in the north. There are fears that, in a crisis, Russia may be tempted to take pre-emptive military action before the alliance can mobilise its significantly greater conventional military resources (Mikkola 2019, p. 5). Russia's armed forces train for rapid, offensive operations against neighbouring Nordic States (Oxford Research Group 2018, 3.5, Boulègue 2019, p. 22, Focus 2021, pp. 57–58). Analyst Pavel Baev has speculated that the Arctic is a theatre where Russian power projection could be "performed with minimal risk" (Baev 2017). As noted above, Waltz (1979) claimed that mutual nuclear deterrence alleviated much of the uncertainty caused by a security dilemma because possession of such weapons by both parties made war too risky a proposition. In a similar vein, Russian military analyst, Mikhail Khodarenok, recently dismissed the possibility of war in the Arctic because "there are no players in the region today, a conflict among whom would not have the risk of escalation into a full-scale nuclear war" (Gazetta.Ru 2019). Unfortunately, reliance on nuclear deterrence to prevent war may be misplaced. While security dilemmas inherently increase the risk of war through accident and miscalculation, the changing role of nuclear weapons in Russian strategic thinking might be an even greater destabilising factor. Crossing the nuclear threshold would be an enormous risk for Russia and would likely court retaliation in kind. But Russian strategy, war games and training suggest that the option for selective, tactical nuclear strikes during a conventional war with NATO might be considered as a means of retaining the strategic initiative and preventing further escalation. (Kilcullen 2020, pp. 138–139, Zysk 2018). RAND analyst Samuel Charap highlights a potential further source of confusion and misunderstanding. He argues that there is a mismatch between the Western concept of deterrence and the broader Russian concept of strategic sderzhivanie as the latter term does "not entail an exclusive focus on the prevention of adversary aggression" (Charap 2020). Although sderzhivanie by no means applies only to the use of nuclear weapons, Charap suggests that Russian thinking views even the most assertive military measures as defensive in nature being intended primarily to restrain rather than simply deter an adversary. The current lack of dialogue and military-to-military contacts contributes to the uncertainty, suspicion and hostility inherent in the security dilemma. In the north, Russia and NATO states currently exchange less information about exercises and deployments than during the latter part of the Cold War (Rahbek-Clemmensen 2016, p. 8). There is no military forum to discuss hard security issues since Russia no longer participates in the Arctic Security Forces Roundtable and the Northern Chiefs of Defence Conference has been suspended. The Russia-NATO Council has not met since July 2019. In December 2020, a conference organised by the European Leadership Network called for urgent military-to-military dialogue " ... to increase predictability and reduce the risk of military incidents at sea, in the air and on land escalating to the level of military conflict" (European Leadership Network 2020, p. 4).

## One nuke leads to retaliation, nuke war is certain

**Rodriguez 19** [Rodriguez, Luisa. Luisa Rodriguez is research analyst at 80,000 Hours. Previously, she researched civilisational collapse at the Forethought Foundation for Global Priorities Research, and nuclear war at Rethink Priorities and as a visiting researcher at the Future of Humanity Institute. "Would US and Russian Nuclear Forces Survive a First Strike?" Rethink Priorities, 18 June 2019, [rethinkpriorities.org/research-area/would-us-and-russian-nuclear-forces-survive-a-first-strike/](https://rethinkpriorities.org/research-area/would-us-and-russian-nuclear-forces-survive-a-first-strike/).]

The degree to which a nuclear war between the US and Russia could escalate depends on how many of their nuclear weapons would survive a first strike. For decades, both the US and Russia have been able to maintain a secure second strike by hiding their nuclear weapons on submarines, armored trucks, and aircraft. If improvements in technology allowed either country to reliably locate and destroy those targets, they would be able to eliminate the others' secure second strike, thereby limiting the degree to which a nuclear war could escalate. But, at least for now though, technological progress has not advanced to the point of threatening the subset of the nuclear warheads that are deployed on mobile systems: sea-launched ballistic missiles, air-based strategic bombers, and road-mobile ICBMs. The problem of reliably locating a mobile target like a submarine or a plane equipped with advanced stealth technology is still unsolved. As a result, I expect both the US and Russia would be able to mount a massive second strike following a first strike by the other. Specifically, I expect somewhere between ~990 and ~1,500 of the US's nuclear warheads would survive a first strike. While I believe Russia's nuclear forces would fare slightly worse, I expect at least ~450 warheads and as many as ~1,240 warheads would survive.

## UNCLOS k2 conflict resolution in the Arctic

**Nevitt 20** [Nevitt, Mark. Mark Nevitt is an associate professor of law at the Emory University School of Law. "Climate Change, Arctic Security, & Why the U.S. Should Join the U.N. Convention on Law of the Sea." Ssrn.com, 18 Sept. 2020, papers.ssrn.com/sol3/papers.cfm?abstract\_id=4306566.]

Climate change is transforming the Arctic in new and dramatic ways. According to the UN Intergovernmental Panel on Climate Change (IPCC), the Arctic is warming two to three times the rate of the rest of the planet. And this month's "United in Science 2020" report found that the Arctic sea ice extent was the lowest on record for July. Due to a pernicious feedback melting loop, melting permafrost, and the continual possibility of cataclysmic "green swan" events, worldwide sea level rise will be further impacted by Arctic events. What happens in the Arctic does not necessarily stay in the Arctic. In addition, climate change is both opening maritime trade routes and offering the possibility of natural resource extraction on the Arctic's continental shelf. It's also creating a whole new operational domain for the world's militaries. Unlike Antarctica—which is also being dramatically impacted by climate change—the Arctic lacks a comprehensive, Arctic-specific treaty. The Arctic region is largely governed by the United Nations Convention on the Law of the Sea (UNCLOS), the increasingly important work of the Arctic Council, and a hodgepodge of laws and bilateral agreements. But climate change is increasingly stressing this legal and policy framework. UNCLOS, aptly described as "A Constitution of the Oceans," remains one of the most comprehensive (and complex) international law treaties ever negotiated. It will take on increased importance as the Arctic adjusts to its 21st century climate reality. The United States, however, remains the only Arctic Council member that is not party to UNCLOS. This is short-sighted and contrary to U.S. national security and economic interests. Despite continued U.S. intransigence on law of the sea ratification, a remarkably diverse coalition of American national security experts, environmentalists, and business interests support the U.S. becoming a party to UNCLOS. While the United States accepts UNCLOS's key navigational provisions as binding as a matter of customary international law, climate change is dramatically impacting the Arctic. It further reinforces the need for the U.S. Senate to provide its advice and consent on this critical treaty. In what follows, I highlight three UNCLOS provisions that will take on increasing importance in a changing Arctic, reinforcing the need for the U.S. to join this critical treaty. (1) Article 38: The Right of Transit Passage Through the Northwest Passage and Northern Sea Route The right of transit passage will take on increased importance as climate change opens two Arctic maritime routes: the Northwest Passage and Northern Sea Route. These two seasonal waterways—the Northwest Passage that runs through Canada and the Northern Sea Route (sometimes referred to as the Northeast Passage) that hugs the Russian coastline—are both found in the Arctic. The Northwest Passage contains several possible routes running through the Canadian Arctic Islands, linking trade from northeast Asia via North America to the northern Atlantic. The Northern Sea Route provides the shortest maritime link between eastern and western Russia while offering another global maritime shortcut for the world's shipping. The right of transit passage applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or exclusive economic zone. All ships and aircraft enjoy this right, and UNCLOS makes clear that this right "shall not be impeded" provided that ships and aircraft proceed without delay through (or over) the strait. But does the right of transit passage fully apply to these two Arctic waterways? It remains unclear. As the Arctic sea ice extent decreases, shipping from all nations—to include nations outside the Arctic such as China—will also increase as nations seek faster and cheaper routes. Yet the international right of transit passage is running headfirst into Russian and Canadian claims over these waters. Canada, for example, asserts that much of the Northwest Passage traverses through an Arctic Archipelago that are historic Canadian internal waters. In addition, Russia asserts a similar internal waters claim over three straits that makeup the Northern Sea Route. Both Russian and Canadian claims challenge the right of transit passage through these waters. While these claims have been protested as excessive by the United States and European Union, their precise legal status remains unclear. While the United States and Canada signed a 1988 Agreement on Arctic

Cooperation that has defused tensions between these two allies, consider how much the Arctic (and world) has changed since 1988. How much longer can the “agree to disagree” approach hold? (2) Article 76: Defining the Continental Shelf The five Arctic coastal states (Denmark (via Greenland), Russia, United States, Norway and Canada) all have continental shelves in the Arctic Ocean. Converging at the North Pole, each nation’s extended continental shelf come together the way oranges wedges meet at the stem. Approximately half of the Arctic’s ocean floor is comprised of the continental shelf, the largest percentage of any of the world’s oceans. Why is the Arctic continental shelf so important? A coastal state’s continental shelf comprises the seabed and subsoil that extend far beyond the territorial sea. The U.S. has an enormous continental shelf off the coast of Alaska, and the seabed and subsoil provides access to valuable oil, natural gas, and minerals. Unlike other maritime zones delineations, the continental shelf lacks an express outer limitation. Under UNCLOS, for example, each coastal state’s exclusive economic zone extends out to 200 nautical miles. But a coastal state’s continental shelf “extends beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin.” What, exactly, constitutes a natural prolongation is a complex scientific and technical question that is made even more difficult by the costs to procure this information in the harsh Arctic environment. As climate change renews the possibility for Arctic oil, mineral, and gas extraction determining the precise breadth of each nation’s continental shelf will take on increased importance. Indeed, the U.S. Geological Survey estimates that 30% of the world’s undiscovered gas and 13% of undiscovered oil lies north of the Arctic Circle. UNCLOS can aid in resolving competing continental shelf claims with the procedures outlines in Article 76 that establishes the Commission for the Limits on the Continental Shelf (CLCS). With Canada’s Arctic submission to the CLCS in May 2019, each Arctic coastal state—but not the United States—have submitted information in support of their continental shelf claim. Not surprisingly, each Arctic coastal state seeks a fairly broad interpretation of “natural prolongation” and the outer breadth of their continental shelf. Russia, for example, asserts a continental shelf that extends to the Lomonosov Ridge, an area that extends to the North Pole several hundred miles from their Arctic coastline. As a non-party to UNCLOS, the United States is likely prohibited from making a submission to the CLCS in support of its Arctic continental shelf claim off the Alaskan coast. While the CLCS can only make recommendations on the breadth of each nation’s continental shelf, “the limits of the continental shelf established by a coastal state on the basis of these recommendations shall be final and binding.” Regardless of the finality of CLCS decisions, the United States should ratify UNCLOS and immediately make a continental shelf deposit to the CLCS. (3) Article 234: Ice Covered Areas As highlighted above, climate change is dramatically altering the Arctic icepack’s size, opening up shipping lines and navigational waterways for the first time in human history. Beyond the disputed claims by Russia and Canada over the Northwest Passage and Northern Sea Route, climate change is forcing us to look with fresh eyes at each Arctic coastal state’s authority over Arctic “ice-covered areas.” Article 234 (“Ice-covered areas”) of the law of the sea treaty states: Coastal states have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation . . . [s]uch laws and regulations shall have due regard to navigation and protection of the marine environment. This provision is taking on increasing importance in the Arctic, which has large swaths of ice-covered areas that are melting due to climate change. Article 234 bestows special regulatory authority for Arctic coastal states over ice-covered areas up to 200 nautical miles (the limits of the exclusive economic zone). Yet climate change raises several key questions about the outer scope of this authority. What, for, example, does “for most of the year” and “severe climatic conditions” mean? And won’t climate change gradually diminish any regulatory authority over ice-covered areas as the Arctic ice pack melts? Further, how should we apply Article 234 to the Northwest Passage and Northern Sea Route? And how can this provision be reconciled

with the right of transit and innocent passage discussed earlier? Despite these questions, both Canada and Russia have taken a forward-leaning view of their authority under Article 234. Russia has asserted an expansive view of this authority, requiring notification of foreign ships prior to transiting the Northeast Passage. While this runs counter to other UNCLOS provisions concerning the right of innocent passage through another nation's territorial sea, it, too, remains unresolved. The U.S. Should Ratify and Sign the United Nations Convention on the Law of the Sea The United States is an Arctic nation. And the Arctic Council's 2008 Ilulissat Declaration reaffirmed its commitment to the law of the sea framework. While the U.S. is not a party to UNCLOS, the U.S. has actually been a good law of the sea partner in upholding navigational freedoms throughout the world. And the U.S. Navy has complemented and enforced many key UNCLOS provisions through freedom of navigation operations. The U.S. has also worked hard to resolve disputes peacefully, a core law of the sea principle. But the U.S. lacks a seat at the law of the sea table and its credibility and commitment to the law of the sea are questioned by other nations. As these three provisions highlight, the law of the sea will be central to resolving current and future disputes in the Arctic. The U.S. Senate should provide its advice and consent to UNCLOS, without delay.

**ICC**

## Human Rights

## Trump hates the ICC; that strains ICC legitimacy.

**Trump 18** [Donald Trump, "Remarks by President Trump to the 73rd Session of the United Nations General Assembly | New York, NY", 09/25/2018, Trump White House, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-73rd-session-united-nations-general-assembly-new-york-ny/>]

So the United States took the only responsible course: We withdrew from the Human Rights Council, and we will not return until real reform is enacted. For similar reasons, the United States will provide no support in recognition to the International Criminal Court. As far as America is concerned, the ICC has no jurisdiction, no legitimacy, and no authority. The ICC claims near-universal jurisdiction over the citizens of every country, violating all principles of justice, fairness, and due process. We will never surrender America's sovereignty to an unelected, unaccountable, global bureaucracy.



## **ICC empirically decreases human rights abuses – studies prove.**

**Appel 18** [Appel, B. J. (2018) (Department of Political Science, Michigan State University, East Lansing, MI, USA). In the Shadow of the International Criminal Court: Does the ICC Deter Human Rights Violations? Journal of Conflict Resolution, 62(1), 3-28. <https://doi.org/10.1177/0022002716639101>]

The International Criminal Court (ICC) is responsible for prosecuting crimes against humanity, war crimes, and genocide. Despite the potential for the ICC to deter human rights abuses, scholars and policy makers are divided on the effectiveness of it. This debate, however, is plagued by some important theoretical and empirical limitations. I address the problems in the literature and evaluate whether the ICC can prevent human rights abuses. I argue that the ICC can deter governments from committing human rights violations by imposing a variety of costs on them throughout their investigations that decrease their expected payoffs for engaging in human rights abuses. Across a variety of statistical estimators that account for standard threats to inference and several anecdotes, I find strong support for my theoretical expectations; leaders from states that have ratified the Rome Statute commit lower levels of human rights abuses than nonratifier leaders.

## The US looks hypocritical now.

**Vindman 23** [Yevgeny Vindman, (Yevgeny Vindman is a former colonel in the U.S. Army JAG Corps who served as deputy legal advisor on the White House National Security Council from 2018 to 2020. He currently works on behalf of an international coalition called the Atrocity Crimes Advisory group with Ukrainian prosecutors investigating war crimes in Ukraine.) 4-11-2023, "The United States Should Join the International Criminal Court", Foreign Policy accessed through archive.md, <https://archive.md/Sld23> or <https://foreignpolicy.com/2023/04/11/russia-putin-ukraine-war-icc-united-states-crimes-arrest-warrant/>]

Despite being an active proponent of the rules-based order, the United States is an outlier in the democratic world when it comes to its lack of support for the ICC. The ICC's founding treaty, the Rome Statute, boasts a broad geographical coalition of 123 state party signatories—including many of the United States' strongest allies, such as Japan and the United Kingdom. The United States has thus far provided several justifications for not joining the treaty, yet many still see this absence as hypocrisy. Having served 25 years in the military, including as a legal advisor on international criminal law and ICC matters at the White House during the Trump administration, I know the case against joining the ICC well. Critics argue that the ICC infringes on U.S. sovereignty, limits our freedom of action in international relations, and exposes our soldiers and politicians to potentially politically motivated prosecutions by foreign bureaucrats. But under closer scrutiny, many of these fears fall flat. Further, in the current geopolitical environment, there is good reason to believe that the benefits of supporting the ICC now will heavily outweigh the risks. Since World War II, the United States has helped build, reinforce, and lead an international order in which countries play by predictable rules. Conflicts, at least between major powers, are resolved through negotiation and consensus instead of force. This system of postwar institutions provides a bedrock of stability that has allowed for a climate of relative peace among global powers and economic prosperity for the American public. Russia's aggression in Ukraine is the most serious attack on this system since at least the collapse of the Soviet Union and the greatest threat to peace on the European continent since World War II. As one of the guardrails put in place to maintain the rules-based international order, if the ICC's warrant is ignored, then the other remaining guardrails to prevent illegal warfare may erode, too. Inversely, abiding by international legal norms, including those enforced by the ICC, has the potential to walk back the damage Russia has already done to the rule of law. If the global community can put up a united front to hold Russia accountable for its crimes, other would-be aggressors—especially Russia's backers in Beijing—would take note. Supporting institutions of justice and accountability—even those that could potentially hold the United States accountable—would be a much-needed investment in the long-term viability of the U.S.-led international system for generations to come. As is the case of any international treaty, support for the ICC undoubtedly involves a certain sacrifice of sovereignty in pursuit of stability, deterrence, and peace. But even sharp criticisms and great concerns about joining the ICC should not dissuade the United States from entering into a treaty that will support the international rule of law. The idea that unelected bureaucrats in a supranational body can question and impugn the actions of democratically elected national officials is unconvincing. Though international prosecutors have vast powers, they can be constrained by the U.N. system and are only effective when the actions at hand violate principles of international law either in the initiation or conduct of conflict. Any objectively just and appropriate use of force would be beyond the ICC's reach. One would hope that any use of force by the United States would meet these simple criteria. The greatest concern about cooperating with the ICC is that doing so would expose U.S. service members and leaders to politically motivated prosecution by foreign bureaucrats. But the court operates on the principle of complementarity, meaning that the ICC will not exercise jurisdiction when a state exercises its own prerogatives to investigate and prosecute potential war crimes. The ICC steps in only when a state fails to use its own national criminal justice apparatus to handle war crimes, as is currently the case in Russia. In the United States, however, the robust military justice systems ensure that crimes are investigated and prosecuted as a matter of maintaining order and discipline within the armed forces, making ICC jurisdiction against U.S. military personnel unlikely, so long as the United States continues to police its own behavior. Because the United States is already

compliant with core principles of international criminal law, supporting and even joining the ICC would have very little practical effect on U.S. operations. Support for the ICC would, however, eliminate the argument that the United States is hypocritical and send a clear message that the United States plays by the same rules that it expects of all other international actors.For example, even though the U.S. military has a robust legal regime that effectively polices compliance with the law of war, there have been recent lapses at the political level, specifically the Trump-era grants of clemency for war criminals such as former Navy SEAL special operations chief Eddie Gallagher, who was accused of committing various war crimes while deployed in Iraq in 2017, and four security guards from the private military firm Blackwater—Paul Slough, Evan Liberty, Dustin Heard, and Nicholas Slatten—who were serving jail sentences for a 2007 civilian massacre in Baghdad. These actions were not popular with career military prosecutors—including myself—because the lack of justice and accountability erodes not only U.S. moral authority but ultimately good order and discipline within the military. Justice for its own sake is, of course, a worthy goal. Signing the Rome Statute would be a powerful step toward justice for Ukrainians who have suffered at the hands of Putin, as well as those who deserve accountability elsewhere. But many short-sighted critiques of the ICC miss the larger point that support for this body is not just the morally correct choice; it's also the strategically correct one for U.S. foreign policy. A demonstrated commitment to accountability will strengthen the United States' own institutions and make U.S. leadership of international institutions more credible and viable. Further, ICC membership would potentially chill U.S. political leaders' appetite for unjust wars that could land them in dicey moral and legal terrain. An added layer of restraint and accountability may prevent future foreign-policy follies, whether by the White House or even by an expansionist China eyeing Taiwan. American choices made in the coming months and years will either further erode the international system or accelerate Russia's status as a global pariah. By making the right choice and joining the ICC's efforts for justice, the United States adds to its own security by fortifying the rules-based international order and dissuading aggressive adventures by its competitors.

## **The ICC's deterrent effect against human rights violations is empirically verified but can be expanded.**

**Philips 16** [Christen Romero Philips, "The International Criminal Court & Deterrence: A Report to the Office of Global Criminal Justice, U.S. Department of State", June 2016, Stanford Law School: Law & Policy Lab, <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf>]

Emerging empirical evidence suggests the ICC does have a direct deterrence effect on particular actors in specific situations. Given that it "can try cases arising out of any events taking place after 1 July 2002, the possibility of prosecution and punishment by the ICC might realistically enter into the calculations of potential perpetrators worldwide."<sup>1</sup> Many of the early literature on the impact of the ICC based justifications on a general deterrence theory, positing that the threat of an ICC prosecution would deter both leaders and subordinates from committing atrocities across the board. For example, Payam Akhavan has argued, in the context of the ICTY, that the long culture of impunity created a world in which international law could not deter future violations of human rights, but that the creation of the ICTY could, at least to some extent.<sup>2</sup> He argued that "targeting political and military leaders and subjecting them to a threat of punishment, or even mere international opprobrium, can generate a form of immediate deterrence."<sup>3</sup> In recent years, emergent empirical evidence has shifted the discussion to a conditional deterrence model, suggesting that the ICC's capacity to deter will depend on the type of actor, the context, and the level of ICC involvement in a situation country.<sup>4</sup> In perhaps the largest and most in-depth empirical study of the ICC's deterrence effect, published in 2015, Jo and Simmons present evidence supporting the conditional deterrence theory. Jo and Simmons found "[g]overnments that depend on aid relationships are easier to deter than the more self-reliant."<sup>5</sup> They also found that rebels are harder to deter than governments, but that "even rebels appear to have significantly reduced intentional civilian killing when the ICC has signaled its determination to prosecute."<sup>6</sup> Furthermore, there is variation among types of rebel leaders; secessionist rebels who want to rule and gain international legitimacy are more likely to be deterred by the threat of the ICC than non-secessionist rebels, due to the impact ICC action could have on their standing in the international community.<sup>7</sup> Importantly, Jo and Simmons' findings suggest that individuals, especially rebel groups, may only be deterred once the ICC has taken affirmative steps toward investigation.<sup>8</sup> In the primary findings of a case study of Kenya that is still underway, Dutton and Alleblas describe three factors that together impact the deterrent effect of the ICC: 1. The domestic political context, 2. The type of actor, and 3. The level of ICC intervention. Their findings suggest that ratification of the ICC Statute alone did not necessarily produce any deterrent effect in Kenya, but that the investigation and indictments of Kenyatta and Ruto seems to have produced some deterrent effect, contributing to the relatively peaceful elections in 2013. However, sustaining this increased level of involvement may have also contributed to the unintended consequence of forcing "the country's leaders into a corner, and they responded by taking actions to ensure that they would not be held accountable for any human rights abuses."<sup>9</sup> These findings in Kenya lend support to Jo and Simmons' conclusion that individuals may only be deterred once the ICC has taken affirmative steps to investigate. Furthermore, a recent in-depth analysis of the situation in the DRC by Broache found that "the publication of the arrest warrant for Ntaganda had no significant effect on violence against civilians, mostly because Ntaganda and other CNDP leaders perceived a low probability of arrest."<sup>10</sup> While the conviction of Lubanga was associated with an immediate increase in violence against civilians, "Ntaganda's voluntary surrender to the ICC was associated with lower levels of violence against civilians, mostly because it significantly weakened the M23."<sup>11</sup> Broache argues for reframing the deterrence debate to look at various stages of the legal process, and his research in the DRC gives further weight to a conditional deterrence theory, as opposed to all-or-nothing approaches. Along with earlier literature discussing a more theoretical basis for the deterrence argument, these emergent findings support the ICC's capacity to deter in specific situations. For example, CroninFurman's earlier research found that commanders who permit or fail to punish

subordinates for atrocities will be easier to deter than those who explicitly order the commission of such atrocities.<sup>12</sup> This lends additional support to the distinction both Jo and Simmons and Dutton and Alleblas make between different types of actors. In a recent online symposium created to discuss the emerging research by Jo and Simmons, a number of experts in this field weighed in on the study. These criticisms will be further elaborated on in the second section. However, there are a number of criticisms of the study itself that merit discussion here. First, the data set used by Jo and Simmons ends in 2011, as discussed by Drumbl, and thus was generated before the ICC had actually convicted anyone.<sup>13</sup> Therefore, although the study is comprehensive and very well done, it does not actually address the way the most recent and significant prosecutorial developments affect the deterrence argument. Second, it is impossible to completely eliminate all selection effects that arise from “the fact that states choose to accept the court’s jurisdiction through ratification of the Rome Statute.”<sup>14</sup> Therefore, it is difficult to entirely eliminate the possibility that any change in the behavior of various actors is due to the same factors that lead the state to ratify the ICC Statute in the first place, such as a democratic transition or a commitment to peace and justice.<sup>15</sup>

## **Ratifying the ICC reduces domestic human rights violations – strengthens the US.**

**Philips 16** [Christen Romero Philips, "The International Criminal Court & Deterrence: A Report to the Office of Global Criminal Justice, U.S. Department of State", June 2016, Stanford Law School: Law & Policy Lab, <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf>]

Ratification of the ICC seems to exert a positive effect on domestic laws and practices, and is correlated with a reduction in hostilities and human rights violations. There is some evidence that ratification of the ICC Statute alone produces a deterrent effect. Studies have found "suggestive evidence that a government's ratification of the ICC tends to be correlated with a pause in civil war hostilities or reduction in human rights violations."<sup>16</sup> Part of this effect may be attributable to the ICC's complementarity provision, which provides Member States with an incentive to develop or strengthen domestic justice systems in order to preclude ICC jurisdiction. "There is strong evidence of a reduction in intentional civilian killing by government actors when states implement ICC consistent statutes in domestic criminal law, which we can reasonably attribute, at least indirectly to the ICC's influence."<sup>17</sup> It may be impossible to tease apart the deterrent effect of the new domestic laws from that of the ICC itself, but regardless, joining and engaging with the ICC seems to have some deterrent effect, either directly or indirectly. Simmons and Danner found through an empirical analysis that the "the least accountable governments – the least democratic, with the weakest reputations for respecting the rule of law, the least politically constrained – with a recent past of civil violence," were among the earliest to ratify the Rome Statute.<sup>18</sup> They attribute this finding to something they call "credible commitment theory," which explains why governments with such low accountability voluntarily chose to subject themselves to ICC jurisdiction.<sup>19</sup> This theory posits that ratification of the ICC can be used as a form of self-binding by states that are most vulnerable to ICC prosecution and least able to commit credibly to domestic alternatives, by essentially tying their hands as they work toward conflict resolution.<sup>20</sup> Furthermore, even in countries that are able to commit credibly to domestic alternatives, there is evidence that avoiding ICC jurisdiction by conducting domestic prosecutions has positive effects on human rights practices. For example, research by Sikkink and Walling in 2007 found that "in 14 of the 17 cases of Latin American countries that have chosen trials, human rights seem to have improved."<sup>21</sup> In response to critics of trials who argue that judicial processes exacerbate conflict (discussed more fully below), Sikkink and Walling conclude that "there is not a single transitional trial case in Latin America where it can be reasonably argued that the decision to undertake trials extended or exacerbated conflict."<sup>22</sup> Although the ICC did not intervene in any of these cases, the act of conducting domestic prosecutions, consistent with the ICC's complementarity provision, had a positive effect on human rights practices throughout the region.

## **Strengthening the ICC leads to greater prosecutions that empirically promote human rights.**

**Philips 16** [Christen Romero Philips, "The International Criminal Court & Deterrence: A Report to the Office of Global Criminal Justice, U.S. Department of State", June 2016, Stanford Law School: Law & Policy Lab, <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf>]

The ICC exerts a normative influence by making prosecutions for human rights violations a primary mechanism for justice, which is associated with improvements in the protection of human rights.

Research by Kim and Sikkink "provides evidence that prosecutions work both through their punishment effects and because they communicate norms."<sup>23</sup> The ICC has the ability to communicate such norms at a very high level that could have widespread effects, given the Court's visibility and potential for nearly worldwide jurisdiction. By investigating and prosecuting human rights abuses, the ICC exerts a normative influence, communicating the importance and value of prosecutions as a mechanism for justice. Prosecutions are some of the most visible forms of justice in post-conflict societies with the potential to advance peace by highlighting the measures taken to hold specific individuals accountable. Furthermore, prosecutions can help to advance peace by dispelling notions of collective guilt and highlighting individual responsibilities for atrocities.<sup>24</sup> While there has been some debate about the appropriateness of prosecutions as a tool for justice, research in Latin America by Kim and Sikkink highlights the value of human rights trials. For example, they found that "transitional countries with human rights prosecutions are less repressive than countries without prosecution," that "countries with more cumulative prosecutions are less repressive than countries with fewer prosecutions," and that even "countries with more neighbors with prosecutions are less repressive."<sup>25</sup> They argue that "both normative pressures and material punishment are at work in deterrence, and the combination of the two...is more effective than either pure punishment or pure normative pressure."<sup>26</sup> The ICC may also be able to assert a normative effect on victim involvement in prosecutions, although this impact has yet to be empirically studied. Victims are theoretically given a more prominent role in the ICC than in other international criminal tribunals.<sup>27</sup> If the ICC is looked to as a model of how to prosecute human rights abuses, it may have an impact on the decisions domestic or other international bodies to increase victims' roles within a prosecution.

## Joining the ICC by becoming party to the Rome Statute signals US commitment to international justice and strengthens the ICC.

**Gavino 21** [Gillian Gavino (Gillian Gavino is a second year International Affairs MA student at the George Washington University Elliott School of International Affairs in Washington, DC.), "Catching up to the world: Why the US should join the ICC", 11/15/2021, Rappler, <https://www.rappler.com/voices/imho/opinion-catching-up-world-why-us-should-join-icc/>]

As Americans reflect on this year's Nobel Peace Prize winners, how can the US stand in solidarity with those fighting for human rights and assist in bringing international justice? One way is for the US to join the ICC and support its mission of punishing the most serious offenses of international humanitarian law. By joining the ICC, the US can work to bring international justice, while lobbying for needed reforms of the ICC from the inside. The ICC is the world's court for prosecuting individuals who commit genocide, crimes against humanity, war crimes, and crimes of aggression. A treaty known as the Rome Statute created the ICC. The Clinton administration initially signed the treaty but did not ratify it pending further review. The Bush administration subsequently notified the UN that it did not intend to pursue the ratification process over concerns of jurisdiction and politically motivated prosecutions against US service personnel. In the meantime, state and non-state actors have continued to commit serious international crimes. The Biden administration has expressed continuing reservations regarding the court, even as it intends to take a less adversarial approach than its predecessor. The Biden administration is opting to address concerns with the court's stakeholders rather than impose sanctions. However, no policy has been specified. America's future relationship with the ICC is still undefined. Herein lies a new opportunity for the US to forge a new partnership. Joining the ICC would reaffirm a US commitment to international norms. It would show that the US is willing to work with the international community on issues of law and justice. The US would finally be able to fulfill the obligations it had originally signed up for under the Rome Statute. Joining the ICC would strengthen the court and the effectiveness of international justice. The US is still the world's only superpower, and the court can benefit from its immense resources. International criminals will think twice knowing that the US and ICC stand together. Joining the ICC would enable the US to push for needed reforms within the court itself. As a member of the court, the United States would also become a member of the court's Assembly of States Parties which is the legislative body that administers the court. This will give the US leverage and legitimacy in lobbying for reforms. The US would have a true seat at the table within the ICC. Many in the previous administration such as John Bolton heavily criticized the ICC and expressed the fear that US troops might one day be brought before the court. However, the US has the resources and ability to defend itself, justify its actions, and account for its mistakes. As long as the US is able to hold itself accountable, it should have nothing to fear from the court.



**Kant**

**To 'become party to' is binding.**

**UN 10** (United Nations, 2010, "Fact Sheet #5 Understanding International Law," 2010 Treaty Event Towards Universal Participation and Implementation, [https://treaties.un.org/doc/source/events/2010/Press\\_kit/fact\\_sheet\\_5\\_english.pdf](https://treaties.un.org/doc/source/events/2010/Press_kit/fact_sheet_5_english.pdf))

To become party to a treaty, a State must express, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty – it must “consent to be bound” by the treaty. It can do this in various ways, defined by the terms of the relevant treaty.

**To 'become party to' accepts jurisdiction.**

**The Rome Statute** (Rome Statute of the International Criminal Court, 7-17-1998, "Rome Statute of the International Criminal Court," The International Criminal Court, <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>)

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

**Ethic's can't begin in the natural world – First, is the is-ought gap. Statements about how the world is, like 'most people desire to maximize their own pleasure,' don't necessarily give us conclusions about how the world ought to be.**

**DePaul 21, PhD**, [\*Ph.D. Brown University and Professor of Philosophy Emeritus at the University of Notre Dame; & \*\*PhD at University of Notre Dame, Associate Professor of Philosophy at Kansas State University. (\*Michael DePaul & \*\*Amelia Hicks, 5-12-2021, "A Priorism in Moral Epistemology," *Stanford Encyclopedia of Philosophy*, <https://plato.stanford.edu/entries/moral-epistemology-a-priori/>)]

For Kant, there is a close connection between the nature of moral truths—in particular, their prescriptive content (i.e., what they direct one to do), as well as their necessity and universality—and the way in which we discover those truths, namely, a priori. In his view, one can discover a maximally general, fundamental moral principle. This is a principle that he calls "the categorical imperative". Kant holds it can be known through reason alone, specifically, via a transcendental argument (see entries on Kant's moral philosophy and transcendental arguments). He held that we could then deduce more specific, but still general moral truths from this fundamental principle. Kant provides various formulations of the categorical imperative, the first being that one ought to act only in accordance with a maxim[3] that one can at the same time will to become a universal law—roughly, an act ought to be done by someone only if the person could will, without contradiction, that everyone act as he or she is acting. Examples of more specific principles he deduces from the categorical imperative are that one ought not make lying promises or commit suicide. Kant's discussion of lying promises nicely illustrates how the categorical imperative works: A person in some difficulty is considering making a promise he knows he cannot keep to escape the difficulty. To apply the categorical imperative, the person must consider what would happen if everyone in some difficulty made a lying promise to escape. If so many lying promises were made, no one would believe a person who promised to do something, so under these conditions one could not escape a difficulty by making a promise. Hence, the person could not consistently will that his maxim be a universal law, since making it a universal law would frustrate his aim in making the lying promise. Therefore, one ought not escape a difficulty by making a lying promise.¶ In Book II of the *Groundwork* (1785 [1996]) Kant claims the fundamental moral truths are synthetic a priori because moral truths are prescriptive. Kant held that the categorical imperative is not analytic, because although Kant thought the applicability of the categorical imperative to any given individual is deducible from the assumption that the individual is rational, the concept of the categorical imperative is not contained in the concept of a rational being. Kant thought the categorical imperative must be discovered a priori—through reason—because, as a fundamental moral law applying to all rational beings, it cannot be discovered through mere experience: one cannot learn how one should act from how people do act.¶ Moreover, we can see why Kant may have thought that the necessity and universality of moral truths makes them impossible to discover a posteriori. Regarding necessity: observing how things actually go seems insufficient to find out how they must go. And regarding universality: if moral truths are universal in the sense that they are true in all contexts, then one could only verify the truth of a moral claim by (a) experiencing all contexts and (b) perceiving the moral truth in each one. But that is clearly impossible.

**Second is intrinsic uncertainty in all empirical knowledge that means different agents can all justifiably adopt completely-different worldviews, making the moral consequences of those external worldviews non-universal.**

**Sinnott-Armstrong 8-1, PhD** [American Yale PhD philosopher specializing in ethics, epistemology, neuroethics, the philosophy of law, and the philosophy of cognitive science. He is the Chauncey Stillman Professor of Practical Ethics in the Department of Philosophy and the Kenan Institute for Ethics at Duke University. (Walter Sinnott-Armstrong, 8-1-2024, "Moral Skepticism," *Stanford Encyclopedia of Philosophy*, <https://plato.stanford.edu/entries/skepticism-moral/>)]

The final kind of argument derives from René Descartes (1641). I do not seem justified in believing that what I see is a lake if I cannot rule out the possibility that it is a bay or a bayou. Generalizing, if there is any contrary hypothesis that I cannot rule out, then I am not justified in believing that what I see is a lake. This common standard is supposed to be required for justified belief. When this principle is applied thoroughly, it leads to skepticism. All a skeptic needs to show is that, for each belief, there is some contrary hypothesis that the believer cannot rule out. It need not be the same hypothesis for every belief, but skeptics usually buy wholesale instead of retail, so they seek a single hypothesis that is contrary to all (or many common) beliefs and which cannot be ruled out in any way.¶ The famous Cartesian hypothesis is of a demon who deceives me in all of my beliefs about the external world, while also ensuring that my beliefs are completely coherent. This possibility cannot be ruled out by any experiences or beliefs, because of how the deceiving demon is defined. This hypothesis is also contrary to my beliefs about the lake. So my beliefs about the lake are not justified, according to the above principle. And there is nothing special about my beliefs about the lake. Everything I believe about the external world is incompatible with the deceiving demon hypothesis. Skeptics conclude that no such belief is justified.

**Thus, my value is constitutive practical reason. Since agents are defined by choosing courses of action, we are constituted by our ability to exercise reason and make decisions a priori. This morality is universal, since non-agents cannot be posed practical questions and are thus morally irrelevant.**

**Vriend 22** [M.A. in philosophy and is a PhD student. (Justin Vriend, August 2022, "Agency and Practical Reason: A Consideration of Some Objections to Constitutivism," *The University of Guelph*, <https://atrium.lib.uoguelph.ca/server/api/core/bitstreams/2d29bd04-1229-49a9-9a48-92ee5730bd48/content>)]

Place yourself for a moment in a canvas tent pitched between tall snow-laden trees beside some remote lake, far from civilization. A small wood-burning stove sits in the middle of the tent, its smoke funneled out by a narrow chimney. You are eagerly reading some brilliant novel that is transforming how you think about the world and your place in it. But a sudden shiver informs you that the fire is beginning to die. Looking at your woodpile, you see that you are running short of fuel. And you know just how cruel winter can be. Without heat, you risk cold, quiet death. But just a few more chapters couldn't hurt, right? For a moment, you register confusion. You realize you are at odds with yourself. So, you take a moment to reflect on your situation. You pose yourself the prototypical practical question, "What should I do?"<sup>1</sup> Christine Korsgaard suggests that your ability to entertain this question, and the fact that your answer matters, are the practical consequences of your being a rational agent. In contrast with the actions of gibbons and other lower apes, your actions do not always flow mechanistically from the balance of your desires.<sup>2</sup> You are able to step back from your desires and reflect. In this reflective gap, you have powers not generally possessed by subrational animals. First, you are able to suspend your habitual and instinctual responses to your goals and desires. Second, you are able to observe and interpret your apparent goals and desires. You might call this having epistemic access to your goals and desires. Third, you are able to deliberate about how you will respond to which goals and desires, voluntarily affirming some while rejecting others, thereby choosing a course of action. You might call this having practical access to your goals and desires. Without these powers, you could not meaningfully be posed with practical questions, nor could you meaningfully be said to act in light of your answers to practical questions. The question 'Which of my desires should I act on?' presupposes that you are capable of suspending your instinctive responses to your desires, forming an interpretation of the buffet of desires that appears before you (epistemic access), and choosing between them (practical access).

**Practical reason is an inescapable authority, but alternatives are non-binding, since they're either internal and thus subjective, or external and thus escapable.**

**Velleman 5, PhD** [PhD from Princeton and professor of philosophy and bioethics at NYU. (J. David Velleman, 2005, "A Brief Introduction to Kantian Ethics" in *Self to Self: Selected Essays*, Cambridge University Press, p. 18–19)]

As we have seen, requirements that depend for their force on some external source of authority turn out to be escapable because the authority behind them can be questioned. We can ask, "Why should I act on this desire?" or "Why should I obey the U.S. Government?" or even "Why should I obey God?" And as we observed in the case of the desire to punch someone in the nose, this question demands a reason for acting. The authority we are questioning would be vindicated, in each case, by the production of a sufficient reason.¶ What this observation suggests is that any purported source of practical authority depends on reasons for obeying it – and hence on the authority of reasons. Suppose, then, that we attempted to question the authority of reasons themselves, as we earlier questioned other authorities. Where we previously asked "Why should I act on my desire?" let us now ask "Why should I act for reasons?" Shouldn't this question open up a route of escape from all requirements?¶ As soon as we ask why we should act for reasons, however, we can hear something odd in our question. To ask "Why should I?" is to demand[s] a reason; and so to ask "Why should I act for reasons?" is to demand a reason for acting for reasons. This demand implicitly concedes the very authority that it purports to question – namely, the authority of reasons. Why would we demand a reason if we didn't envision acting for it? If we really didn't feel required to act for reasons, then a reason for doing so certainly wouldn't help. So there is something self-defeating about asking for a reason to act for reasons.¶ The foregoing argument doesn't show that the requirement to act for reasons is inescapable. All it shows is that this requirement cannot be escaped in a particular way: we cannot escape the requirement to act for reasons by insisting on reasons for obeying it. For all that, we still may not be required to act for reasons.¶ Yet the argument does more than close off one avenue of escape from the requirement to act for reasons. It shows that we are subject to this requirement if we are subject to any requirements at all. The requirement to act for reasons is the fundamental requirement, from which the authority of all other requirements is derived, since the authority of other requirements just consists in there being reasons for us to obey them. There may be nothing that is required of us; but if anything is required of us, then acting for reasons is required.

**The unit of moral analysis is a maxim —that’s three parts: it’s a circumstance which begets an action for a reason. Actions absent reasons can’t be morally relevant since they’re equivalent to cosmic randomness.**

**Korsgaard 19, PhD** [PhD from Harvard, B.A. from University of Illinois, FBA, & Honorary LHD from University of Illinois. (Christine Marion Korsgaard, 2019, “Constitutivism and the virtues,” *Philosophical Investigations* 22(2),

<https://dash.harvard.edu/bitstream/handle/1/37366787/Korsgaard.Constitutivism.and.the.Virtues.pdf>, p. 11–13)] \*edited for gender

First of all, no one thinks a wholly “external performance,” if that just means a bodily movement, has any moral value. Suppose that you are starving, and I am about to eat a sandwich when I learn about this. And suppose that just then I am attacked by a series of involuntary muscle spasms that cause me to make exactly the same physical movements I would make if I were giv[e]ing you my sandwich. Of course no one would claim that this wholly “external performance” has any moral value. An act must be done with a certain proximate or immediate intention in order to count as an act at all. And that proximate or immediate intention is already part of the action’s motive. So in order to even count as “giving you my sandwich” I have to at least intend to transmit the sandwich from my possession to yours.¶ But of course one can still have different motives for carrying out a certain proximate or immediate intention: I might give you a sandwich, say, simply in order to alleviate your hunger, seeing that as worth doing for its own sake. Or I might give you a sandwich because I believe you will pay me for it and I hope to get the money, or because I dislike you and I am hoping you will choke on it. Or, as Hume thought of the matter, I might give you a sandwich because I think it is my duty to give you a sandwich. But this last case, at least according to Kantians, is where Hume gets it wrong. Here is why:¶ I just contrasted these cases: ¶ 1. I give you a sandwich simply to alleviate your hunger. ¶ 2. I give you a sandwich to get the money you will pay me for it. ¶ 3. I give you a sandwich hoping you will choke on it. ¶ 4. I give you a sandwich because it is I think it is my duty to do so. ¶ There are two important points about this list of cases:¶ The first one has to do with the awkwardness on the “inner” side of Hume’s “inner/outer” contrast. Hume, as I mentioned, sometimes describes things like “benevolence” or “malice” or “ambition” as “motives.” But actually, there is a difference in the way we think about the idea of a “motive” when we think about it from the first person or the third person point of view. I have just said that any act has an immediate or proximate intention; when we think of motives for performing a certain act from the first-person point of view, it is natural to think of them as further or more fully specified intentions. So for instance when I say that I give you a sandwich in order to alleviate your hunger, or hoping you will pay me for it, or hoping you will choke on it, I am specifying the further ends I hope to achieve by transmitting the sandwich from my possession to yours. But of course I might have further intentions still: I might be hoping you will pay me for the sandwich because I hope to get rich, or because I need to pay a debt, or because I want to make a contribution to charity. We might reasonably suppose that from this first-person point of view, we have specified the agent’s motive only when we have reached what I will call [their] his final intention, which will be [their] his fully specified intention. We only get to the agent’s fully specified intention—his [their] final intention—when we arrive at a [is] description of the action under which the agent values it for its own sake. There is no further reason, let us say, why I want to alleviate your hunger; or to get rich myself—those are simply states of affairs I see as valuable. Everything else equal, therefore, they make it seem to me as giving you a sandwich is a thing worth doing.7



**Thus, my Criterion/Standard is consistency with the categorical imperative. That asks us to universalize our maxim and determine if its universality defeats the point. If it does, it's self-contradictory since it's nonsensical to take an action and then expect other agents in identical scenarios to not take it.**

**Guthrie 1** [M.A. from Lacrosse University, professor of philosophy at Regis University. (Shandon L. Guthrie, January 2001, "IMMANUEL KANT AND THE CATEGORICAL IMPERATIVE," The Examined Life On-Line Philosophy Journal, Volume II Issue 7, <http://static1.1.sqspcdn.com/static/f/38692/701189/1262870571447/Immanuel+Kant+and+the+Categorical+Imperative.pdf>)]

The particular work under consideration here will be Kant's *Foundations of the Metaphysics of Morals* translated by H. J. Paton. This work, although relatively short, contains Kant's working definition of his concept of morality. In addition, a portion of Kant's work, *Good Will, Duty, and the Categorical Imperative* will be included in our discussion (edited by Professor Anthony Serafini). For Kant, the central radix of morality concerns obligation or reasons of ought. If it is defined in terms of ought, we must understand if conditional or unconditional usages are being applied here. That is, a conditional ought means that one ought to perform some act in order for something else to happen (i.e. possibly some type of reward). If something is an unconditional ought then one ought to perform some act apart from any consideration of merit. It appears that Kant himself adopts the view that morality is the unconditional ought. It is without regard to reward or merit. Dr. Ed L. Miller of the University of Colorado states:¶ For Kant, only the unconditional ought is the moral ought. Why? Because, as we all recognize--don't we?--morality must be necessary and universal, that is, it must be absolutely binding, and absolutely binding on everyone alike: Whoever you are, whatever your situation, you ought to do X.(3)¶ The implication here is that moral acts are to be accomplished apart from any alternate considerations such as merit and reward. In fact, Miller suggests that this morality must be "binding" and "universal." After all there would be something wrong with the idea suggesting "murder is wrong" if it only applied to person Q and not person R. Indeed, Kant himself states:¶ I am never to act otherwise than so that I could also will that my maxim should become universal law. Here, now, it is the simple conformity to law in general, without assuming any particular law applicable to certain actions, that serves the will as its principle, and must so serve it, if duty is not to be a vain delusion and a chimeric vision.(4)¶ Kant further dismisses the notion that morality operates in a meritocracy:¶ [T]he moral worth of an action does not lie in the effect expected from it, nor in any principle of action which requires to borrow its motive from this expected effect.(5)¶ When one understands the departure of a moral act from its consequences then it becomes clear what Kant was attempting to convey. This is what he and others refer to as duty. The fulfillment of our duty then does not rest on the consequences of our actions. However, the results of an action may be necessary in determining duty, while it must be remembered that this is not to be confused with the consequences that result from human action. In the terms of 19th century philosophy, the results of the thing-in-itself (the moral act) affect both the subject (the moral agent) and the object (the other individual(s) affected). By making the act universal and necessary, the highest good must be achieved in the subject-object relationship. This determines what our duty is. In understanding what the proper ideal is in the maximization of the highest good of each action, we look through it in our perception of the world and how we ought to act in it. So now the categorization of morality as a priori must be established.¶ MORALITY AS A PRIORI¶ Kant emphasizes the absolute necessity of separating genuine morality from all empirical considerations. Instead, the necessity of deriving it a priori, or from the categorization of claims alleged to be true apart from experiencing them first, is derived from pure reason. For Kant, morality must be a priori. If it is not, then morality falls into the realm of "anthropology" or empirical truths about human nature. This means that morality must be "freed from everything which may be only empirical"(6) For Kant, morality simply must be separate from experience due to the very idea of duty itself. In his *Foundations* Kant makes this argument:¶ Everyone must admit that a law, if it is to hold morally, i.e., as a ground of obligation, must imply absolute necessity; he must admit that the command, "Thou shalt not lie," does not apply to men

only, as if other rational beings had no need to observe it. The same is true for all other moral laws properly so called.(7)¶ Again, the clear message of duty's transcendence of human experience becomes the idea shared by all rational beings who embrace an objective ethic. So, if all of us are wearing the rose-colored glasses of morality (the "idea") then the world must look rose-colored in perception to all of us (the "projection"). If morality appears to exist universally then it seems that all of us share the same idea, namely that morality exists a priori. This is how Kant's ethical system roots itself in the a priori assumption. Since Kant's system is known a priori then this presents us with a universal and necessary view of morality. It might be said that morality is a matter of discovery and not one of invention.¶ THE "GOOD WILL"¶ Kant gives a concise definition of what makes morality a priori, but the matter remains as to where these a priori assumptions derive from. Graciously enough, Kant has provided a foundation for these intuitions about morality, namely the "Good Will." Consider what Kant states:¶ Nothing in the world--indeed nothing even beyond the world--can possibly be conceived which could be called good without qualification except a good will. (8)¶ As seen in alternate ethical systems, such things as pleasure and happiness are seen as basic virtues or foundations of moral action (and in some cases its motive). But Kant wishes to avoid linking moral intuition to natural proclivities such as these. Thus morality must be rationally conceived apart from our human inclinations. Kant, through analogy, shows why morality cannot be based on such inclinations:¶ Intelligence, wit, judgment, and the other talents of the mind, however they be named, or courage, resoluteness, and perseverance as qualities of temperament, are doubtless in many respects good and desirable. But they can become extremely bad and harmful if the will, which is to make use of these gifts of nature and which in its special constitution is called character, is not good.(9)¶ What he is saying here is that just as qualities such as intelligence, wit, and judgment are neutral tools of the person, so are pleasure and happiness. It could be the case that pleasure and happiness motivate evil or morally forbidden acts. Slavery in one sense made many Europeans complacent but such acts are undeniably sinister to most people today. Dr. Miller explains what Kant connotes in the concept of the good will:¶ For Kant a good will, or a pure will, is an intention to act in accordance with moral law, and moral law is what it is no matter what anything else is. To act out of a good will is, then, to do X because it is right to do X, and for no other reason. This would be rational morality.(10)¶ Kant's motivation by the "Good Will" to enact a duty differs from acting in accordance with duty. Such difference neglects motivation. For example, someone who saves the life of a woman from a murderous man so that he may rob her may be considered to act only in accordance with duty in regard to her deliverance from the murderer. He did not act out of the "Good Will" since his motivation was to rob her. Therefore, to take both intent and motivation into account in order to do the right thing considers one to be acting morally or dutifully. This act is said to proceed from that universal "Good Will."¶ THE "CATEGORICAL IMPERATIVE"¶ One final thought remains in Kant's ethical system. Having presented his view on how and why something may be considered moral, the issue of examination caps the end of his view in this section. That is, Kant presents us with a test or a method of determination on whether or not a particular act is considered to be morally right, morally wrong, or somewhere beyond the moral realm. For Kant the source of moral justification is the categorical imperative. An imperative is said to be either hypothetical or categorical. Kant writes, "If now the action is good only as a means to something else, then the imperative is hypothetical; if it is conceived as good in itself and consequently as being necessarily the principle of a will which of itself conforms to reason, then it is categorical . . ."(11) So he says that in order for an act to be categorically imperative, it must be thought to be good in itself and in conformity to reason. As a categorical imperative, it asks us whether or not we can "universalize" our actions, that is, whether it would be the case that others would act in accordance with the same rule in a similar circumstance. This is seen in Kant's statement about the categorical imperative:¶ Act only on that maxim whereby thou canst at the same time will that it should become a universal law.(12)¶ The point Kant makes in his presentation of the categorical imperative is that an act becomes imperative (or commanded) when it ought to be applied to everyone.

Miller comments:¶ [A] categorical imperative would command you to do X inasmuch as X is intrinsically right, that is, right in and of itself, aside from any other considerations--no "ifs," no conditions, no strings attached . . . a categorical imperative is unconditional (no "ifs") and independent of any things, circumstances, goals, or desires. It is for this reason that only a categorical imperative can be a universal and binding law, that is, a moral law, valid for all rational beings at all times.(13)¶ This is to say that because a moral act is the right thing to do, it is universal and binding on the agent to follow through with the moral act. However, the act should not be done out of any condition ("ifs" or "if . . . thens").¶ With the categorical imperative becomes the guiding principle of morality, it becomes the impetus for determining whether an act is moral or not. At this point it should be emphasized that Kant's categorical imperative is concerned only with general and abstract moral actions. Therefore, the categorical imperative determines whether or not any act is right or wrong. It is at this point that to do the opposite (to not will to do an act that everyone in similar circumstances would do) would be to invite contradiction. This is to say that something is morally wrong when it would result in a contradict[s]ion. By contradiction we are not referring to a logical one (i.e.  $A = [\sim A]$ ) but a practical one (i.e. when something is self-defeating). Kant himself uses four examples, one of which illustrates this ethical antinomy. He posits a man in extreme despair who considers whether or not he should take his own life.(14) The dilemma is this: Either he takes his own life thereby thwarting the threat of ongoing dissatisfaction or he remains alive to face his situation. Kant states that the nature of feeling "despair" is one which impels one to improve live (e.g. feeling bad requires one to do something to feel good). If he chooses to take his own life, he is actually universalizing the maxim, "In order to love myself, I should shorten my life." This maxim is a practical contradiction because the consequent works opposite to the antecedent. That is, killing myself does nothing to improve my life. It results in a contradiction. In this sense the categorical imperative is used as a test for general moral principles in order to determine a particular act based on its own general maxim. The criterion for a particular action is found in its general principle. This general principle is tested to be either a contradiction or a morally permissible act. Consequently, the nature of the action is determined from this process.

## **Consequences fail – They use induction to justify induction, which is circular.**

**Schurz 19, PhD** [Gerhard Schurz and Ralph Hertwig, Director of Logic and Philosophy of Science at Heinrich Heine University Düsseldorf, Wiley Online Library, "Cognitive Success: A Consequentialist Account of Rationality in Cognition," 01/21/19, <https://onlinelibrary.wiley.com/doi/full/10.1111/tops.12410>, chin]

One key counterargument to the view that circular justifications have epistemic value demonstrates that contradictory rules can be pseudojustified by the same circular argument structure. For example, the circular inductive justification of induction goes as follows: Inductions were successful in the past, whence, by induction, they will be successful in the future. If one accepts this justification, then—to avoid inconsistency—one must equally accept a counterinductive justification of counterinduction<sup>3</sup> that runs as follows: Counterinductions were not successful in the past, whence by counterinduction they will be successful in the future (see Douven, 2011, sect. 3; Salmon, 1957; Schurz, 2018). Eventually, circular justification may also be given for fundamentalist doctrines, such as the “rule of blind trust in God’s voice,” which a person may hold in reflective equilibrium with the intuition that “God’s voice in me tells me that I should blindly trust his voice.”

## Even if they win everything else, empirically predictions fail.

**Stevens 12, PhD** [Northwestern Professor; Founding Faculty Director, Deportation Research Clinic, Buffett Institute for Global Affairs; Institute for Policy Research, Faculty Associate; Political Theory Field Coordinator A.B.: Smith College, 1984; Ph.D.: University of California, Berkeley, 1993. (Jacqueline Stevens, 6-23-2012, "Political Scientists Are Lousy Forecasters," *The New York Times*, <https://archive.is/nPGyx>)]

It's an open secret in my discipline: in terms of accurate political predictions (the field's benchmark for what counts as science), my colleagues have failed spectacularly and wasted colossal amounts of time and money. The most obvious example may be political scientists' insistence, during the cold war, that the Soviet Union would persist as a nuclear threat to the United States. In 1993, in the journal *International Security*, for example, the cold war historian John Lewis Gaddis wrote that the demise of the Soviet Union was "of such importance that no approach to the study of international relations claiming both foresight and competence should have failed to see it coming." And yet, he noted, "None actually did so." Careers were made, prizes awarded and millions of research dollars distributed to international relations experts, even though Nancy Reagan's astrologer may have had superior forecasting skills.<sup>¶</sup> Political prognosticators fare just as poorly on domestic politics. In a peer-reviewed journal, the political scientist Morris P. Fiorina wrote that "we seem to have settled into a persistent pattern of divided government" — of Republican presidents and Democratic Congresses. Professor Fiorina's ideas, which synched nicely with the conventional wisdom at the time, appeared in an article in 1992 — just before the Democrat Bill Clinton's presidential victory and the Republican 1994 takeover of the House.<sup>¶</sup> Alas, little has changed. Did any prominent N.S.F.-financed researchers predict that an organization like Al Qaeda would change global and domestic politics for at least a generation? Nope. Or that the Arab Spring would overthrow leaders in Egypt, Libya and Tunisia? No, again. What about proposals for research into questions that might favor Democratic politics and that political scientists seeking N.S.F. financing do not ask — perhaps, one colleague suggests, because N.S.F. program officers discourage them? Why are my colleagues kowtowing to Congress for research money that comes with ideological strings attached?<sup>¶</sup> The political scientist Ted Hopf wrote in a 1993 article that experts failed to anticipate the Soviet Union's collapse largely because the military establishment played such a big role in setting the government's financing priorities. "Directed by this logic of the cold war, research dollars flowed from private foundations, government agencies and military individual bureaucracies." Now, nearly 20 years later, the A.P.S.A. Web site trumpets my colleagues' collaboration with the government, "most notably in the area of defense," as a reason to retain political science N.S.F. financing.<sup>¶</sup> Many of today's peer-reviewed studies offer trivial confirmations of the obvious and policy documents filled with egregious, dangerous errors. My colleagues now point to research by the political scientists and N.S.F. grant recipients James D. Fearon and David D. Laitin that claims that civil wars result from weak states, and are not caused by ethnic grievances. Numerous scholars have, however, convincingly criticized Professors Fearon and Laitin's work. In 2011 Lars-Erik Cederman, Nils B. Weidmann and Kristian Skrede Gleditsch wrote in the *American Political Science Review* that "rejecting 'messy' factors, like grievances and inequalities, which are hard to quantify, 'may lead to more elegant models that can be more easily tested, but the fact remains that some of the most intractable and damaging conflict processes in the contemporary world, including Sudan and the former Yugoslavia, are largely about political and economic injustice," an observation that policy makers could glean from a subscription to this newspaper and that nonetheless is more astute than the insights offered by Professors Fearon and Laitin.<sup>¶</sup> How do we know that these examples aren't atypical cherries picked by a political theorist munching sour grapes? Because in the 1980s, the political psychologist Philip E. Tetlock began systematically quizzing 284 political experts — most of whom were political science Ph.D.'s — on dozens of basic questions, like whether a country would go to war, leave NATO or change its boundaries or a political leader would remain in office. His book "Expert Political Judgment: How Good Is It? How Can We Know?" won the A.P.S.A.'s prize for the best book published on government, politics or international affairs.<sup>¶</sup> Professor Tetlock's main finding? Chimps randomly throwing darts at the possible

outcomes would have done almost as well as the experts.” These results wouldn’t surprise the guru of the scientific method, Karl Popper, whose 1934 book “The Logic of Scientific Discovery” remains the cornerstone of the scientific method. Yet Mr. Popper himself scoffed at the pretensions of the social sciences: “Long-term prophecies can be derived from scientific conditional predictions only if they apply to systems which can be described as [that are] well-isolated, stationary, and recurrent. These systems are very rare in nature; and modern society is not one of them.” Government can — and should — assist political scientists, especially those who use history and theory to explain shifting political contexts, challenge our intuitions and help us see beyond daily newspaper headlines. Research aimed at political prediction is doomed to fail. At least if the idea is to predict more accurately than a dart-throwing chimp.

**Vote off on promise-breaking. The US agreed to become party under conditions that have been fulfilled. This evidence is from the U.S. chief diplomat who conducted the original negotiations.**

**Scheffer 23** [individual who chiefly negotiated the original U.S. Rome Statute provisions, LL.M. from Georgetown, B.A.s from Harvard and Oxford, & 1st United States Ambassador-at-Large for War Crimes Issues. (David Scheffer, 7-17-2023, "The United States Should Ratify the Rome Statute," *Lieber Institute West Point*, <https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/>)]

Austin's statement also reflects a presumption that should be challenged. During the Clinton Administration, my instructions as the U.S. chief negotiator of the Rome Statute were based on the intent of building an international criminal court which the United States one day would join. The instructions were not to negotiate for six years to build a court that the United States would never join. When I signed the Rome Statute, the intent was to signal that the United States would remain on deck with the treaty and work towards one day joining the Court, not to stand in permanent opposition to it.¶ President Bill Clinton conceded in his signing statement that the treaty would not (during Clinton's remaining three weeks in office) and should not be submitted by his successor to the Senate until "fundamental concerns are satisfied," a primary one being to "observe and [they] assess the functioning of the court." That opportunity to "observe and assess" began on July 1, 2002, when the ICC became operational following ratification of the Rome Statute by 60 nations. We have had 21 years to "observe and assess" and while there are some imperfections in the workings of the ICC, as there are with every legal system, the ICC's professionalism and track record merit Washington's respect.¶ In any event, U.S. policy towards the ICC today should not be premised on, structured, or implemented as if the United States intends to be a permanent non-party State. Such isolation was never the Clinton Administration's position and never reflected my negotiating instructions.¶ The immunity interpretation was not advanced by the United States in order to permanently keep the United States out of the ICC, but rather to explain its status and non-exposure to ICC jurisdiction until Washington ratified the treaty. Otherwise, why did we negotiate and sign the treaty?¶ Rationalizations for permanent non-party status may attract the support of those seeking that outcome, but such thinking defies all that was negotiated into the Rome Statute and its supplemental documents to protect U.S. interests, including due process protections, complementarity, Security Council backstop under Article 16, precise definitions of the crimes, judicial oversight of the Prosecutor's investigations, tough admissibility standards, high approval requirements for amendments, precise rules of procedure and evidence, comprehensive elements of crimes, and much more.

**That means our continued violation is a violation of our duty to uphold our promises.**

**Kemp 58** [PhD professor at the University of St. Andrews. (J. Kemp, January 1958, "Kant's Examples of the Categorical Imperative," *The Philosophical Quarterly* 8(30))]

**FALSE PROMISES** ¶ Here the maxim which Kant considers cannot become a universal law of nature is "Whenever I believe myself short of money, I will borrow money and promise to pay it back, though I know that this will never be done".<sup>14</sup> " Kant argues ", Harrison says, " that, though it is possible for me to adopt and act on this maxim, it is not possible for everybody to adopt and act on it; for, were they to do so, no-one would trust anyone who made a promise to keep it, hence no-one would be able to obtain a service by making a promise, hence no-one would make any promises, hence no-one would be able to act on the maxim in question ".<sup>15</sup> But what Kant says is, not that it is impossible for everyone to adopt and act on this maxim, but that a law that everyone is able to do so would contradict itself; and thus the impossibility of everyone adopting the maxim cannot be a merely causal impossibility, as Harrison's version would allow it to be. But the chief error here, a not uncommon one, lies, I think, in a misunderstanding of Kant's statement that the universality of the maxim in question " would make promising, and the very purpose of promising, impossible ". Kant's use of the word ' machen ' here is taken by Harrison to indicate a causal relationship : if the maxim were universally adopted, then a causal consequence would be that the practice of promise-making, or at least of making promises in connection with loans, would soon die out, because it would be seen to be pointless (Cp. Harrison p. 55 " I am willing to grant that if everyone acted on the maxim in question, promise-making would die out "). And if this were Kant's meaning, the argument would indeed be as unsatisfactory as Harrison maintains. It may well be true, for instance, that if everyone cheated at bridge, it would soon result that no one would play it; but this result is in no way inconsistent with the universalised maxim to cheat whenever it is to one's advantage. For the maxim does not assert or imply that everyone plays bridge, but only that, if and when they play bridge, they will cheat whenever they think it is to their advantage.



## **Negative Evidence**

## **ICC Bad**

## **The ICC only targets African nations, allowing developed nations to get away with war crimes.**

**Rowe 22** [Rowe, Emily. *The ICC-African Relationship: More Complex than a Simplistic Dichotomy*. International Relations Review, 2022, [www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://fluxirr.mcgill.ca/article/view/75/59&ved=2ahUKewjC-7j716CKAxW1JjQIHdZCt4QFnoECBYQAQ&usq=AOvVaw3MYIJA5G\\_1nyOSuGRBA6yo](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://fluxirr.mcgill.ca/article/view/75/59&ved=2ahUKewjC-7j716CKAxW1JjQIHdZCt4QFnoECBYQAQ&usq=AOvVaw3MYIJA5G_1nyOSuGRBA6yo). Accessed 12 Dec. 2024.]

The ICC's principle of complementarity enables the Prosecutor to easily demonstrate 'inability' or 'unwillingness' in developing states, allowing individuals from developing countries to be disproportionately investigated in comparison to developed states and for all thirty official ICC cases to prosecute nationals from African states. Despite all African ICC proprio motu investigations and prosecutions being justifiable, the Court's structure remains biased, for it has overtly failed to investigate and then prosecute warranted cases against nationals from affluent, developed states. Furthermore, the ICC's legal structure allocates considerable jurisdictional power to the UNSC, allowing the Court's purpose to be subordinate to great power interests. Within the anarchic international system (Realpolitik), the cases the Court opens are highly tailored to great power geopolitical interests, as seen with the US and UK, further narrowing the ICC's scope for investigation and prosecution. Therefore, the ICC is neither of the extremes of the overly simplistic dichotomy, rather its legal structure is selectively biased, as it allows nationals of developing states, predominately African countries, to be disproportionately investigated and prosecuted for their crimes while enabling powerful and developed states to utilize the legal structure to circumvent such investigation. Although it is evident that the ICC's legal structure is not without error, the Court's fundamental purpose to enforce international justice and to deter further acts of genocide, war crimes, crimes against humanity, and crimes of aggression, remains of immense importance.

## **The ICC increases human rights abuses by not allowing the U.S. to intervene in other nations.**

**Yoo 20** [Yoo, John. "The U.S. Must Reject the International Criminal Court's Attack on Its National Sovereignty." *National Review*, 17 Mar. 2020, [www.nationalreview.com/2020/03/united-states-must-reject-international-criminal-court-attack-on-national-sovereignty/](http://www.nationalreview.com/2020/03/united-states-must-reject-international-criminal-court-attack-on-national-sovereignty/). Accessed 13 Dec. 2024.]

With these actions, the Trump administration will defend the rights, not just of the United States, but of all sovereign nations. America did not join the Rome Statute. It remains unfettered by its requirements. To protect international law, it should refuse to recognize any ICC probe. International rules should only bind nations that consent to them. Allowing the ICC to claim power over the U.S., which does not consent to its jurisdiction, will erode any incentive to obey any international rules at all. The ICC's actions threaten the only true mechanism for deterring human rights abuses. Subjecting U.S. forces to an after-the-fact and idealistic human-rights barometer will only discourage Washington from intervening to end massive human-rights abuses in difficult world hotspots. If the global elite want the U.S. to lead efforts to end killings in places such as Syria, Yemen, or Sudan, the last thing it should do is prosecute American troops when they take on the difficult jobs that no other nation can or will do.

## ICC involvement increases conflict.

**Prorok 17** [Alyssa K. Prorok, Spring 2017, "The (In)compatibility of Peace and Justice? The International Criminal Court and Civil Conflict Termination", Pro Quest, <https://www.proquest.com/docview/1898588260/fulltextPDF?accountid=3611&parentSessionId=CYznjKAlnczM96QyKYefFPhHHj3L41V3oiwVoAJ420%3D&pq-origsite=primo>]

As expected, ICC involvement significantly decreases the likelihood of conflict termination in Model 1, thereby lengthening war. Figure 1 demonstrates that this effect is sizeable: the predicted probability of termination without ICC involvement is 21 percent, but drops to 11 percent when the ICC is involved, a 47 percent decrease in the likelihood of termination. Model 2 tests the conditional hypothesis. ICC involvement is again negative, as is the civilian deaths disparity, while the interaction term is positive. Because this is a nonlinear model with an interaction, I turn to first differences and predicted probabilities to determine the significance and substantive impact of ICC involvement, conditional on the threat of domestic punishment.

## The ICC is slow and ineffective.

**Vega 20** [Vega, Octavio, and Paul Apostolicas. "Beyond Justice's Reach, Part 1: The Limits of the International Criminal Court." *Harvard International Review*, 25 September 2020, [https://hir.harvard.edu/failure-international-criminal-court/.](https://hir.harvard.edu/failure-international-criminal-court/)]

As of July 2020, the Court has 14 outstanding arrest warrants, and the defendants to which they are subject originate from North and sub-Saharan African nations. The vast majority of these indictments and warrants were issued in the early to mid 2000s, testifying to the generally feeble reach of the ICC in quickly apprehending defendants at large. The 31 remaining current and past defendants also all hail from African nations in which the alleged crimes were committed. This is positively not a reflection of where the world's only crimes against humanity are concentrated, but rather a window into the broken and limited legal architecture of the Court's international law.

## **The ICC's lack of enforcement means they will impede peace negotiations with prosecutions.**

**Philips 16** [Christen Romero Philips, "The International Criminal Court & Deterrence: A Report to the Office of Global Criminal Justice, U.S. Department of State", June 2016, Stanford Law School: Law & Policy Lab, <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf>]

ICC prosecutions may have a negative impact on peace processes by inflaming parties to a conflict with threats of prosecution, preventing them from negotiating peace agreements. This theoretical argument stems from the

broader discussion about peace versus justice, and whether one must come at the expense of the other. The general argument is that ICC prosecutions

may have a negative impact on peace processes by inflaming warring parties with threats of

prosecution, thus preventing them from coming to the negotiating table.<sup>29</sup> Ku and Nzelibe have been some of the

strongest proponents of this theory, arguing that prosecutions can discourage bargaining between warring parties, thus

blocking the use of amnesty and prolonging the conflict.<sup>30</sup> To illustrate their point, they discuss the

feelings of a number of Acholi leaders in Uganda who have expressed their disapproval of the ICC's role

in the peace talks, suggesting that neither peace nor justice will be served because the ICC is branding

the LRA as criminals.<sup>31</sup> Similarly, "some commentators suggest that the UN Security Council Resolution 1970 (2011)

referring the situation of Libya to the ICC impeded a political solution of a negotiated exit for Gaddafi

and instead forced him to fight to the end."<sup>32</sup> Snyder and Vinjamuri have also argued that prosecutions can be antithetical to peace, positing that when

"enforcement power is weak, pragmatic bargaining may be an indispensable tool in getting perpetrators to relinquish power and desist from their abuses."<sup>33</sup> They suggest that this dynamic is

applicable to the ICC; since the Court is often unable to enforce its indictments with arrests and prosecutions,

perpetrators have no reason to relinquish power and stop violating human rights. Therefore, they argue that

pragmatic bargaining is a necessary tool to achieve these aims. Furthermore, they suggest that prosecutions can actually inflame peace processes,

and list several factors that make attempts to prosecute perpetrators "likely to increase the risk of

violent conflict and further abuses, and therefore hinder the institutionalization of the rule of law,"

including weak political institutions, an ongoing conflict without a decisive victor, and potential spoilers.

## The ICC doesn't have a deterrent effect.

**Philips 16** [Christen Romero Philips, "The International Criminal Court & Deterrence: A Report to the Office of Global Criminal Justice, U.S. Department of State", June 2016, Stanford Law School: Law & Policy Lab, <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf>]

Individuals who are committing mass atrocities that constitute crimes within the ICC's jurisdiction are not rational actors, which is the presumption underlying any deterrence model, and thus they will not be deterred by traditional cost-benefit analyses. Deterrence depends on a rational actor model, whereby the individual calculates the perceived benefit from the crime to be lower than the perceived cost (taking into account severity of sentence and certainty of punishment). However, some have argued that individuals who are committing the types of crimes under the ICC jurisdiction are not rational actors, and have a skewed view of the costs and benefits of committing those crimes.<sup>46</sup> Cronin-Furman distinguishes between those leaders who affirmatively order violence against civilians for tactical purposes from those who simply allow subordinates to commit atrocities.<sup>47</sup> Her research suggests that the former category may have overriding interests that skew the cost-benefit analysis, preventing them from being deterred as might be expected. On the other hand, she concludes that the latter should be able to be deterred by the threat of ICC prosecution if it is severe and certain enough.<sup>48</sup>



**The ICC is always subject to the whims of other powerful states like China and Russia who have vetoing powers, it is influenced by politicking, and it hurts smaller states the most.**

**Shamsi 16** [Shamsi, Nadia . "THE ICC: A POLITICAL TOOL? HOW THE ROME STATUTE IS SUSCEPTIBLE TO THE PRESSURES OF MORE POWER STATES." *Willamette Journal of International Law and Dispute Resolution*, vol. 24, no. 1, 2016, pp. 85–104. JSTOR, <http://www.jstor.org/stable/26210471>.]

The political interference of the Security Council with the ICC's work has recently been illustrated with the situation in Syria. Syria shares many parallels with that of Libya. Peaceful protesters in both States were met with widespread violence under the direction of their governments in early 2011.<sup>64</sup> Yet, the international response was starkly different. While the US, UK, and France took military action proceeding Security Council Resolution 1973 with Libya, the international community could not agree on a suitable response in Syria. Russia and China, opponents of international intervention, used their veto power to block UN Security Council action in Syria.<sup>65</sup> In May 2014, Russia and China again vetoed a UN Security Council resolution involving Syria-this time with referring the crisis to the ICC.<sup>66</sup> As Syria is not a party to the Rome Statute, the only way a situation can be referred to the ICC is by the Security Council. While the US, France, and Britain voted to investigate possible war crimes and crimes against humanity in May 2014, Russia and China were adamant in using their veto power.<sup>67</sup> The US was one of many States who criticized Russia and China's move.<sup>68</sup> Ironically, the US was also culpable of political bias when it voted for the Security Council resolution. The US ultimately agreed to support a draft resolution after ensuring that Israel would be protected from the ICC for any possible prosecution related to its occupation of the Syrian Golan Heights.<sup>69</sup> D. The Future of the Security Council with Crimes of Aggression The Security Council will also have a large amount of power when it comes to referring crimes of aggression to the ICC.<sup>70</sup> In cases where a situation is referred by a State Party or proprio motu, the Prosecutor must inform the Security Council about the investigation and give the Security Council six months' time to determine that an act of aggression has occurred. Where the Security Council makes a determination, the Prosecutor may proceed with the investigation in a similar way as the other three core crimes.<sup>71</sup> If the Security Council makes no such determination, the Prosecutor may only proceed if authorized by the Court's Pre-Trial Division judges.<sup>72</sup> Furthermore, the Security Council can suspend an investigation into any core crime for one year, and may renew this request under Article 16.<sup>73</sup> This gives the Security Council and particularly the five permanent members- quite a bit of freedom in deciding the cases that are brought to the ICC. As a result, many cases that the Prosecutor ultimately chooses to investigate are an indirect result of support from the Security Council, and the cases that the Prosecutor chooses not to investigate are a result of discouragement and deferral from the Security Council.

V. ACTION TAKEN BY THE PROSECUTOR PROPRIO MOTU Finally, the ICC Prosecutor is able to take action in order to initiate proceedings in the ICC. Article 42(1) emphasizes that the role of the Prosecutor is one of independence and objectivity.<sup>74</sup> The Prosecutor's scope of discretion extends to decisions involving whether to investigate or prosecute, selection and timing of charges, and determination of the forum of adjudication. However, the Prosecutor is not bound to investigate and prosecute all crimes within the jurisdiction of the Court. Article 53 emphasizes that the Prosecutor, after evaluating the information, can choose to initiate an investigation, unless it is determined that there is no "reasonable basis" to proceed.<sup>75</sup> When determining whether to investigate a claim, the Prosecutor must look at the gravity of the situation. The June 2006 Selection of Situations and Cases noted that factors relevant in assessing the gravity of a situation include: (1) the scale of the crimes, which primarily includes the number of victims; (2) the nature of the crimes, which refers to the specific elements of each offense (murder, rape, etc.); (3) the manner of commission of the crimes (the extent to which the alleged crimes follow "a systematic, organized, or planned course of action"); and (4) the impact of the crimes on regional peace and security, and long-term social, economic, and environmental effects.<sup>76</sup> In addition to assessing the gravity of the circumstances, jurisdiction remains a large issue as well. Article

19 of the Rome Statute emphasizes that the Court shall satisfy the requirement that it has jurisdiction in any case brought before it. <sup>77</sup> Despite the standard the Rome Statute set for an independent and objective Prosecutor, recent examples have shown that the Prosecutor is just as likely to be vulnerable to political pressure. In the case of Iraq, for example, while the Prosecutor cited jurisdiction and gravity concerns, it was criticized for using these reasons to conceal an underlying political bias. <sup>78</sup> Furthermore, the lack of transparency within the role itself prevents those from determining what exactly the real reason is for declining an investigation. While the Prosecutor may choose to decline an investigation based on "the interests of justice," some find that this phrase is used only to avoid investigating and prosecuting more powerful countries. As mass atrocities and large-scale crimes continue throughout the world, it is essential that the only permanent international criminal court excel in competence and efficiency. The ICC was established to ensure justice, accountability, and fight against impunity. However, several articles in the Rome Statute leave the Court vulnerable to political influence, resulting in inconsistent investigations and compromising its independence and objectivity. Several recent cases in Palestine, Libya, Syria, Iraq, and Afghanistan illustrate how, with the large roles the Security Council plays in referring investigations, the entire system is arguably at the mercy of the more powerful states. In order to prevent the ICC's susceptibility to bias, there should be an effort towards: (1) consistently applying the standards under the Rome Statute, particularly paying attention to self-referrals and what constitutes the "gravity" threshold; (2) improving the Security Council's practices in the areas of justice and accountability; and (3) restricting permanent members of the Security Council from using the veto in situations where crimes punishable under the Rome Statute appear to have been committed.

## The ICC will always be seen as illegitimate.

**Robinson 15** [Robinson, Darryl. (Darryl Robinson is a professor at Queen's University Faculty of Law. As a Legal Officer at Foreign Affairs Canada (1997-2004), he advised on international criminal law and helped negotiate the Statute of the International Criminal Court. He was also an adviser at the International Criminal Court (2004-6). He received the Antonio Cassese Prize for International Criminal Law Studies in 2013 for his innovative contributions to the field. His writings on international criminal law focus on criminal law theory, crimes against humanity, command responsibility, and ecocide.) 04-24-2015. "Inescapable Dyads: Why the International Criminal Court Cannot Win." *Leiden Journal of International Law* 28.2 (2015): 323–347. Web.]

You might think you could escape the conundrum, because you have counterarguments to these criticisms.<sup>28</sup> In response to the apologia critiques, you might argue that it is a fallacy to leap from the state having political motivations to the ICC having political motives. Indeed, the International Court of Justice has always held that political motives of triggering entities do not prevent it from carrying out its juridical function.<sup>29</sup> In response to the utopia critiques, you might argue that ICC interventions are rooted in political consent; for example, a state party consents in advance to the possibility of proprio motu action.<sup>30</sup> However, while you may be able to mitigate the concerns, you cannot remove them. Indeed, such arguments have had negligible impact to date; they have been unable to compete with more dramatic narratives that the Court is pandering to states and/or trammelling over them. Moreover, there will always remain a spectrum for legitimate disagreement about where the 'right' balance lies. As this example showed, apologia/utopia critiques can focus on different sites of power. Commentary usually focuses on the Court's relationship with territorial states (currently, states in Africa) or with the most influential states (such as the P-3 or P-5).<sup>31</sup> As we will see below, the Court is routinely criticized at both levels from both directions. With respect to territorial states, the Court is criticized both for being too deferential and not deferential enough. With respect to the most powerful states, the Court is routinely criticized both for reflecting their agendas and for disrupting their agendas.<sup>32</sup> Consider situation selection. Imagine that you have a role in selecting situations (either as Prosecutor or as Pre-Trial Chamber). For any choice you make, people can advance powerful counter-arguments, and they can plausibly describe your decision as 'political'. Importantly, you cannot disprove the politicization hypothesis, because there is no course of action you can take that is incompatible with some claim of politicization. It is a non-falsifiable hypothesis. Take for example the Palestine situation. If you conclude that you do not have jurisdiction and say 'no' to the situation, people can plausibly argue, 'Aha – this proves that you are political. You obviously distorted your analysis because you are afraid to displease the USA.'<sup>38</sup> It is an apologia critique. On the other hand, if you conclude you do have jurisdiction and you say 'yes' to the situation, people can plausibly argue, 'Aha – this proves that you are political. You obviously distorted your analysis to go after a high-profile state.'<sup>39</sup> It is a utopia critique. Or consider case selection within a situation. It has been plausibly argued that Court has erred by failing to go after 'big fish'.<sup>40</sup> It has also been plausibly argued that the Court has erred by focusing too much on 'big fish', rather than manageable cases.<sup>41</sup> As a Prosecutor, your cases can almost always be described as reaching 'too low' (unless you indict a president, and even then it can be argued you should have indicted a president from a bigger country): you are obviously being timid because your political calculations are steering you away from powerful actors.<sup>42</sup> At the same time, your cases can also usually be described as reaching 'too high': your grandstanding and myopic pursuit of your own narrow agenda is disrupting peace and other important initiatives.<sup>43</sup> Notice here the versatility of the common vocabulary. Regardless of which choice you make, it can convincingly be portrayed as 'political'. You are either (i) 'political' because you are acting on the presumed wishes of states (apologia), or (ii) 'political' because you are not acting on the presumed wishes of states (utopia). Similarly, you are either (i) 'political' because you are too concerned about external consequences, or (ii) 'political' because you are insufficiently concerned about external consequences.<sup>44</sup> Thus, one can base arguments in the 'upstream' effect (influences on the decision) or on the 'downstream' effect (consequences of the decision), and argue either one from an apologia or utopia angle. Each accusation is plausible on its face, because each relies on a plausible model of the international prosecutor. Thus, it should not be

surprising that the discourse frequently decries the Court's decisions as 'political', given that the term 'political' is employed in a multitude of ways, including precisely opposite ways. The epithet is literally inescapable. Because of the term's different meanings, it can be applied with plausibility to any conceivable decision. When we realize this, we see that we must disentangle the different (and often opposite) meanings in order to truly appreciate the arguments. A recurring concern in current literature is that the ICC Office of the Prosecutor (OTP) has not yet charged officials of powerful states or of referring states.<sup>45</sup> The OTP response is that such officials have not yet met the requisite criteria for selection (jurisdiction, gravity, complementarity). It is not possible to adequately address the arguments here, because analysis would require careful dissection of facts and selection criteria, which must wait for another occasion. For the purpose of exploring dyads, it suffices for now to offer a narrower point. Namely, a problem arises for any prosecutor when powerful persons do not meet the relevant criteria for selection.<sup>46</sup> If you don't charge the powerful persons, then you are vulnerable to lingering suspicion that you let them off because of power (apologia). If you do charge them, you are vulnerable to suspicion that you altered the benchmarks to prove a point (utopia).<sup>47</sup> So the Catch-22 in such scenarios is that, in order to 'prove' your impartiality, you must compromise your impartiality. This points to another seeming tension, between appearing impartial and being impartial, especially in so far as 'appearing impartial' is commonly but superficially associated with prosecuting all groups. There is a tension between applying uniform standards and achieving uniform outcomes, because the crimes of some groups may not meet the relevant threshold.<sup>48</sup> These problems are magnified for the ICC because of the disparity between its jurisdictional reach and its resources. On any reasonable set of selection criteria, persons from some groups (including well-connected groups) will be responsible for real crimes and yet not warrant selection for prosecution. A common reaction is that you could escape or blunt such concerns by publishing your legal reasoning. However, your stated analysis and reasons can be very easily dismissed as a mere superficial cover for your presumed political (cravenly timid or self-aggrandizingly overreaching) choice.<sup>49</sup> The apologia/utopia dyad permeates even small and seemingly technical policy decisions or interpretive choices. For example, consider the criteria for case selection: should 'feasibility of arrest' be one of the factors?<sup>50</sup> If you say 'yes', then an apologia critique arises: your position benefits the powerful since they are more difficult to arrest. If you say 'no', then a utopia critique arises: you are endorsing the investment of resources into investigations that you know are likely to be ineffective. And, because you could have used those investigative resources for a feasible case, you are likely to have one fewer executed warrant and one more unexecuted warrant, fuelling claims that your institution is a 'paper tiger'. Whichever choice you make, one of these perfectly salient and quite powerful critiques is available. You cannot choose to solve both problems. You can only choose which forms of perfectly plausible criticism will be applied to your decision. As mentioned in section 2 above, during pre-transitional justice there will often be many other actors engaged in many important initiatives in the situation. What posture should the ICC adopt in the face of other sensitive initiatives? Should it back away? Should it moderate its activities? Should it proceed unabated? Each of these options is open to credible criticism, as either apologist or utopian. The 'too deferential' critique is an 'apologia' critique you are improperly and inappropriately sacrificing and subordinating your mandate to considerations other than criminal justice. This critique adopts a formalistic vision, based on an idealized national prosecutor. On the starkest versions of this model, the pursuit of criminal law has supremacy over all other considerations (fiat justitia ruat caelum). For a prosecutor to even consider an interest other than justice constitutes 'politicization' and results in a loss of legitimacy. Conversely, the 'too imperious' critique is a 'utopia' critique. Its objection is precisely the opposite: that you are failing to consider competing interests. You are intervening in a situation, upsetting other important initiatives, and not adequately listening to and accommodating the views and concerns of other actors. This critique also accuses you of 'politicization', but now it is because you are trying to inject your mandate and agenda into the situation above all other considerations.<sup>79</sup> Notice again that the international

prosecutor can always be labelled as 'political', either because she is willing to moderate the pursuit of her mandate for other interests, or because she is not. We also see again the tension between 'international' and 'criminal' institutional expectations. One can always object that the ICC is not acting as a criminal law institution should (i.e. focusing exclusively on criminal justice), or that the ICC is not acting as an international law institution should (i.e. accommodating other community interests).<sup>80</sup> The ICC must always fail to fully reflect at least one of these paradigms. Again, might there be an intermediate position that gives the 'just right' amount of accommodation to other values? There are certainly many points along a spectrum that one could adopt. As one example, consider the intermediate position adopted by the ICC OTP in the early days of the Uganda investigations, in which there were calls to suspend the investigation in light of the peace process. The OTP position was that (i) it would carry out its mandate, but that (ii) it would manage its timing and profile to avoid unnecessary disruption to other initiatives, and (iii) it would consider suspending the investigation if there was a demonstrable success in the peace process. Like any intermediate position, this position was open to plausible criticisms from both directions. To those for whom justice is clearly the paramount value, it was utterly inappropriate for a criminal law body to even be collecting information on or adapting to 'political' processes such as peace talks, or to be considering deferral (*apologia critique*).<sup>81</sup> To those for whom peace is clearly the paramount value, the OTP's caveats were clearly inadequate, because the OTP was nonetheless intervening and thereby endangering the process.<sup>82</sup> There are many possible intermediate positions as to how much ICL should or should not accommodate other interests, but each is amenable to perfectly plausible criticism. As a final illustration, consider the rhetorical or persuasive strategies that a court might use to build support. In order to help build up a track record and habit of compliance with a fledgling system, one might point out practical, moral, political, or reputational reasons to support the Court, such as possible benefits for 'peace, security and well-being', the prevention of crime, or bolstering the rule of law.<sup>83</sup> However, such an approach can plausibly be criticized as too sullied by its appeal to political interests, and too focused on the hoped-for instrumental benefits of the Court. Thus, to avoid those pitfalls, one might make a more formalistic and legalistic appeal. For example, the prosecutors of several international institutions issued a declaration stating that 'it is no longer about whether individuals agree or disagree with the pursuit of justice in political, moral, or practical terms; now, it is the law.'<sup>84</sup>

## Affirming the Court is not only illegitimate but also undermines American Constitutionality

**Bolton 01** [Bolton, John R. "The Risks and Weaknesses of the International Criminal Court from America's Perspective." *Law and Contemporary Problems*, vol. 64, no. 1, 2001, pp. 167–80. *JSTOR*, <https://doi.org/10.2307/1192359>.]

In fact, the court and the prosecutor are illegitimate. The ICC's principal failing is that its components do not fit into a coherent "constitutional" design that delineates clearly how laws are made, adjudicated, and enforced, subject to popular accountability and structured to protect liberty. Instead, the court and the prosecutor are simply "out there" in the international system. This approach is clearly inconsistent with American standards of constitutional order, and is, in fact, a stealth approach to erode our constitutionalism. That is why this issue is, first and foremost, a liberty question. The ICC's failing stems from its purported authority to operate outside (and on a plane superior to) the U.S. Constitution, and thereby to inhibit the full constitutional autonomy of all three branches of the U.S. government, and, indeed, of all states party to the statute." ICC advocates rarely assert publicly that this result is central to their stated goals, but it must be for the court and prosecutor to be completely effective. And it is precisely for this reason that, strong or weak in its actual operations, the ICC has unacceptable consequences for the United States. The court's illegitimacy is basically two-fold: substantive and structural. As to the former, the ICC's authority is vague and excessively elastic. This is most emphatically not a court of limited jurisdiction. Even for genocide, the oldest codified among the three crimes specified in the Rome Statute,<sup>1</sup> there is hardly complete clarity on its meaning. The ICC demonstrates graphically all of the inadequacies of how "international law" is created. The U.S. Senate, for example, cannot accept the statute's definition of genocide unless it is prepared to reverse the position it took in February 1998 proving the Genocide Convention of 1948, when it attached two reservations and five understandings, and one declaration.<sup>13</sup> By contrast, Article 120 of the Rome Statute provides explicitly and without any exceptions that "[n]o reservations may be made to this [s]tatute." Thus confronted with the statute's declaration of "genocide" that ignores existing American reservations to the Genocide Convention, the Senate would not have the option of attaching these reservations (or others) to any possible ratification of the statute. Stripped of the reservation power, the United States would risk expansive mischievous definitional interpretations by a politically motivated court deed, the "no reservations" clause appears obviously directed against the United States and its protective Senate, and is a treaty provision we should never agree to. The Rome Statute's two other offenses, crimes against humanity and crimes,<sup>14</sup> are even vaguer, as is the real risk that an activist court and prosecutor can broaden the language of the terms essentially without limit.<sup>1</sup> It is precisely this risk that has led our Supreme Court to invalidate state and federal criminal statutes that fail to give adequate notice of exactly what they prohibit under "void for vagueness" doctrine. Unfortunately, "void for vagueness" is largely an American shield for civil liberties. A fair reading of the treaty, for example, leaves the objective observer unable to answer with confidence whether the United States was guilty of war crimes for its aerial bombing campaigns over Germany and Japan in World War II. The fundamental problem with the latitude of the ICC's interpretive authority stems from the decentralized and unaccountable way in which "international law," and particularly customary international law, is made.<sup>9</sup> It is one of those international law phenomena that just happens "out there," among academics and activists. While the historical understanding of customary international law was that it evolved from the practices of nation states over long years of development, today we have theorists who speak approvingly of "spontaneous customary international law" that the cognoscenti discover almost overnight. This is simply not acceptable to any free person. The idea that nations and individuals can be bound through "international law" has a surface appeal precisely because it sounds so familiar and comfortable to citizens of countries such as ours, where we actually do live by the "rule of law." In reality, however, this logic is naive, abstract to the point of irrelevance from real international relations, and in many instances simply dangerous. It mistakes the language of law for the underlying concepts and structures

that actually permit legal systems to function, and it seriously misapprehends what "law" can realistically do in the international system.<sup>20</sup> In fact, what happens in "international law," especially in "customary international law," meets none of the tests of what we understand "law" to be. In common-sense terms, "law" is a system of rules that regulates relations among individuals and associations, and between them, and sources of legitimate coercive authority, that can enforce the rules. The source of coercive authority is legitimate to the extent it rests on popular sovereignty. Any other definition is either incoherent, or unacceptable to anyone who values liberty. To have real "law" in a free society, there must be a framework—a constitution—that defines government authority and thus limits it, preventing arbitrary power. As the great scholar C. H. McIlwain wrote, "[a]ll constitutional government is by definition limited government."<sup>21</sup> There must also be political accountability, as demonstrated through reasonably democratic popular control over the creation, interpretation, and enforcement of the laws. These prerequisites must be present to have agreement on three key structures: authoritative and identifiable sources of the law for resolving conflicts and disputes among parties; methods and procedures for declaring and changing the law; and the mechanisms of law interpretation, enforcement, execution, and compliance. In "international law," essentially none of this exists. There is no process tying international authority to the political consent of the global population for true democratic legitimization. There is no definitive dispute-resolution mechanism, and no agreed-upon enforcement, execution, or compliance mechanisms. No international organization that exists today honestly meets any acceptable test for accountable law-giving, law-interpreting, or law-enforcing institution.

## **The threat of prosecution risks US national security.**

**Austin 21** [W. C. Austin, Who's Afraid of the Big Bad Wolf? The International Criminal Court as a Weapon of Asymmetric Warfare, 39 Vanderbilt Law Review 291 (2021) <https://scholarship.law.vanderbilt.edu/vjtl/vol39/iss2/1>]

The ICC is currently a fledgling institution struggling for its own identity, legitimacy, and survival. If it endures, it will emerge from this time of trial as an emboldened institution, fully empowered by the consent of nation-states who have given up a portion of their national sovereignty to the Court-a potential "Big Bad Wolf." The Court's developing processes and policies have created a structure that can be asymmetrically exploited in the future, especially if the United States ratifies the Rome Treaty. NGOs are innumerable and each has its own political agenda; they will have formalized avenues of access to the Office of the Prosecutor, where they may present allegations against the United States with little restraint. The Chief Prosecutor's proprio motu power will require him to seriously analyze all allegations of U.S. war crimes-some potentially exaggerated or fraudulent. During a pre-investigation phase, the Chief Prosecutor will inform the United States of the claim, which will prompt a U.S. investigation to gain the protection of complementarity. Mass media will play havoc with such a scenario, broadcasting the complaints that expose high-level U.S. politicians and military leaders to jeopardy. For the United States-a nation at war against terrorism and the world's only superpower-misuse of the ICC could provide asymmetric warriors the sling with which David can slay Goliath. A nation built on law can be undone by law. Given these allegations, U.S. officials may cease to press the offensive and take a risk-averse posture that could ultimately jeopardize the national security of the United States. Even principled acts of war could be exploited through the processes of the ICC to force the diversion of precious resources in the battle against terror, split up international coalitions, and reduce the dominance of U.S. hegemony throughout the world. When deciding in the future whether to join the ICC, the United States must consider the potential for asymmetric warfare built into the Court's processes. Only then will it be able to plan to avoid this landmine. If the nation chooses to accept these risks for the cause of international justice, at least it will have done so with both eyes wide open.



## **The US would be prosecuted, giving powerful enemies an advantage.**

**Sampson 24** [Eve Sampson, 11-21-2024, (I served in the U.S. Army as an engineer officer after graduating from the United States Military Academy at West Point in 2016. I left the Army to pursue a master's degree at the University of Maryland in 2021. Since graduating, I've written for The Washington Post, The Associated Press and most recently the International Consortium of Investigative Journalists.) "Why Some Countries Won't Join the I.C.C.", No Publication, <https://www.nytimes.com/2024/11/21/world/middleeast/us-icc-member-countries.html>]

The United States, which has been involved in major conflicts since the court's creation, has abstained from membership, seeking to prevent the tribunal from being used to prosecute Americans. More than 120 countries are members of the court, including many European nations, and members are formally committed to carrying out arrest warrants if a wanted person steps on their soil. But powerful nations including China, India, Russia and Israel, like the United States, are not members. U.S. presidential administrations from both parties have argued in the past that the court should not exercise its authority over citizens from countries that are not a member of the court. "There remains fear of actually being investigated by the court for the commission of atrocity crimes, given the military projection of both countries regionally or globally, and fear of being prosecuted for political, rather than evidence-based, reasons," said David Scheffer, a former U.S. ambassador and a chief negotiator of the statute that established the court. Mr. Scheffer added that there were strong rebuttals to those fears, including that "no country's leaders should, as a matter of policy and of law, enjoy impunity for intentionally committing genocide, war crimes or crimes against humanity." This argument, he said in an email, "has been pursued with determination (and American support) in Ukraine, which shortly will become the 125th member of the I.C.C." The Biden administration swiftly denounced the I.C.C.'s decision on Thursday. "The United States fundamentally rejects the court's decision to issue arrest warrants for senior Israeli officials," a spokesman for President Biden's National Security Council said in a statement. "We remain deeply concerned by the prosecutor's rush to seek arrest warrants and the troubling process errors that led to this decision." Several prominent Republicans, too, condemned it, including Representative Michael Waltz, Republican of Florida, whom President-elect Donald J. Trump has tapped to be his national security adviser. Mr. Waltz said in a statement on Thursday that Israel had acted "lawfully" during the war in Gaza and that the United States had rejected the court's charges. He also warned the court and the United Nations about the Trump administration's position toward the bodies once it takes office. "You can expect a strong response to the antisemitic bias of the ICC & UN come January," he wrote on X. The former ambassador John R. Bolton, who served as Mr. Trump's national security adviser during his first term, condemned the court's prosecutor, accusing him of "moral equivalence." "These indictments prove precisely what is wrong with the ICC. A publicity-hungry Prosecutor first goes after the victims of a terrorist attack, before going after the real criminals," he said, adding "I hope this is the death knell of the ICC in the United States."

## Trump responds to unfavorable ICC decisions with sanctions.

**Gramer & Bazil-Eimil 24** [Robbie Gramer and Eric Bazil-Eimil, 11/21/2024, "A Trump storm cometh for the ICC," POLITICO, <https://www.politico.com/newsletters/national-security-daily/2024/11/21/a-trump-storm-cometh-for-the-icc-00183727>]

The Trump world has a message for the International Criminal Court: Brace for impact. Top Republican officials lashed out at the ICC with a mixture of fury and threats after it issued arrest warrants today for top Israeli officials over the war in Gaza, giving clear indications that DONALD TRUMP will play hardball with the global court once he enters office. "The ICC has no credibility and these allegations have been refuted by the U.S. government," said Rep. MIKE WALTZ (R-Fla.), Trump's incoming national security adviser, in a post on X. "Israel has lawfully defended its people & borders from genocidal terrorists. You can expect a strong response to the antisemitic bias of the ICC & UN come January." Sen. TOM COTTON (R-Ark.) lashed out in a post of his own at the ICC and its top prosecutor, KARIM KHAN. "The ICC is a kangaroo court and Karim Khan is a deranged fanatic. Woe to him and anyone who tries to enforce these outlaw warrants," he said. While the U.S. isn't a party to the ICC, it has at times partnered with the international tribunal to investigate war crimes around the world. So what would Trump's reaction to the ICC look like once he's in office? While Trump himself hasn't (yet) responded to the ICC news, Republicans have plans. U.S. cooperation on ICC investigations into Russian war crimes in Ukraine, for example, may come to a screeching halt. "While I supported the work the ICC was doing to prosecute Putin for his war crimes in Ukraine, I can no longer support an organization that has blatantly chosen to disregard its mandate," said Sen. JIM RISCH (R-Idaho), the incoming chair of the Senate Foreign Relations Committee. Then, expect sanctions. Risch has pushed to advance sanctions against ICC officials in response to the court's decision to advance cases against Israeli Prime Minister BENJAMIN NETANYAHU and former Defense Minister YOAV GALLANT. That bill has turned into a huge political headache and source of fierce impasse and infighting within the SFRC between Democrats and Republicans. "His bill will absolutely be a priority next Congress if Biden or Schumer don't act sooner," a Republican Senate aide said, referring to Democratic Senate Majority Leader CHUCK SCHUMER. The aide was granted anonymity to discuss the matter candidly. U.S. allies in Europe, already bracing for new tensions with Washington under Trump, are also in an awkward spot now. The ICC indictments against Netanyahu and Gallant mean that both of them could face arrest if they travel to any of the 120 countries party to the founding treaty of the ICC. (Israel also isn't a member). That includes key U.S. allies such as the United Kingdom, France and the Netherlands, where the ICC is headquartered. Already, the Dutch government said it would adhere to the ICC ruling and arrest Israeli officials if they came to the Netherlands.

## The US will never follow the ICC but fights back and further damaging international law's rule.

**McDonagh 24** [Shannon McDonagh, 12-2-2024, "ICC chief blasts US and Russia over 'appalling' interference," Newsweek, <https://www.newsweek.com/icc-chief-condemns-us-russia-sanctions-backlash-1994092>]

"The court is being threatened with draconian economic sanctions by another permanent member of the Security Council as if it was a terrorist organization," she said. Her remarks in-part targeted Republican Sen. Lindsey Graham, who recently called the court a "dangerous joke" and advocated punishments against any allies cooperating with ICC investigations in an interview with Fox News. The ICC, established in 2002, prosecutes war crimes and crimes against humanity when national courts are unable or unwilling to act. However, its lack of enforcement power depends on member states to execute warrants, complicating high-profile cases. Graham's comments followed the court's decision last month to issue arrest warrants for Israeli Prime Minister Benjamin Netanyahu, former Defense Minister Yoav Gallant, and Hamas' military chief for alleged crimes against humanity during the ongoing Gaza conflict. The move marked the first time the ICC has targeted a sitting leader of a major Western ally. U.S. President Joe Biden labeled the warrants "outrageous," contrasting his prior support for similar charges against Russian President Vladimir Putin for war crimes in Ukraine. Biden previously called the warrant for Putin "justified" and backed efforts to hold Russian forces accountable for atrocities committed during the war. International responses to the Netanyahu warrant have been mixed. Austria criticized the decision as "incomprehensible" but acknowledged its legal obligation to act. Italy called the move "wrong," and Hungary pledged support for Israel over the ICC. France said it would "respect its obligations" but would need to consider Netanyahu's possible immunities. "It really has the potential to damage not just the court, but international law," said global security expert Janina Dill. Akane also criticized Russia's retaliatory measures, including Moscow's arrest warrants issued for ICC head Prosecutor Karim Khan. Accusations against the 54-year-old British lawyer have forced the court into unforeseen scrutiny at a crucial juncture. In Oct. it was revealed that a former female aide accused him of subjecting her to over a year of unwanted advances while working at The Hague. This included groping and sexual coercion. He's categorically denied the allegations, saying there was "no truth to suggestions of misconduct." Although the court's watchdog dropped the inquiry after the woman declined to file a formal complaint, the Assembly of States Parties announced an external investigation. Khan, addressing the assembly, did not comment on the allegations, instead opting to focus on the court's recent cases, including new warrant requests related to Myanmar and Afghanistan issued by six countries earlier this month. 'Sanctions Are a Huge Burden' Last week, six countries, including France, Luxembourg, and Mexico, urged the ICC to investigate potential crimes in Afghanistan following the Taliban's return to power in 2021. While Khan is not required to act on such requests, past instances suggest that prosecutors often initiate investigations under similar circumstances. Once its final two trials wrap up in December, the ICC will have no active cases on its docket. Despite issuing several arrest warrants in recent months, many prominent suspects remain beyond its reach. "Sanctions are a huge burden," said Milena Sterio, an expert on international law. Enforcing those warrants often proves elusive. In September, Mongolia declined to detain Putin during his visit, despite an outstanding ICC warrant. Sudan has similarly refused to surrender former President Omar al-Bashir, who is accused of atrocities during the Darfur conflict. "It becomes very difficult to justify the court's existence," said Sterio.

## **When the US breaks ICC policy it agrees to, it sets the norm that ILAW is meaningless.**

**O'Mahoney 24** [Dr Joseph O'Mahoney, University of Reading, 11-7-2024, "Trump and the threat to international order," No Publication, <https://www.reading.ac.uk/news/2024/Expert-Comment/Trump-and-the-threat-to-international-order---expert-comment>]

"A stable international order relies on people knowing what the rules are and expecting that, generally speaking, others will follow them. A Trump presidency poses the risk that the US rejects the rules, bringing instability to global politics." There are six areas of foreign policy to watch carefully: Breaking rules – Trump's decision-making approach appears capricious and transactional. He is changeable and his reasons for foreign policy decisions are often idiosyncratic. Trump has withdrawn from global agreements, such as the Paris Agreement. Deals are made bilaterally, rather than within multilateral institutions. Ultimately, post-World War Two peace has relied on the rest of the world trusting the US to follow the rules and this is now under threat. Opposing norms – A core principle of international relations is that war isn't a way of resolving disputes between states. Trump used US troops in Syria to take possession of oil fields, saying "We're keeping the oil. We have the oil. The oil is secure." He also criticised the failure of previous administrations to keep the oil after invading Iraq. Despite the fact that "Annexation of territory by force is prohibited under international law", Trump formally recognised Israeli sovereignty over the Golan Heights. This move was condemned, even by close US allies. Undermining Ukrainian sovereignty – Trump has raised the possibility of recognizing Russia's sovereignty over Crimea, since the occupation by Russian troops. This has also been widely denounced. His claim that he could end the current Russia-Ukraine war in 24 hours likely means Trump would pressure Ukraine to cede territory to Russia. Promoting arms races – Trump says that Russia can "do whatever the hell they want" to NATO members who do not spend more in defence. This has pressured European states to increase military spending and removed a key barrier to nuclear non-proliferation. Trump is encouraging militarisation, despite professing his concern over nuclear weapons and casting himself as the candidate who will end wars. Going nuclear – Historically, Trump has not cooperated with other states on arms control or nonproliferation. He withdrew from the Intermediate Range Nuclear Forces treaty with Russia and the Joint Comprehensive Plan of Action to limit Iran's nuclear program. Iran has responded by increasing its stocks of enriched uranium. Exercising unchecked power – There are no longer other Republicans or foreign policy professionals surrounding Trump who have previously provided guardrails and restraints to contain Trump's impulses. Trump's power won't be checked in a second term. The Republican party has been purged of anyone insufficiently loyal to Trump. The Supreme Court has ruled that a president cannot be prosecuted for "official acts", effectively allowing him free reign to act as he pleases. "Trump's second term will bring even more uncertainty about the US's global commitments." We might see states decide that they will grab some long-desired territory, calculating that if the US is not committed to resisting conquest or defending allies, they will not face coordinated opposition. Other states will feel forced to arm themselves and form alternative alliances not dependent upon now unreliable US support. "There is a serious risk that the world will see increased militarization of international politics, more instability, more uncertainty, and a return to living under the threat of war."

## **UNCLOS Bad**

## **The US joining UNCLOS hurts the economy.**

**Groves 12** [Groves, Steven. "Accession to U.N. Convention on the Law of the Sea Would Expose the U.S. To Baseless Climate Change Lawsuits." *The Heritage Foundation*, 2012, [www.heritage.org/global-politics/report/accession-un-convention-the-law-the-sea-would-expose-the-us-baseless-climate](http://www.heritage.org/global-politics/report/accession-un-convention-the-law-the-sea-would-expose-the-us-baseless-climate). Accessed 11 Dec. 2024]

In the past, international courts have not hesitated to pronounce adverse judgments against the United States that have negatively affected its national interests, including judgments on critical matters such as the use of military force, as in the Paramilitary Activities case, and on controversial legal and social issues such as the death penalty, as in the Avena case. UNCLOS tribunals have already indicated that they will engage in hotly contested international environmental disputes, as demonstrated by the MOX Plant case. An adverse judgment against the United States in a climate change lawsuit would be domestically enforceable and would undoubtedly harm the U.S. economy. The regime formulated by the arbitral tribunal in the Trail Smelter case, if extrapolated to its logical extent and applied to U.S. industries that produce greenhouse gases, would impose massive regulatory burdens on U.S. companies, and the costs would be passed on to American consumers. Such a judgment would accomplish through international litigation what climate change alarmists could not achieve through treaty negotiations or in the U.S. Congress.

## UNCLOS wrecks US seabed mining.

**Bandow 04** [Doug Bandow, (Doug Bandow is a senior fellow at the Cato Institute, specializing in foreign policy and civil liberties. He worked as special assistant to President Ronald Reagan and editor of the political magazine *Inquiry*. He writes regularly for leading publications such as *Fortune* magazine, *National Interest*, the *Wall Street Journal*, and the *Washington Times*.) 4-8-2004, "The Law of the Sea Treaty: Inconsistent With American Interests", Cato Institute, <https://www.cato.org/testimony/law-sea-treaty-inconsistent-american-interests>]

The LOST's fundamental premise is that all unowned resources on the ocean's floor belong to the people of the world, meaning the United Nations. The U.N. would assert its control through an International Seabed Authority, ruled by an Assembly, dominated by poorer nations, and a Council (originally on which the then-U.S.S.R. was granted three seats), which would regulate deep seabed mining and redistribute income from the industrialized West to developing countries. The Authority's chief subsidiary would be the Enterprise, to mine the seabed, with the coerced assistance of Western mining concerns, on behalf of the Authority. Any extensive international regulatory system would likely inhibit development, depress productivity, increase costs, and discourage innovation, thereby wasting much of the benefit to be gained from mining the oceans. But the byzantine regime created by the LOST is almost unique in its perversity. Unfortunately, the amendments made in 1994, which I discuss below, do not change the essential character of the treaty. For instance, as originally written, the treaty was explicitly intended to restrict, not promote, mineral development. Among the treaty's objectives were "rational management," "just and stable prices," "orderly and safe development," and "the protection of developing countries from the adverse effects" of minerals production. The LOST explicitly limited mineral production, authorizing commodity agreements (rather like OPEC). Further, the treaty placed a moratorium on the mining of other resources, such as sulphides, until the Authority adopted rules and regulations — which could be never. The process governing mining reflected this anti-production bias. A firm had to survey two sites and turn one over gratis to the Enterprise even before applying for a permit, in competition with the favored Enterprise and developing states. The Authority could deny an application if the firm would violate the treaty's antidensity and antimonopoly provisions, aimed at U.S. operators. And the Authority's decisions in this area were to be set by the Legal and Technical Commission, the membership of which could be stacked, and the 36-member Council, which would be dominated by developing states, making access for American firms dependent upon the whims of countries that might oppose seabed mining for economic or political reasons.

## **UNCLOS subjects all of American Interests in the Ocean to Committees and the International Community**

**Washington Post 12** [Washington Post (access via archive.md), 6-6-2012, "The Law of the Sea Treaty Is a Bad Deal for the U.S.", <https://archive.md/kh3FA>]

I respect the wisdom and views of the former secretaries of state, but their arguments in favor of ratification of UNCLOS fail to address the principal objection to the treaty. Few would argue that the provisions and objectives of the treaty are positive. The problem is that the treaty is to be enforced by a U.N. court or tribunal. Experience has shown that such international tribunals are too often subject to the Achilles' heel of international democracy: demagoguery. Once the treaty has been accepted, there is nothing to prevent a coalition of anti-American interests from taking over the tribunal and ruling against us. When it comes to use of the seas, America is fully capable of protecting its own interest. We have no reason to trust our security and economic health to the whims of an international tribunal.



## **Ratifying UNCLOS forces the US to share resources and technology with other countries – decreases profit and implodes national security.**

**Rabkin 06** [Jeremy Rabkin, 06, 6-1-2006, (Jeremy A. Rabkin is a professor of law at Antonin Scalia Law School at George Mason University, where he teaches constitutional law and international law. Prior to joining the George Mason faculty in 2007, he spent 27 years as a professor of government at Cornell University.) "The Law of the Sea Treaty: A Bad Deal for America", Competitive Enterprise Institute, <https://cei.org/studies/the-law-of-the-sea-treaty-a-bad-deal-for-america/>]

Nor is there much consolation in the prospect of appealing to ITLOS against the seizure of an American ship, since the most vulnerable American ships would be small craft, gathering intelligence near the coasts of unfriendly states. UNCLOS couples transit rights with provisions for national regulatory measures in coastal waters, including the right of the coastal state to prohibit intelligence gathering in these waters. Suppose an American ship were seized outside the territorial waters of a hostile state, on the claim that it had earlier traversed these waters for illicit purposes and then been pursued into “contiguous” waters—as UNCLOS allows, for a belt of water extending twelve nautical miles beyond the twelve mile reach of “territorial waters.”<sup>5</sup> The United States being required to document for ITLOS exactly what its ship was doing in exactly which waters could very well compromise sensitive U.S. intelligence gathering operations. It is not even clear that the United States would benefit from having the option to pursue its own claims. In a direct confrontation over a seizure, the United States has considerable resources—naval, diplomatic, and economic—to unilaterally pursue its demands for immediate release. But having subscribed to UNCLOS, the United States would have much more difficulty wielding such pressures, if the state which effected the seizure insisted that the matter should be taken to ITLOS for resolution. The best provisions in UNCLOS are those setting down rules for economic development in areas extending up to 200 nautical miles beyond the shorelines of coastal states. In addition to their territorial waters of up to 12 miles, coastal states can also claim control over fishing and drilling in this exclusive economic zone (EEZ). The United States claimed such rights in 1945 for the continental shelf adjacent to its shores. This action provoked a variety of conflicting claims by other states, since the continental shelf—where waters are relatively shallow—does not extend nearly as far beyond coastlines elsewhere. The UNCLOS formula of a 200-mile limit for all coastal states was a compromise quite acceptable to the United States. Therefore the United States has asserted that this portion of UNCLOS should now be regarded as settled customary law, binding on all states whether they ratify this particular treaty or not. In fact, most coastal states have already claimed an exclusive economic zone in accord with UNCLOS provisions. However, the actual treaty insists that in return for the acknowledgement of such claims, coastal states must provide compensation to the rest of the world. The most blatant application of this concept concerns mineral extraction on the continental shelf beyond the 200-mile limit. UNCLOS allows claims to the limit of the continental shelf or up to 350 miles from the shoreline, whichever is less.<sup>8</sup> However, to claim such additional drilling rights the state must first accept delineation of its continental shelf by a special Commission on the Limits of the Continental Shelf, established by UNCLOS with a requirement that the Commission’s membership show for “equitable geographical representation” in its membership.<sup>9</sup> If it chooses to exercise drilling or mining rights in this area beyond its EEZ, a state must provide a portion of revenue derived from such activity—increasing at 1 percent a year up to a rate of 7 percent per year—to the Deep Seabed Authority, an agency established by UNCLOS for general supervision of deep sea development.<sup>10</sup> The United States government already provides sizable contributions—often over extended periods—to international aid organizations for programs—such as vaccination, schooling, and road building—which it considers likely to improve conditions in developing countries. UNCLOS does nothing to advance this. Instead, it requires states that are able to extract mineral wealth from the seas to compensate those that are not—while the non-extracting state contributes nothing to the equation. Moreover, money extracted from drilling efforts on the continental shelf goes to an entity that is not equipped to administer development assistance to developing countries. The Seabed Authority is not even charged with doing that. UNCLOS

instead makes all mining operations in the deep seas—beyond the continental shelf or the 350 mile limit of coastal states—subject to approval by this agency. The Authority is not only authorized by UNCLOS to regulate mining operations to guard against environmental and safety concerns, it is also authorized to enforce the treaty's assertions that "resources [of the deep seabed] are the common heritage of mankind"<sup>11</sup> and that "all rights in [these] resources are vested in mankind as a whole, on whose behalf [the Authority] shall act."<sup>1</sup> Further, this approach carries an immediate risk to U.S. national security. Allegedly to ensure that the benefits of deep sea mining are properly shared, UNCLOS requires all states to "cooperate in promoting the transfer of technology and scientific knowledge" relevant to exploration and recovery activities in the deep seas.<sup>17</sup> The 1994 supplementary agreement endorses these provisions, qualifying them only with vague assurances that technology transfer should be conducted on "fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights."<sup>18</sup> It remains to be seen whether the Authority will assert claims to impose technology transfers in this field. It could do so by making such transfers a condition for approving permits for exploration or recovery by Western firms, since all such activity requires approval of the Authority.<sup>19</sup> Yet even without direct demands from the Authority, the Chinese government, by invoking these provisions, managed to obtain microbathymetry equipment and advanced sonar technology from American companies in the late 1990s. China claimed to be interested in prospecting for minerals beneath the deep seas. Pentagon officials warned against sharing this technology with China, given its potential application to anti-submarine warfare. But other officials in the Clinton Administration insisted that the United States, having signed UNCLOS—even if not yet having ratified it—must honor UNCLOS obligations on technology sharing. Future administrations may be more vigilant, but the Authority may, in the future, be more insistent. That is the logic of a treaty that makes mining by firms in one country contingent on the approval of the governments in other countries.

## **Settler Colonialism K**

**Settler colonialism is the permeating structure of the nation-state reliant on the elimination of indigenous life and land through the occupation of settlers turning Natives into ghosts and chattel slaves into excess labor.**

**Tuck and Yang 12** (Eve Tuck, Unangax, State University of New York at New Paltz K. Wayne Yang University of California, San Diego, Decolonization is not a metaphor, Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, pp. 1-40)

Our intention in this descriptive exercise is not be exhaustive, or even inarguable; instead, we wish to emphasize that (a) decolonization will take a different shape in each of these contexts - though they can overlap<sup>4</sup> - and that (b) neither external nor internal colonialism adequately describe the form of colonialism which operates in the United States or other nation-states in which the colonizer comes to stay. Settler colonialism operates through internal/external colonial modes simultaneously because there is no spatial separation between metropole and colony. For example, in the United States, many Indigenous peoples have been forcibly removed from their homelands onto reservations, indentured, and abducted into state custody, signaling the form of colonization as simultaneously internal (via boarding schools and other biopolitical modes of control) and external (via uranium mining on Indigenous land in the US Southwest and oil extraction on Indigenous land in Alaska) with a frontier (the US military still nicknames all enemy territory "Indian Country"). The horizons of the settler colonial nation-state are total and require a mode of total appropriation of Indigenous life and land, rather than the selective expropriation of profit-producing fragments. Settler colonialism is different from other forms of colonialism in that settlers come with the intention of making a new home on the land, a homemaking that insists on settler sovereignty over all things in their new domain. Thus, relying solely on postcolonial literatures or theories of coloniality that ignore settler colonialism will not help to envision the shape that decolonization must take in settler colonial contexts. Within settler colonialism, the most important concern is land/water/air/subterranean earth (land, for shorthand, in this article.) Land is what is most valuable, contested, required. This is both because the settlers make Indigenous land their new home and source of capital, and also because the disruption of Indigenous relationships to land represents a profound epistemic, ontological, cosmological violence. This violence is not temporally contained in the arrival of the settler but is reasserted each day of occupation. This is why Patrick Wolfe (1999) emphasizes that settler colonialism is a structure and not an event. In the process of settler colonialism, land is remade into property and human relationships to land are restricted to the relationship of the owner to his property. Epistemological, ontological, and cosmological relationships to land are interred, indeed made pre-modern and backward. Made savage. In order for the settlers to make a place their home, they must destroy and disappear the Indigenous peoples that live there. Indigenous peoples are those who have creation stories, not colonization stories, about how we/they came to be in a particular place - indeed how we/they came to be a place. Our/their relationships to land comprise our/their epistemologies, ontologies, and cosmologies. For the settlers, Indigenous peoples are in the way and, in the destruction of Indigenous peoples, Indigenous communities, and over time and through law and policy, Indigenous peoples' claims to land under settler regimes, land is recast as property and as a resource. Indigenous peoples must be erased, must be made into ghosts (Tuck and Ree, forthcoming). At the same time, settler colonialism involves the subjugation and forced labor of chattel slaves<sup>5</sup>, whose bodies and lives become the property, and who are kept landless. Slavery in settler colonial contexts is distinct from other forms of indenture whereby excess labor is extracted from persons. First, chattels are commodities of labor and therefore it is the slave's person that is the excess. Second, unlike workers who may aspire to own land, the slave's very presence on the land is already an excess that must be dis-located. Thus, the slave is a desirable commodity but the person underneath is imprisonable, punishable, and murderable. The violence of keeping/killing the chattel slave makes them deathlike monsters in the settler imagination; they are reconfigured/disfigured as the threat, the razor's edge of safety and terror. The settler, if known by his actions and how he justifies them, sees himself as

holding dominion over the earth and its flora and fauna, as the anthropocentric normal, and as more developed, more human, more deserving than other groups or species. The settler is making a new "home" and that home is rooted in a homesteading worldview where the wild land and wild people were made for his benefit. He can only make his identity as a settler by making the land produce, and produce excessively, because "civilization" is defined as production in excess of the "natural" world (i.e. in excess of the sustainable production already present in the Indigenous world). In order for excess production, he needs excess labor, which he cannot provide himself. The chattel slave serves as that excess labor, labor that can never be paid because payment would have to be in the form of property (land). The settler's wealth is land, or a fungible version of it, and so payment for labor is impossible.<sup>6</sup> The settler positions himself as both superior and normal; the settler is natural, whereas the Indigenous inhabitant and the chattel slave are unnatural, even supernatural. Settlers are not immigrants. Immigrants are beholden to the Indigenous laws and epistemologies of the lands they migrate to. Settlers become the law, supplanting Indigenous laws and epistemologies. Therefore, settler nations are not immigrant nations (See also A.J. Barker, 2009). Not unique, the United States, as a settler colonial nation-state, also operates as an empire - utilizing external forms and internal forms of colonization simultaneous to the settler colonial project. This means, and this is perplexing to some, that dispossessed people are brought onto seized Indigenous land through other colonial projects. Other colonial projects include enslavement, as discussed, but also military recruitment, low-wage and high-wage labor recruitment (such as agricultural workers and overseas-trained engineers), and displacement/migration (such as the coerced immigration from nations torn by U.S. wars or devastated by U.S. economic policy). In this set of settler colonial relations, colonial subjects who are displaced by external colonialism, as well as racialized and minoritized by internal colonialism, still occupy and settle stolen Indigenous land. Settlers are diverse, not just of white European descent, and include people of color, even from other colonial contexts. This tightly wound set of conditions and racialized, globalized relations exponentially complicates what is meant by decolonization, and by solidarity, against settler colonial forces. Decolonization in exploitative colonial situations could involve the seizing of imperial wealth by the postcolonial subject. In settler colonial situations, seizing imperial wealth is inextricably tied to settlement and re-invasion. Likewise, the promise of integration and civil rights is predicated on securing a share of a settler-appropriated wealth (as well as expropriated 'third-world' wealth). Decolonization in a settler context is fraught because empire, settlement, and internal colony have no spatial separation. Each of these features of settler colonialism in the US context - empire, settlement, and internal colony - make it a site of contradictory decolonial desires<sup>7</sup>. Decolonization as metaphor allows people to equivocate these contradictory decolonial desires because it turns decolonization into an empty signifier to be filled by any track towards liberation. In reality, the tracks walk all over land/people in settler contexts. Though the details are not fixed or agreed upon, in our view, decolonization in the settler colonial context must involve the repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted; that is, all of the land, and not just symbolically. This is precisely why decolonization is necessarily unsettling, especially across lines of solidarity. "Decolonization never takes place unnoticed" (Fanon, 1963, p. 36). Settler colonialism and its decolonization implicates and unsettles everyone.

**All of IR and foreign policy is built on settler colonialism. Indigenous peoples are erased by being cast as domestic, primitive, and landless. The aff's foundational assumptions around IR are complicit in the destruction of Native life and governance.**

**King 17** [Hayden King (Dr. Hayden King is Anishinaabe from Beausoleil First Nation on Gchi'mnissing, in Huronia Ontario. MA (Queen's University), PhD (McMaster University)), "The erasure of Indigenous thought in foreign policy", July 21, 2017, Open Canada, <https://opencanada.org/erasure-indigenous-thought-foreign-policy/>]

I spent some of the best days of my childhood on the West Beach of the Anishinaabe community Gchi'mnissing, an Island First Nation in southern Georgian Bay, Ontario. The thrill of jumping into the back of a pick-up truck and bouncing over bumpy dirt roads, dodging the outstretched birch and maple branches to get to what I remember as a magical spot is something that I roll over in my mind on days I think about the Island. There was another beach, arguably more beautiful, but it was primarily for the cottagers who spent their summers on our reserve. Then when I was a teenager my Dad bought a little boat, white with a red stripe and a tiny cabin for sleeping. He named it "Bad Apples" and my family would load it up with groceries, sometimes a pig to roast, and we'd spend our summer weekends camped on the shores of one of the reserve's uninhabited outer Islands, a place called Beckwith. Beckwith was popular with non-Native yachtsmen and women, too. On long weekends my friends and I would try to count all of their shining boats from high on a sand dune: 90, 100, 120. Then we'd race through the narrow woodland channel, past the Island's sole outhouse, back to the other side of Beckwith where there were fewer boats, mostly aluminum and disintegrating fiberglass. The water was more shallow here, the sand thicker with moisture and pocked by grass. But it was ours, the Indian side. This type of arrangement between Indigenous and non-Indigenous Canadians might be conceptualized as politics, indeed effective diplomatic practice in an imperfect world. But for the scholars and practitioners in the field of foreign policy it is invisible. Likewise with the more provocative type of Indigenous diplomacy: the countless blockades to protect the land and water, land and treaty claims, the Idle No More movement, and so on. In the discipline of International Relations (IR), too, Indigenous philosophy and politics has been excused, marginalized and categorized as domestic, at best. Indeed, the centuries of colonization that have subjugated Indigenous political communities are the foundation on which contemporary thinking about 'the global' has revolved. In this sense, foreign policy and IR are implicated in both spawning and sustaining settler colonialism in Canada. As a result, there is a need to chart the links between these processes and consider the shape and content of long-neglected Indigenous philosophies of the international. For as long as settler colonialism defines the limits of what is possible for foreign policy, the relationship (or, the politics) between Indigenous peoples and non-Indigenous will continue to be characterized by conflict. Foreign policy, but in whose national interest? For those studying and working in foreign policy, there are certainly debates over what constitutes the definition of the field. In Canada, there are debates about what counts as foreign policy (defence, security, trade, peacekeeping) and also how to approach those subjects (from liberal frameworks, realist, even some critical lenses). In his [textbook](#) on foreign policy Kim Nossal notes that the field is inherently divisive, emerging from "the interplay of conflicting interests, divergent objectives, contending perceptions, and different prescriptions about the most appropriate course of action." Yet despite these divisive debates, there is near universal acceptance of two core assumptions: the legitimacy of the Canadian state itself as the primary actor in foreign policy and the concept of the national interest, which the field of foreign policy strives to serve. This is no surprise, really, considering these assumptions are underwritten and supported by every domestic institution — from Canada's constitutional sources, to the cultural organizations that currently promulgate the fantasy of Canada as 150 years of glowing hearts, or decisions of the Supreme Court that reflect on the "assertion of Crown sovereignty" without ever explaining how that sovereignty was obtained. But for critical Indigenous scholars, these assumptions are myths that form not a legitimate state in the community of nations, but rather a violent settler colony. Between 1921 and 1923, after many years of resistance to the young

countries, Canada and the United States were steadily encroaching into Haudenosaunee territory and governance. Cayuga Chief Deskaheh, also known as Levi General, travelled to London, England, to appeal to King George on the matter. (He wasn't the first or last to appeal to a King or Queen; Anishinaabe leader Shingwaukonse actively attempted to, post-War of 1812, and Chief Theresa Spence did so in 2013, among many others). But when King George refused him, Deskaheh turned to the Geneva-based League of Nations, seeking a seat for the Haudenosaunee. With his efforts undermined by English officials there too, he returned home but was stopped at the U.S.-Canada border and turned away by Canadian border guards. He spent his final days in Rochester, New York. Before his death he made one last plea to ordinary Canadians and Americans for justice: "Do you believe — really believe — that all peoples are entitled to equal protection of international law now that you are so strong? Do you believe — really believe — that treaty pledges should be kept? Think these questions over and answer them to yourselves...We have little territory left — just enough to live and die on [because] the governments of Washington and Ottawa have a silent partnership of policy. It is aimed to break up every tribe of red men so as to dominate every acre of their territory." (His plea is documented in Rick Monture's *We Share Our Matters*.) The last two sentences of this quote are an apt description of modern settler colonialism, nearly 100 years before scholars identified the process. For anthropologist Patrick Wolfe, there is a distinction between colonialism, which eventually ends when the invaders leave, and settler colonialism, where they don't. While in the former formulation the Indigenous population is often transformed to labour for colonial extraction, in the latter, the settler colony attempts to liquidate all remnants of the previous (Indigenous) societies to legitimize its permanent presence. Deskaheh was speaking in the North American context, Wolfe in the Australian, but the phenomenon can be seen elsewhere, from Aotearoa/New Zealand to Palestine/Israel. Common strategies in this liquidation are as follows: physical extermination; oppressive Indian legislation designed to contain; the creation of reserves/reservations/settlements, residential or boarding schools; discrimination aimed specifically at women; and eventually legal absorption into state apparatuses and assimilation. While the genocidal nature of settler colonialism may not appear as physical violence today (though we do still have plenty of that), the underlying motivation to expunge threats to settler sovereignty endures. But where the specific harms of the field of foreign policy come into greater focus are in crafting a common sense around what counts as a legitimate politics of the international. Consider the core concepts of the field, or at least the discipline of IR that foregrounds foreign policy. I think it's fair to say most traditional perspectives view the international system as an anarchic environment where self-interested and (mostly) rational states compete against each other for power. Or, in contrast, they may cooperate. For foundational IR scholar Hedley Bull, this simple formulation is "the supreme normative principal of the political organization of mankind." Canadian foreign policy is a foreign policy that normalizes and affirms settler colonialism. I don't need to elaborate on these concepts for this audience. But, what about political communities that do not resemble a state, that eschew coercive notions of exclusive sovereignty, that are bound by obligations and responsibilities to the land and thus do not recognize an anarchic world, political communities that do not start and end with men? The discipline of IR, as well as practice of foreign policy, effectively casts Indigenous peoples as primitive (or at least inferior), sanctions the theft of their lands, and then forecloses the possibility of resurgent political communities. At a fundamental level the perpetuation of this conceptual galaxy denies opportunities for Indigenous expressions of liberation — whether the case is the Six Nations of the Grand River, whose demands for a seat at the League of Nations in 1922 were rejected, or the current Canadian government demands that the articulation of international Indigenous rights not challenge territorial integrity or state sovereignty (this is true generally but seen clearly with the United Nation's Declaration on the Rights of Indigenous Peoples). Such a denial is also expressed in the the unequivocal support of the state of Israel at the expense of Palestinian existence, or the collaboration with a Honduran government that suppresses Indigenous communities and murders activists like Berta

Cáceres. I am talking about more than denying liberation. By continuing to enforce the view of humanity as a set of political states, with Europe at the centre of the planet – as Chickasaw lawyer James Youngblood Henderson once pointed out in his deconstruction of the familiar Mercator world map – foreign policy actively contributes to the erasure of Indigenous political difference conceptually as well as Indigenous bodies physically. (Not to mention non-Indigenous but racialized political communities and bodies, too.) Thus, Canadian foreign policy is a foreign policy that normalizes and affirms settler colonialism. This is the primary national interest. And so, foreign policy is itself a manifestation of settler colonialism. A brief history of Indigenous diplomacy Much of the sophisticated political arrangements cultivated among Indigenous peoples in North America have been destroyed by violence but also legal fictions. Some of the first transatlantic international laws — papal bulls like the 1493 Doctrine of Discovery — defined Indigenous peoples as inhuman, freeing up their lands for legal theft by the Spanish and Portuguese, then French and English. The Royal Proclamation of 1763 and subsequent treaties were drafted to privilege colonial interpretations of “nation-to-nation” relationships. The aforementioned institutions — the constitution and courts in Canada — have held these fictions up through time. Yet somehow Indigenous notions of international politics endure. Perhaps this is not surprising given the diplomatic cannon is some 10,000 years old. For many years, up to the first 250 years of settler presence in North America, and even today, Dene, Nêhiyawak, Mi’kmaq, Salish and many others exchanged gifts, smoked the pipe, made treaties, broke treaties and made new ones again; on their terms. Records of these efforts have been kept — and continue to be — in pictographs, birchbark scrolls, petroglyphs, masks, totem poles, beadwork, wampum belts and many volumes of text. But that 1763 date is instructive in understanding the contrast between the two general approaches to international politics addressed here. When the English defeated the French after the Seven Years War the former were surprised that the Indigenous allies to the French did not also surrender. As Anishinaabe leader Minavavana famously said, “Englishman, although you have conquered the French you have not yet conquered us! We are not your slaves. These lakes, these woods, and mountains were left us by our ancestors. They are our inheritance; and we will part with none of them.” And so the English attempted to placate Indigenous resistance with a Royal Proclamation, a system to effectively buy land from Indigenous peoples west of the then-existing Thirteen Colonies. It also shrewdly positioned the Crown as the arbiter of these future land transactions and, as such, the de facto sovereign (in fact the Supreme Court cites this moment as the assertion of Crown sovereignty). A year later, at Niagara, the English gathered approximately 2,000 Indigenous leaders to solemnize the proclamation and earn Indigenous endorsement. After the presentation, the Indigenous leaders espoused their understanding of the agreement, which according to Indigenous law scholar John Borrows was about respect for the self-determination of Indigenous nations, a military alliance, free and open trade (as well as free movement), consent before any English expansion, the ongoing provision of gifts, and finally, mutual peace, friendship and respect. They further demonstrated their understanding by invoking the Two Row Wampum Treaty, one of the earliest diplomatic accords between Indigenous peoples and settlers, created 150 years prior. In the early 1600s the first waves of settlers were arriving in Kanien’kehá:ka territory, the eastern portion of Haudenosaunee lands. Reflecting the pragmatism of Indigenous diplomacy, the Mohawk entered into an agreement with these newcomers that they hoped would shape the long-term relationship. Onondaga faithkeeper and philosopher Oren Lyons described the beaded belt known today as the Two Row Wampum in the Nordic International Law Journal in 1986: “The row of purple wampum on the right represents the Ongwahoway or Indian people, it is their canoe. In the canoe along with the people is our government, our religion or way of life. The row of purple wampum on the left is our White brethren, their ship, their government, and their religions for they have many. The field of white represents peace and the river of life. We will go down this river in peace and friendship as long as the grass is green, the water flows, and the sun rises in the east...You will note the two rows do not come together, they are equal in size, denoting the equality of all life, and one



end is not finished, denoting the ongoing relationship into the future.” The key element of the Indigenous reading of the Royal Proclamation then, encapsulated in the Two Row Wampum, is mutual autonomy and non-interference. This in turn rests on the acceptance of distinct political communities highlighted by Lyons’ reference to “ways of life,” which based on Indigenous political organization undoubtedly meant non-state political communities. Obligations to the land may be the most incomprehensible to the field of foreign policy. Another Indigenous treaty, nearly as well known as the Two Row, is the Dish with One Spoon. This was an agreement between the aforementioned Haudenosaunee and the Anishinaabeg. Graphically, it is a belt of white beads with a purple lozenge in the centre representing a bowl or dish. The treaty effectively recognized that a number of distinct nations live in the dish and have obligations to ensure it never runs empty. That does not mean we surrender authority or jurisdiction to a central government or institution, but that we recognize responsibilities to each other and importantly to the land. It is also important to note there are no sharp objects on the wampum — or, if you will, at the table — with which we might stab each other, just a spoon that we share (as Darlene Johnson described [here](#) in 2004). In other words, the Dish With One Spoon encouraged distinct political communities to share the same territory in peace. A terrain mapped not by exclusive sovereignty but mutual obligations. In the inventory of paradigmatic contrasts described here, those obligations to the land may be the most incomprehensible to the field of foreign policy. Making sure the bowl never runs empty is a reference to the rights of the land. In much of Anishinaabeg philosophy, non-human communities are afforded supreme status. We live at their discretion. This is illustrated in our creation story in which the birds and muskrat decide if we live or die, to the promise we made to the eagle to live by the laws of creation, or our first treaty with the deer and moose to always ensure their homes and communities flourish in exchange for their flesh, bones, skin and teachings. There is diplomacy here but it is limited by an acknowledgement of a rules-based world, i.e., not anarchic. The resulting articulation of political communities limits human exploitation of the land and environment and encourages living in balance. Consider the next blockade you read about in the news. While the media will struggle to explain, the Mushkego or Wet’suwet’en or Innu will very likely be acting on their political/legal/spiritual obligations to the land. The blockade is diplomacy. An inter-national politics of the future past Of course, this is not a fulsome accounting of Indigenous diplomacies or their shift and contortions through time in response to settler colonialism. The above is the briefest of surveys to demonstrate the radically divergent approach to the international. That being said, some words to conclude on the contemporary expression of Indigenous politics amid a settler colonial foreign policy and settler colonialism generally are important. On the former, I’ll be brief. While there are some counter-hegemonic writers in the field who may engage with these ideas, the likelihood of changing the trajectory, core assumptions or underlying concepts towards a more just, anti-colonial, matriarchal politics is unlikely. Settler colonialism relies on the myths perpetuated by foreign policy experts (among other settler experts of all kinds) to sustain itself and legitimize occupation. So can Indigenous people contribute to foreign policy in Canada and beyond? No, not unless it comes at the expense of further sabotaging the re-building of Indigenous futures. Or, settler colonialism ceases to be, in which cases the field of foreign policy as we know it would also disappear. Meanwhile Indigenous struggles for freedom within the borders of Canada, an act of international politics itself, go on. Blockades to defend the land, articulating Indigenous interpretations of confederation-era treaties, the attempted centering of Indigenous women and two-spirit perspectives, all seek to undermine and challenge domination. Sometimes we win and that golf course or real estate development stalls. Audra Simpson [refers](#) to these successes — when “Indigenous political orders prevail” — as “nested sovereignty” and they reveal that settler colonialism, the project of Canada itself, is not as complete or settled as traditional thinkers in the field of foreign policy would have us believe. Reconciliation appears as an opportunity for the state to recuperate its image without meaningful change. Still, Canada itself is a project still committed to suffocating Indigenous political difference without a discernible end in sight.

The notion of reconciliation increasingly appears as an opportunity for the state to recuperate its image without meaningful change. And decolonization, as I understand it, requires the institutions that maintain settler colonialism to be dismantled — a project not yet begun. Now, we live in what Nēhiyaw activist Erica Violet Lee [calls](#) the wastelands. A place where “we grow our medicines from the cracks in concrete sidewalks or in between railroad tracks. We have to dig our laws out from underneath gravel logging roads and tend to our worlds in contaminated fields...For those of us in the wastelands—for those of us who are the wastelands—caring for each other in this way is refusing a definition of worthiness that will never include us. To provide care in the wastelands is about gathering enough love to turn devastation into mourning and then, maybe, turn that mourning into hope.” Indigenous people endure in a settler colony striving to eliminate, re-building what remains after two centuries of that assault. Indigenous philosophies exist in a hostile intellectual environment that refuses to recognize their existence. These are the terms on which international politics is practiced for many Indigenous peoples in Canada, and for that matter, around the globe. So as we re-imagine new/old alternatives for our collective relationship within and beyond the borders of settler states through time, and until we can breathe life into them, I think the Indian side of the Island is just fine. A note from illustrator Chief Lady Bird: The main illustration “Nimaamaa” is based on the teachings within the Dish With One Spoon Wampum, which the mother is holding. The image — and the wampum — represent keeping the dish (the earth) clean, ensuring that there is enough in the dish for everyone on turtle island, and never using more than we need. There are also multiple planes of existence depicted: the mother and her baby are in one time and space, whereas her dress, with the hide stretched out to be tanned, acts as a doorway into another time and space. This piece can simultaneously be read as pre-colonial, decolonial, and futurist, and ultimately represents the connection to our traditions and the importance of maintaining them to bring us forward in a good way, which also connects to the Seven Generations teaching.

**The 1AC's focus on human rights is an attempt to distract you from the underlying erasure of indigenous people. Their call for human rights within a settler schema only sustains the settler state.**

**Dale 22** [Dale, J. G. (George Mason University), 2022, The Colonialism of Human Rights: Ongoing Hypocrisies of Western Liberalism. Contemporary Sociology, 51(5), 409-411. <https://doi.org/10.1177/00943061221116416x>]

The core claim of Colin Samson's *The Colonialism of Human Rights: Ongoing Hypocrisies of Western Liberalism* is that contemporary human rights represent a form of institutionalized racism. With roots in a colonialist past, the "universal" nature of human rights pronounced by western liberal states took shape through the exceptions: "they largely did not apply to colonized and enslaved people" (p. 161). Samson's thesis is that western colonial domination created and organized particular socially divisive relations that represent still unfolding, uncompleted histories today. These conflicting relations were not resolved by Liberalism's new virtues, nor social, political, economic, and legal practices including those associated with human rights, civil rights, or citizenship rights. Rather, the legacy of states' (including settler states) colonial domination remains constitutive of an enduring institutional process of colonialism—a "colonialism of human rights" (p. 6). In short, Samson suggests that non-universal human rights are structurally embedded in national and international human rights discourse and within human rights as an institution (pp. 35-37). Within the political culture of the United States today, this is a provocative claim. Last year, while the largest protest in U.S. history was inspiring support for ending police brutality and institutionalized racism, the U.S. State Department released a draft report of its Commission on Unalienable Rights. It distinguishes the United States' "unalienable" human rights (as universal, nontransferable, and pre-political) from the "so-called universal" human rights espoused in the Universal Declaration of Human Rights. The report identifies the unalienable rights of the United States as freedom of religion and private property, while relegating all other rights to "positive law," which it contends may be revised or repealed in accordance with the ruling authority's decisions (Report of the Commission on Unalienable Rights, July 16, 2020, p. 12).

**The call to ratify UNCLOS is just another chapter in the story of indigenous marine dispossession where the settler independently creates their own claims to jurisdiction that exclude natives and justify the extension of power through western legal mechanisms.**

**Wilson 20** [David Wilson, "A Brief History of Colonisation, Customary Law, and Indigenous Marine Dispossession", 11/19/2020, One Ocean Hub, <https://oneoceanhub.org/a-brief-history-of-colonisation-customary-law-and-indigenous-marine-dispossession/#:~:text=The%20imposition%20of%20colonial%20territorial,2001;%20Reid%2C%202015.>]

Territorial Sovereignty and Indigenous Marine Dispossession The imposition of colonial territorial sovereignty was directly linked with the gradual ascendancy of colonial jurisdiction over marine space and Indigenous bodies at sea. Prevalent claims that limited jurisdiction over territorial seas could be extended from land meant that colonial powers – now claiming territorial sovereignty over island groups and coastal areas – also exerted sovereign rights over vast littoral expanses and territorial seas. This led to the extension of colonial sovereignty over coastal spaces and proximate waters through legal mechanisms surrounding the regulation and control of commercial and extractive marine activities. This also enabled greater claims to police and regulate Indigenous bodies at sea (Hamilton, 2019; Harris, 2001; Reid, 2015). Collectively, these claims led to Indigenous dispossession through (i) the undermining of Indigenous propertied claims to marine space and resources and (ii) the suppression of Indigenous maritime activities through discriminatory regulations. These were not mutually exclusive strategies but could involve the legal construction of marine space and resources as a commons open to all colonial subjects, which was then followed by discrimination against Indigenous groups through regulations surrounding licences, fishing gear, and vessel types to make way for colonial commercial control. In this way, establishing a public right to marine space provided opportunity to transform ocean space into regulated and exclusive jurisdictional spaces under colonial control. Analogous to what occurred on land, Indigenous marine rights – including those formerly recognised in treaties or through customary inter-societal practices – were superseded to make room for the expansion of colonial control and industry (Akyeampong, 2001; Reid, 2017; Walker, 2002). Policies of conservation and industrial development also worked to displace Indigenous Peoples and remove their rights to exist within coastal spaces (Mowforth, 2014). In the process, the same sovereignty that colonial polities claimed over marine space and the maritime activities of their subjects was increasingly denied to Indigenous polities. The increasing supremacy of colonial (and especially British) sea power in the nineteenth century not only enabled colonisers to undermine Indigenous sovereignty by coercing entry into formerly regulated markets through intrinsically unequal ‘free trade’ agreements, but was also employed to extend colonial control over Indigenous maritime activities (Banner, 2007; Steinberg, 2001). This included Indigenous maritime activities occurring on the high seas and on coastal expanses that did not fall under direct colonial control. This was achieved through colonial-dominated suppression regimes surrounding piracy and slavery that were reliant on a series of bilateral agreements with Indigenous authorities. These provided colonial maritime forces with the jurisdiction to stop, seize, and suppress Indigenous shipping or attack coastal outposts on the grounds of piracy or slavery (Benton and Ford, 2016; Pitts, 2018). Indigenous authorities and peoples were not passive when colonisers manoeuvred to relocate jurisdictional sovereignty away from their control. By working within and rejecting imposed legal frameworks, Indigenous groups sought to advance and protect certain rights and customs. At the same time, colonial administrations had to assimilate and accommodate Indigenous jurisdiction in one form or other in order to secure or maintain their claims to territorial sovereignty. These uneven negotiations then shaped the hybridised legal systems that emerged within overarching colonial structures (Benton, 2002). Constructing ‘Customary’ Law, Indigeneity, and ‘Traditional’ Usage Rights To protect their rights and authority, Indigenous authorities were required to translate their customs to fit colonial expectations of ‘custom’ and ‘traditional authorities.’ This was achieved by inventing new or adapting existing customs and authorities. The forms of ‘customary’ law that were then recognised and divested

with the power and authority of the colonial state were ingrained not only in colonial conceptions and constructions of what 'customary law' should and could be, but were also shaped by what Indigenous groups and authorities perceived would fit colonial expectations of customary law. Translating and adapting Indigenous law to fit within a rigid colonial framework transformed diverse power imbalances, societal inequalities, and ideological assumptions into fixed legal realities (Chanock, 1985; Mann, 2011; Ranger, 2003). This not only 'froze' customary law as a set of rigid and proscribed rights based on ahistorical assumptions of the perpetuity of these customs since pre-colonial times, but also 'froze' customary law as it was translated and misrepresented under colonial rule at times of intense societal upheaval. In both cases, customary law was constructed to represent a 'traditional world' that often did not reflect the complex realities, adaptability, and fluidities of Indigenous laws. The protection of the right to perform Indigenous or customary authority was then dependent on the overarching colonial structures that divested them with jurisdiction (Barker, 2011; Ranger, 2003; Watson, 2015). It is important not to understate the power imbalances at play here as, ultimately, what was permitted as 'custom' was dependent on what colonial administrations would tolerate, notwithstanding Indigenous adaptations or inventions (Evans and Nanni, 2015). This is particularly pertinent to marine rights. Although colonisers regularly (but not always) proved willing to accommodate Indigenous forms of existing or imagined tenure rights on land, the same did not apply to sea spaces. Dominion over foreshore areas was claimed by the state while the high seas remained unownable, and neither could accommodate Indigenous claims to propertied rights over marine areas. (Allen et al., 2019; Curran et al., 2020) By controlling the framework in which the rights of Indigenous Peoples and local communities were recognised, colonial and state administrations then also controlled the means by which 'Indigeneity' and 'traditional practices' were acknowledged. This required communities to meet the legal tests constructed by colonisers to prove their Indigeneity and/or the long-standing nature of their customs and practices (McMillan and McRae, 2015; Watson, 2015). These same characteristics were used to represent Indigenous groups as primitive and backward, meeting the characteristics of 'uncivilised' peoples within European racial science that then justified their oppression and exclusion (Anghie, 2005; Koskeniemi, 2002). This created a 'static' and 'fixed' Indigeneity that ignored the historical reconditioning and transformations of Indigenous society before and during colonisation. Such constructions of a 'bounded' Indigeneity explicitly ignore the existence of Indigenous networks – landed and marine – prior to, during, and following colonisation which featured frequent mobility and exchange across vast distances (Carey and Lydon, 2014). 'Static' Indigeneity also fits a very particular stereotype about 'traditional' use of resources for purely subsistence reasons, a prevalent trope that dates back to the very beginnings of European colonisation (Rice, 2014). With regards to marine resources, this centred on rights to fishing, sealing, and whaling for 'subsistence' or 'cultural' reasons, which provided the opportunity for colonial dominance over the commercial use of these and other marine resources (Fitzmaurice, 2019). Indigenous entrepreneurship and venture capitalism, meanwhile, was undermined through the unequal power of state and non-Indigenous-dominated commercial industries. This construction of 'subsistence' or 'commercial' use of marine resources is directly linked to the continuing obstructions facing Mi'kmaq fishers who have gained recognition to maintain a "moderate livelihood" through fishing, but whose rights to establish a self-regulated fishery continue to be contested. Constructing Indigeneity and 'traditional practices' within a landbound framework misconstrued and homogenised the relationship of Indigenous and local communities to both land and marine space, ignoring the disparate contexts, cultural and political differences, and entrepreneurial and commercial agency of diverse Indigenous groups (Reid, 2015; Sanderson and Willms, 2019). Even as the right to self-identification, jurisdiction, and access to marine resources for Indigenous Peoples and local communities is enshrined in legal instruments such as UNDRIP and UNDROP, these aspirations remain difficult to achieve due to the various legal tests, challenges, and misconceptions surrounding customs, rights, and tradition across national governments and interstate orders. These issues continue to limit the

recognition of dynamic and multilateral Indigenous and customary jurisdiction on coasts and at sea, which remain beholden to the success of Indigenous pressure in forcing these issues into non-Indigenous state and interstate courts (Pasternak and Scott, 2020). This means that protection of the rights and practices of Indigenous Peoples and local communities are dependent on cyclical state decisions, and calls to national or international law can open up and close down possibilities for legal accommodation depending on the decisions of non-Indigenous courts past, present, and future (Curran et. al, 2020; Evans and Nanni, 2015). As we have seen over the past month in Nova Scotia, even where interventions or restructurings seek to disrupt or intervene in the systems of dominance present in state structures, the participation and inclusion of Indigenous groups and local communities does not halt the ongoing processes and structures of colonialism.

## **Thus, decolonization is the only alternative.**

**Tuck and Yang 12** (Eve Tuck, Unangax, State University of New York at New Paltz K. Wayne Yang University of California, San Diego, Decolonization is not a metaphor, Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, 2012, pp. 1-40)

An ethic of incommensurability, which guides moves that unsettle innocence, stands in contrast to aims of reconciliation, which motivate settler moves to innocence. Reconciliation is about rescuing settler normalcy, about rescuing a settler future. Reconciliation is concerned with questions of what will decolonization look like? What will happen after abolition? What will be the consequences of decolonization for the settler? Incommensurability acknowledges that these questions need not, and perhaps cannot, be answered in order for decolonization to exist as a framework. We want to say, first, that decolonization is not obliged to answer those questions - decolonization is not accountable to settlers, or settler futurity. Decolonization is accountable to Indigenous sovereignty and futurity. Still, we acknowledge the questions of those wary participants in Occupy Oakland and other settlers who want to know what decolonization will require of them. The answers are not fully in view and can't be as long as decolonization remains punctuated by metaphor. The answers will not emerge from friendly understanding, and indeed require a dangerous understanding of uncommonality that un-coalesces coalition politics - moves that may feel very unfriendly. But we will find out the answers as we get there, "in the exact measure that we can discern the movements which give [decolonization] historical form and content" (Fanon, 1963, p. 36). To fully enact an ethic of incommensurability means relinquishing settler futurity, abandoning the hope that settlers may one day be commensurable to Native peoples. It means removing the asterisks, periods, commas, apostrophes, the whereas's, buts, and conditional clauses that punctuate decolonization and underwrite settler innocence. The Native futures, the lives to be lived once the settler nation is gone - these are the unwritten possibilities made possible by an ethic of incommensurability. when you take away the punctuation he says of lines lifted from the documents about military-occupied land its acreage and location you take away its finality opening the possibility of other futures - Craig Santos Perez, Chamoru scholar and poet (as quoted by Voeltz, 2012) Decolonization offers a different perspective to human and civil rights based approaches to justice, an unsettling one, rather than a complementary one. Decolonization is not an "and". It is an elsewhere.