When U.S. Senators Kelly Ayotte (R-N.H.) and Rob Portman (R-Ohio), both vice presidential hopefuls, recently declared their opposition to the UN Convention on the Law of the Sea, they virtually guaranteed that it would be dead on arrival if it were sent to the Senate. A group of 34 senators, including Ayotte and Portman and led by Jim DeMint (R-S.C.), is now on the record promising to vote against UNCLOS, which is enough to make getting the two-thirds majority necessary for ratification impossible.

UNCLOS was first negotiated 30 years ago. But back then, U.S. President Ronald Reagan objected to it because, he argued, it would jeopardize U.S. national and business interests, most notably with respect to seabed mining. A major renegotiation in 1994 addressed his concerns, and the United States signed. Now, the U.S. Navy and business community are among
UNCLOS’ strongest supporters. So, too, was the George W. Bush administration, which tried to
get the treaty ratified in 2007 but failed due to Republican opposition in the Senate.

Today’s opponents, including Ayotte, DeMint, and Portman, focus on two issues. First, they
argue, the treaty is an unacceptable encroachment on U.S. sovereignty; it empowers an
international organization — the International Seabed Authority — to regulate commercial
activity and distribute revenue from that activity. Yet sovereignty is not a problem: During the
1994 renegotiation, the United States ensured that it would have a veto over how the ISA
distributes funds if it ever ratified the treaty. As written, UNCLOS would actually increase
the United States’ economic and resource jurisdiction. In fact, Ayotte, DeMint, and Portman’s worst
fears are more likely to come to pass if the United States does not ratify the treaty. If the country
abdicates its leadership role in the ISA, others will be able to shape it to their own liking and to
the United States’ disadvantage.

The opponents’ second claim is that the treaty would prevent the U.S. Navy from undertaking
unilateral action, such as collecting intelligence in the Asia-Pacific region, because permission to
do so is not explicitly granted in the text. According to Admiral Samuel Locklear, commander
of U.S. Pacific Command, however, “The convention in no way restricts our ability or legal right
to conduct military activities in the maritime domain.” On the contrary, as U.S. Defense
Secretary Leon Panetta put it, U.S. accession to the convention “secures our freedom of
navigation and overflight rights as bedrock treaty law.” Even so, critics point out, the ultimate
indispensability of U.S. naval power means that the country can receive the benefits of the
convention without being bound by it. Since the world seems to have functioned perfectly well in
this halfway house for some time, it would make no sense to codify the convention now. It
would be comforting if all that were true. It isn’t.

UNCLOS has become an important barometer of U.S. power in the Pacific Ocean. At stake is the
country’s capacity to uphold, preserve, and strengthen a rules-based order in Asia as China rises.
In July 2010, at the ASEAN Regional Forum (ARF) in Hanoi, U.S. Secretary of State Hillary
Clinton stated that the United States believes that all maritime territorial disputes in the South
China Sea must be resolved multilaterally and in accordance with international law. It is a policy
that she repeated at the deadlocked 2012 ARF in Cambodia. For its part, China objected to the
“multilateralization” of maritime disputes then and continues to do so now. Beijing believes that
it is more likely to make gains if it strikes individual bargains with weaker powers, including
Manila and Hanoi. The other capitals realize this, which is why they welcomed Clinton’s
commitment to multilateralism.

A strong multilateral structure in Asia is a prerequisite to balancing Chinese assertiveness. The
United States should not take sides in other countries’ disputes, but it can and must insist upon a
strong regional framework to ensure that a rising China does not destabilize the status quo. On
this issue, the 34 senators who oppose the treaty are taking Beijing’s side. They are speaking up
for the bilateralism and unilateralism that will harm the U.S.-led regional order in the Asia-
Pacific. No doubt, news of Ayotte and Portman’s recent declarations was greeted warmly in
Beijing. U.S. allies and strategic partners in South East Asia, meanwhile, will be even more
doubtful of Washington’s capacity to maintain its leadership role. It is strategic multilateralism in
the Atlantic that helped the United States to win the twentieth century. Without concordant multilateralism in the Asia-Pacific, it will not fare so well in the twenty-first.

Protecting national sovereignty is a legitimate aim — and one that some liberal internationalists may have been too cavalier about in the past. But for the goal to have any meaning, it must be framed so that it can be met. This is certainly what Reagan had in mind when he articulated a specific set of problems with the original UNCLOS that could be (and eventually were) dealt with. This time around, however, those who object to the treaty have defined sovereignty in such ideological terms that they will never be satisfied. By their reckoning, the United States can never be party to an international organization, even if it has veto status in it.

An international organization might very marginally limit U.S. freedom of action, but this is negligible in comparison to the harm that instability and conflict in the South China Sea could inflict on U.S. interests. Previous presidents from both parties understood the trade-off: In challenging times, and to exercise global leadership, Washington protected its interests by making enlightened commitments overseas, whether in the form of alliances, institutions, or foreign assistance.

The 34 senators who object to UNCLOS are not unique in favoring sovereignty and freedom of action over working within a strategic environment. They are following in the footsteps of those senators after World War II who initially objected to the Marshall Plan, the Truman Doctrine, and new alliances because they imposed costs on the United States and violated its autonomy. U.S. President Harry Truman argued that these multilateral commitments were a part of an international order that would make the world safer for the United States. The positive case failed to convince the Senate. In response, Truman focused his energy on exploiting fear of the Soviet Union and managed to secure the necessary political support for his strategy. Fear won where hope could not.

Today, the positive case is again failing to convince the Senate. But unlike in the 1940s, fear will not work today. First, China is not nearly as threatening as the Soviet Union once was. Second, the United States and its friends in Asia need China to be a part of the solution. If it is not, Asia will be ripe for disruption and destabilization. That over one-third of the Senate fails to appreciate this is a cause for concern. And the blind spot is not confined to maritime security. For example, Washington should be pressing Beijing to participate in existing arms control agreements, such as the Intermediate-Range Treaty of Nuclear Forces, instead of objecting on principle to any treaty that constrains freedom of action. The Senate’s intransigence, if it continues, will make new treaties practically useless as a tool of U.S. national security policy. President Obama and his successors will need to find ways to build multilateral structures through less formal partnerships and coalitions of the willing, which do not require Senate ratification, as well as existing structures such as the ARF. Although these options are important, they also have significant limitations and will not exert as much pressure on China to comply.

U.S. presidents do not create and shape multilateral structures because they believe in global governance as an abstract philosophy. They do so because they want to advance the strategic and national security interests of the United States, which, for more than 65 years, have been tied up in the preservation and strengthening of a rules-based international order. These structures are
not always perfect. When they are flawed, the tough process of ratification makes sure that problems are addressed. Unfortunately, however, doctrinal statements against the very idea of participation in multilateral organizations and agreements are now routinely undermining U.S. leadership overseas. This may have been an indulgence the United States could afford in the “unipolar” 1990s, but faced with a power transition in Asia, it is a strategic blunder that only emboldens those who long for the end of the U.S.-led international order.