

ICAS Bulletin

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A Bimonthly Survey of Research and Analysis on China-US Relations

Twice a month, the ICAS Bulletin updates a global audience on American perspectives regarding the world's most important bilateral relationship. Research papers, journal articles, and other prominent work published in the US are listed here alongside information about events at US-based institutions and original commentary and analysis.

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Publications

The US Asia-Pacific Rebalance, National Security and Climate Change

Caitlin Werrell and Francesco Femia, Editors
Center for Climate Security, November 2015

This major collection of essays by multiple authors discusses the impact of climate change on security in the Asia-Pacific and the implications for US relations with regional states. Essay topics include the impact of climate change on fisheries and migration, and policy recommendations for “climate-wise” development in the region.

The Rise of China: Continuity or Change in the Global Governance Regime?

Catherine Weaver
Ethics and International Affairs, 29:4, Winter 2015

Weaver takes up the question of the broader significance of the AIIB, NDB (BRICS Bank), Silk Road Fund and other Chinese initiatives with regard to the established order of multilateral investment and development. Do these new organizations challenge the existing multilateral development banks and the Bretton Woods system more broadly? While to some degree the world must wait and see how China exercises this new influence, Weaver argues that these initiatives mark incremental

change and an evolution of global multilateral institutions rather than an overturning of the existing system. The Chinese-led institutions have different objectives and modes of operation than the existing institutions, and thus complement more than compete with them. Weaver notes that it is ironic that efforts to limit the influence of new actors like China in the Bretton Woods institutions has only encouraged the proliferation of new institutions in which nations like the United States exercise less influence.

Hollywood in China: How American Popular Culture Shapes Chinese Views of the “Beautiful Imperialist” – An Experimental Analysis

Peter Gries, Matthew Sanders, David Stroup and Huajian Cai
The China Quarterly vol. 224, December 2015

The authors contend that given the fact that fewer than 1% of Chinese have ever met an American, perceptions of US celebrities in China is a significant dimension of Chinese understandings of the United States. They attempt to discover whether broader cultural exposure to Americans via mass media will create “warmer” feelings toward the US as many social science theories suggest. Their studies indicate a more complex dynamic. Chinese perceptions of Americans in mass media depend not only on the political predispositions of the viewers (along a more/less nationalist spectrum), but also on whether or not the Americans are portrayed in US-based media outlets or Chinese media outlets. Americans appearing in Chinese magazines, for example, are more likely to elicit negative reactions than when they appear in American magazines that are sold in China.

China and Competing Cooperation in Asia-Pacific: TPP, RCEP, and the New Silk Road

Min Ye
Asian Security, 11:3, December 2015

This article discusses the results of field surveys and document analysis regarding how Chinese policymakers envision the nature of economic cooperation and competition in East and Central Asia, particularly how they understand the relationship between the “21st Century Silk Road,” TPP, and RCEP.

Summary of Outcomes: First US-China High Level Joint Dialogue on Cybercrime

US Department of Homeland Security, December 2, 2015

Following their December 1 meeting, US Attorney General Loretta Lynch, US Department of Homeland Security Secretary Jeh Johnson, and Chinese State Councilor Gou Shengkun announced a five point agreement. This included establishing guidelines for requesting assistance in cybercrime issues, planning for a 2016 tabletop exercise, creating a hotline mechanism, enhancing cooperation and scheduling a second high-level joint dialogue for June 2016.

An Innocent Mistake

Jeff Smith

American Foreign Policy Council Blog, December 3, 2015

Smith criticizes the character of the US Navy's recent freedom of navigation operation (FONOP) in the South China Sea. While he finds such operations justified and necessary, in Smith's eyes the Obama administration did a poor job of articulating which legal principles were being supported when the USS *Lassen* transited within 12nm of Subi Reef. He notes the disagreements between maritime law experts about the legal character of the transit—namely the uncertainty as to whether the *Lassen* was exercising the right of innocent passage or high seas freedoms. He criticizes Bonnie Glaser and Peter Dutton's frequently cited explanation of the Pentagon's decisions as "too clever by half." For future FONOPS, Smith recommends that the US conduct itself quietly to prevent needlessly provoking nationalist responses in China, while also offering a precise explanation afterwards of which legal principles it means to invoke.

Why China and the US have Found Common Purpose on Climate Change

Jackson Ewing

The Conversation, December 10, 2015

The author describes how the US-China relationship on climate issues has evolved in a positive direction in recent years. Part of this can be attributed to China's increasing concern for its own environmental conditions, and part to the Obama administration's shift towards pushing an environmental agenda through executive action and diplomatic agreements. Leaders in both countries also now believe that managing carbon emissions is in their genuine long-term interest. Ewing notes that the broader strategic competition between the US and China may actually facilitate climate change cooperation between the two, since climate agreements may be "low hanging fruit" for diplomats seeking to mitigate tensions between the nations. Also facilitating recent progress in climate cooperation has been a change in tactics regarding the types of agreements sought. Unlike past efforts, the Paris agreement is structured around flexible, non-binding commitments that make both China and the US more comfortable.

Events**The US Asia-Pacific Rebalance, National Security and Climate Change**

Report Launch

Wilson Center, November 17, 2015

This event featured discussions between Admiral Samuel Locklear, Sherri Goodman, Eric Schwartz and Ellen Laipson regarding the Center for Climate Security's recent report (see above) on the security implications of climate change to US policy in Asia.

Eagle Watching in Moscow and Beijing: Russian and Chinese Historical Perspectives on the US

Wilson Center, December 14, 2015

This event, part of the Wilson Center's *China and Russia on their own Terms* project, featured discussions of how American History and American Studies programs have evolved in Russia and China over the last century. Yafeng Xia discussed trends in how America is viewed in China, and described Chinese views of the US today as being characterized by a "mixture of hostility and admiration." Sergei Zhuk discussed the history of academic American Studies programs in the Soviet Union.

Points (tipping), Lines (9-dash), Planes (military), and Spheres (of influence)—The Geometry of a Changing Relationship

Kissinger Institute, Wilson Center, December 16, 2015

For the Kissinger Institute's third annual review of the state of US-China relations, Robert Daly discussed several issues in the relationship with Jason Wertime, Bill Bishop and Shannon Tiezzi. Bishop discussed how the changing domestic political environment in China might influence US-China relations, Wertime discussed global internet regulation as an emerging issue in the relationship and Tiezzi discussed the South China Sea tensions between the United States and China.

Commentary

Why is the US Not a Party to UNCLOS?

By Professor Myron H. Nordquist

The United States is not a Party to the 1982 UN Convention on the Law of the Sea (UNCLOS) although this multilateral treaty benefits virtually all US national interests. The reasons for the United States not joining the Convention are rooted in the US domestic political context where the US Senate has not acted for several decades to give its advice and consent as required by the US Constitution for the United States to ratify the Convention. UNCLOS in almost all respects reconciles the interests of both coastal States and user States in the global oceans. Indeed, this seminal reconciliation was the most important outcome of the Third UN Conference on the Law of the Sea (Conference).

UNCLOS Benefits to US Interests

The US has a good argument for asserting that it would benefit as much as any nation from accession to the Convention. The Convention confers on the United States the world's largest 200 nautical mile (nm) Exclusive Economic Zone (EEZ) granting sovereign rights to the living and non-living resources therein. In addition, the US is blessed with the Atlantic and Pacific oceans on each side and the Arctic Ocean in the north. Each of these oceans has continental shelves that contain vast oil and gas deposits, especially in the Gulf of Mexico. Even more significantly for the

United States is a satisfactory balancing of the interests of coastal States and user States on the vital issues of innocent passage in a settled 12 nm territorial sea limit and a transit passage regime through and over straits used for international navigation. Freedom of navigation and overflight also prevail in the EEZ. US industries such as those dealing with petroleum, hard minerals, fisheries, and shipping support US adherence to the Convention as do our major environmental organizations given UNCLOS protection and preservation for the marine environment. Objectively, the International Seabed Authority (ISA) has remained faithful to its mandate while the International Tribunal for the Law of the Sea (ITLOS) has gotten more active in settling disputes with each passing year. The Commission on the Limits of the Continental Shelf (CLCS) is overwhelmed but since the US is not even eligible to make submissions to it, delay is not a great concern.

The United States formerly was a leader in ocean law and policy, especially at the Third Conference and in the necessary revisions to the deep sea bed regime. Sadly the United States has lost its global leadership role in the law of the sea.

Background of UNCLOS in the US Political Arena

A page of history is worth a volume of logic with respect to the handling of UNCLOS in the US political system. Recall that President Ronald Reagan took office in 1981 and UNCLOS was concluded in 1982. With the change in US Administration came a sharp turn toward conservative political leadership. At this stage of the negotiations, the text of the Convention was agreed in most respects but the deep seabed mining regime was highly unsatisfactory to the United States and most other industrialized States. The Reagan Administration decided that the United States would not become a Party since the Convention does not allow reservations and Part XI was decidedly unacceptable. The objectionable provisions were subsequently modified by an Agreement relating to the implementation of Part XI of the Convention. This procedurally innovative Agreement was adopted in 1994 just prior to the entry into force of the original Convention. On October 7, 1994 President Clinton transmitted the Convention as fixed to the US Senate seeking its advice and consent as required by the US Constitution. Since 1994 every subsequent Administration (whether Republican or Democratic) has favored US ratification of UNCLOS. The hold-up has been and is in the US Senate and its rigid procedures.

Peculiarities of US Senate Procedures

Not only does the US Constitution require Senate advice and consent for the United States to become a Party to a treaty but also the concurring vote must be by at least 2/3rds of the Senator present on the floor. This is likely to be 67 Senators in the case of UNCLOS. Under Senate rules, if a treaty is still pending on the Senate calendar at the end of a Congressional session, the treaty is referred back to the Foreign Relations Committee. UNCLOS hearings were held in the Committee in 2004 and 2007 but the treaty was not considered by the full Senate in either case. The reason

is that the Convention was not given floor time by the then Majority Leader, a Republican in 2004 and a Democrat in 2007.

Various Chairmen of the Senate Foreign Relations Committee over the past several decades have held contrasting views on the merits of UNCLOS. In the early years, Senator Helms was strongly opposed to the Convention giving it a reputation as “controversial”. Later Chairmen such as Senator Lugar (a Republican) and Senator Kerry (a Democrat) actively supported UNCLOS passage given that the deep sea bed regime had been redone. Despite the removal of the undesired aspects of UNCLOS from the US point of view, the then Senate Majority Leader has in each case determined that UNCLOS was not sufficiently pressing or important enough to warrant the amount of Senate floor time expected for debate. The reason for the determinations was that UNCLOS floor time would reduce floor time for other matters the Majority Leader wanted to take up.

From its inception in the Reagan era, UNCLOS got off to a bad start. Senate floor time for debate was estimated to take at least a week and maybe longer. The time estimate was and is based on opposition expected from upwards of several dozen conservative Republican Senators. So far, no Majority Leader and lately, no Foreign Relations Committee Chair has deemed the value of the increment between joining and not-joining as sufficient to justify pushing for floor time. And no President has offered compelling political trade bait. Those closely following developments in the ocean see value in locking in law the many favorable rights and benefit in the Convention for the United States. Proponents worry about the risks of erosion in ocean law especially when a particular Administration does not actively assert State Practices that protect US national interests.

Worry about the Future of UNCLOS

There are also grounds for worry about the future course of the Convention. We see deep sea bed-like debate stirring in the UN General Assembly with respect to generic resources beyond national jurisdiction. Again unrealistic high expectations of grand new riches are promised for developing nations. We heard similar sentiments in the 1970’s and there are still no profits after 50 years to share from the development of “common heritage” hard minerals. Troubling signs surround the *Arctic Sunrise* and South China Sea cases in ITLOS that suggest that Russia and China are not entirely happy with ITLOS and the Convention. Due to domestic politics, the United States is not even a party to the Convention and the prospects for the US joining are not favorable in the near future. It is worrisome when important States evidence second thoughts about the value of UNCLOS. The global interest in the Rule of Law for over 70% of the earth’s surface may be undermined by emerging challenges to UNCLOS. What UNCLOS provides is not perfect but it is far better than chaos at sea.

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