



MONETARY & ECONOMIC REVIEW

Volume XXII, No. 3

Winter 2007

Will the Senate Deep-Six U.S. Sovereignty?

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Law of the Sea Treaty Is Being Presented for Ratification – Again

“We are told the UNCLOS will somehow ‘guarantee’ our maritime rights. Meanwhile, the Senate Department would have a seat at the table with 155 other nations in a “one nation, one vote: situation at the International Seabed Authority. We would have as much influence as we do in the U.N General Assembly, where we are constantly out-voted.”
– John Fonte, Senior Fellow, Hudson Institute.

The Senate Foreign Relations Committee voted 17-4 on October 31 to approve the Law of the Sea Treaty, meaning it’s now up to 34 Senate Republicans to deep-six the monster.

As we saw with the so-called Immigration Reform bill that the Bush administration and a phalanx of supporters tried unsuccessfully to ram through Congress this summer, there has been a dearth of information provided to the American public about the latest stealth agenda, The Law of the Sea Treaty (LOST). As with the immigration reform bill, there has been a near-blackout in the liberal media about this treaty and its potentially devastating effects. Apart from a front-page article in the Washington Times (“They Just Don’t Get LOST,” October 25, 2007), and postings by a few on-line news outlets, bloggers, and a couple of newsletters, there has been little information provided to the American public about the serious threat posed by LOST if ratified by the Senate.

Republican leaders in the Senate have deep misgivings about the inevitable effects international organizations at the expense of U.S. sovereignty; but Republican opposition to LOST has been virtually unreported in the liberal media.

What Is UNCLOS, or LOST?

The treaty that would bind the U.S. and other nations to a myriad of regulations and restrictions is known as the Law of the Sea Treaty (LOST), negotiated between 1973 and 1982 under UNCLOS, the United Nations Convention on the Law of the Sea. UNCLOS established a transnational institution, the International Seabed Authority (ISA), to regulate maritime activities for over 70 percent of the earth’s surface. The Convention creates rules governing ocean navigation, conservation, and seabed mining.

President Reagan raised concerns about LOST in 1982, and the U.S. did not ratify it. It was revived through new negotiations under President George H. W. Bush. President Clinton sent it to the Senate during his tenure, but it failed ratification. The current White House has called for the Senate to ratify LOST, claiming that objections raised by Reagan were fixed by a 1994 amendment. The 1994 amendment did get rid of some of LOST’s objectionable provisions, such as mandatory technology transfers and other strategies for resource redistribution, but it fell far short of “fixing” other problematic provisions in the Treaty.

Opposition

Among those who strongly oppose LOST, on grounds that it would significantly undermine American sovereignty, are Edwin Meese and William Clark, Attorneys General in the Reagan administration; John Lehman, former Secretary of the Navy; and John Bolton, diplomat and former ambassador to the U.N.

Political opposition in Congress includes Senators Vitter (R-LA), Inhofe (OK), DeMint (SC), Kyl (AZ), Sessions (AL), Ensign (NV), Lott (MS), Cornyn (TX), and McConnell (KY). Presidential candidates Fred Thompson, Mike Huckabee, Tom Tancredo, and Duncan Hunter have expressed their opposition to LOST. Mitt Romney says he “has concerns” about the treaty “giving unaccountable international institutions more power.”

Retired Admiral James “Ace” Lyons (former commander of the Pacific Fleet) declared that it is “inconceivable” that the “Senate would willingly want to forfeit its responsibility for America’s freedom for the seas to...[an] unaccountable international agency.”

The treaty’s sheer size, with 320 articles and nine annexes, is daunting, to say the least. The Treaty covers everything from “criminal jurisdiction on board a foreign ship” (Article 27) to “Anadromous stocks” and “Catadromous

Species” (Article 65 and 665, which pertain to spawning habits of various species of fish) to the “Jurisdiction of the Seabed Disputes Chamber” (Article 187).

Pros and Cons

One of the arguments being made for ratification is that we need “a seat at the table” to influence the rules. However, America’s experience with similar multinational bodies such as the U.N. Human Rights Commission hardly inspires confidence that “having a seat” will enhance our influence. The United States would have only one vote out of about 150 nations – the same vote as Cuba.

From a practical standpoint, nations with mutual concerns – a direct Arctic claim, for example – ought to be able to hammer out a deal between them, without giving a seat and a vote to nations that are too small or remote to be affected, or for whom a particular matter is irrelevant.

Another proponent – the Navy – likes the “legal framework for navigational rights” that they believe LOST would afford, ignoring the fact that the Navy has been getting along just fine for three centuries by using the “customary law” that has guaranteed freedom of the seas. This would change under LOST. Article 20 states, “In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.” It is not hard to imagine what effect this would have on the ability of U.S. submarines to gather intelligence in coastal waters or deploy special forces on hostile shores (the very *raison d’etre* for the \$1 billion submarine called the USS Jimmy Carter).

The oil and gas industry approves of provisions that create an “exclusive economic zone” for the U.S. out to 200 miles. Supporters also see great potential for development of resources in the deep seabed, which would be managed by the International Seabed Authority (on which the U.S. would have a seat). But critics are rightly concerned about the powers of direct taxation that LOST confers on the International Seabed Authority. The details of this innovation are buried in Article 13 of the third annex and contain a mix of “production charges” and annual million-dollar “administrative” fees. Such measures are a veritable invitation to corruption, especially when the taxes can run as high as 70 percent of net proceeds. One only has to recall the UN Oil for Food scam to recognize that the ISA could turn into a similar boondoggle, with billions of dollars flowing through an unaccountable agency into the hands of strategically placed international thieves.

LOST: Do Members of Congress Have a Clue?

The *Washington Times* (October 25, 2007) raised an unsettling point by reminding us that “sometimes even a proposal that has been around forever manages to crawl forward without anyone seeming to have read it.” One has to wonder if LOST supporters in the Bush administration and in Congress actually know what is in the Treaty.

During a recent Foreign Relations Committee hearing, Sen. Vitter asked State Department Legal Advisor, John Bellinger II, if the treaty would cover pollution from land-based sources. Bellinger replied, “We’ve worked our way through the Treaty. We are confident that pollution from land-based sources would not be subject to the jurisdiction of the tribunals or arbitral panels.” But Vitter, one of few who actually seem to have read the Treaty, responded, “I would point you to Section 6, Article 213, page 176, which is about enforcement with respect to pollution from land-based sources. It seems to me the very title of that article at least sets up a *prima facie* case that your statement isn’t correct.”

The chairman of the Senate Foreign Relations Committee, Joe Biden (D-DE), ignored requests for additional hearings and additional testimony from those opposed to the Treaty. The Center for Security Policy reported that Biden, who scheduled the two hearings that were held, did not attend either of them, nor did two other panel members who also happen to be presidential candidates – Barack Obama and Chris Dodd (CSP Decision Brief, “LOST Runs Silent, Runs Deep,” October 29, 2007).

Two critics of the Treaty were given just seven minutes each to provide their oral testimony. On the other side, several of the nine proponents of the Treaty provided misleading testimony about various provisions of the LOST and their ominous implications. Formal requests from Sen. Jim Inhofe, asking the Foreign Relations Committee to examine the Treaty’s myriad repercussions, have gone unanswered.

The Devil in the Details

As John Fonte, Senior Fellow at the Hudson Institute, puts it, “The ultimate question of democratic politics is who ‘decides.’” With that in mind, it is critical that the American people and their representatives in the Senate understand how disputes between signatories to LOST would be handled.

- Under UNCLOS (the convention upon which the Law of the Treaty is based) disputes between the U.S. and other parties are settled by mandatory arbitration. Final decisions are made either by a permanent International Tribunal for the Law of the Sea in Hamburg, Germany or by an *ad hoc* court.
- The Hamburg tribunal consists of 21 judges chosen by member nations, many of them unfriendly to the U.S.
- An *ad hoc* court would consist of five judges, two chosen by the U.S., and two chosen by the other party. The fifth judge (and obviously, the deciding vote) is chosen either by the Secretary General of the U.N. or by the Hamburg tribunal. The decisions are final and binding, with no appeal.

Once the Senate ratifies a treaty, we are bound by the entire treaty, not just those parts we agree with. A treaty supersedes state laws.

What Else Do We Need to Know about LOST?

- Ronald Reagan rejected the Law of the Sea Treaty twenty-five years ago. We have survived since then without being a part to it. There is no justification for haste – let alone stealth – in pressing for ratification of this treaty.
- We should follow President Reagan’s directive while he was in office and observe the Treaty’s provisions regarding navigation (with which we can live) but not be bound by those provisions hostile to our interests. As signatories to LOST, we would not have those choices.

Some 154 countries have ratified the Law of the Sea Treaty; the U.S. is one of the few holdouts. Critics of LOST are being labeled “isolationist” or worse, but the U.S. has been abiding voluntarily with fundamental terms of the treaty since 1983 – with no ill effect.

Essentially, the battle over the Law of the Sea Treaty boils down to a fierce struggle between those who support the founding principle of American self-government and the so-called “transnational progressives” who support global governance. Unfortunately, there are many of the latter who hold powerful positions in the U.S. Senate and are energetically pressing for Senate ratification of LOST.

Ronald Reagan had it right. Now, it’s up to 34 Republican Senators to demonstrate the courage of Reagan and ditch this treaty.