

## Sea Treaty Would Crush US Entrepreneurs

By Doug Bandow

The Law of the Sea Treaty (LOST) is the most important treaty you've never heard of. It would turn over all of the world's unclaimed natural resources to a second United Nations – and is moving ever so steadily towards Senate ratification.

Back in the 1970s, some Third World governments loudly campaigned for a global socialist economic order of more foreign aid, UN regulation of business and collectivist resource development. LOST is a result. It declared all seabed resources to be the “common heritage of mankind,” levied fees and royalties on Western mining and oil companies, created a monopoly company to mine the seabed, and established a new international body to divvy up the spoils.

President Ronald Reagan refused to sign the treaty in 1982, leaving it to sink beneath the waves. But President Bill Clinton decided to “fix” the LOST. After winning a few small concessions, the US signed.

For years, opposition in the Republican-controlled Senate prevented American ratification, but more than enough other countries assented to bring LOST into effect. President George W. Bush now supports the accord. Yet the treaty retains its original collectivist framework.

In broad sweep, LOST covers three subject areas. The first includes exclusive economic zones, fishing, marine research, ocean pollution, and oil exploration. The second covers navigational freedom. The third covers seabed mining – and it is here where the treaty's worst parts lie.

LOST establishes the International Seabed Authority (ISA) – governed by a Council, Assembly, and various committees and commissions – to regulate the oceans. It also establishes an agency called the Enterprise, which would both mine the seabed and collect fees from its own competitors, Western mining companies. And mining won't be the only industry affected. Energy companies, for instance, will owe the

ISA royalties on any oil produced from the Outer Continental Shelf beyond 200 miles.

Those may be the first global taxes imposed on Americans without congressional approval. And for what? To be handed out to corrupt Third World governments and whomever else the majority decides to shower with benefits.

Moreover, those same Third World governments could well hope to use the LOST for their own ends. William C.G. Burns of the Monterey Institute of International Studies, a LOST advocate, calls the treaty “a promising instrument through which such [legal] action might be taken, given its broad definition of pollution to the marine environment and the dispute resolution mechanisms contained within its provision.” That's a recipe for a flood of international lawsuits that could undermine US prosperity and sovereignty.

Russia's recent submarine North Pole flag-planting expedition has led treaty advocates to suggest that America cannot dispute Moscow's territorial claims while remaining outside of the treaty. But America need not be a member to protect its interests. For example, a body set up under LOST, the UN Commission on the Limits of the Continental Shelf, rejected Russian Arctic territorial claims in 2002 based in part on information supplied by the US.

LOST's affirmation of navigational freedom has won widespread support, including from the US Navy. Yet it would bring no net benefit; most of the transit provisions incorporate existing customary international law. Moreover, those provisions are ambiguous on certain matters – including an undefined exemption of “military” transit activities.

The Bush administration proposes various “understandings” restricting the

treaty's reach, but there is no guarantee that the treaty's arbitration mechanisms will uphold America's positions.

Treaty supporters acknowledge that the original accord was flawed, and now claim that the LOST has been “fixed.” But the Clinton administration merely made a horrible treaty slightly less horrid. The governing philosophy, regulatory structure, and most of the rules remain the same. Where explicit redistributionist provisions, such as technology transfer mandates, were dropped, other, more ambiguous, language was left in place that could have the same effect.

Such a Byzantine regulatory structure is likely to discourage entrepreneurship in fields that could be affected – especially the development of technology, software, and other products with multiple ocean uses.

Further, applying a similar approach to other technological frontiers, such as outer space and cyberspace, would discourage private innovation in those fields. In fact, treaty proponents emphasize LOST's value as a legal precedent.

The LOST is not without benefits, but most of those already can be enjoyed without ratifying the treaty. Unfortunately, the costs of joining are too high. Enshrining collectivism as international law to be enforced by a “mini-me” United Nations would be as foolish as it would be costly. **PM**

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