



Written by [Michael Tennant](#) on July 18, 2012

LOST Will Not Be Ratified This Year, DeMint Says

The Obama administration's push for Senate ratification of the [Law of the Sea Treaty \(LOST\)](#) in 2012 appears to have been stymied by Republican opposition. According to the [Daily Caller](#), 34 Republican Senators have now stated that they will not vote to ratify the treaty, which gives the United Nations control over 70 percent of the Earth's surface. Therefore, if the treaty is brought up for a vote before the full Senate and all those now opposing it remain steadfast, it will be defeated.



"With 34 senators against the misguided treaty, LOST will not be ratified by the Senate this year," wrote [Sen. Jim DeMint \(R-S.C.; pictured\)](#), who has been leading the charge against LOST.

The latest GOP Senators to go on the record against LOST are Sens. Kelly Ayotte of New Hampshire, Rob Portman of Ohio, Mike Johanns of Nebraska, and Johnny Isakson of Georgia. ([The New American](#) reported Isakson's announced opposition last week.) They join 30 other Republicans in that chamber who have proclaimed their intention to vote Nay on LOST.

In a [letter](#) to Senate Majority Leader Harry Reid (D-Nev.), Portman and Ayotte, both members of the Senate Armed Services Committee, laid out the anti-LOST case thoroughly. While granting that LOST proponents "inspire to admirable goals," they argued that "the treaty's terms reach well beyond those good intentions":

This agreement is striking in both the breadth of activities it regulates and the ambiguity of obligations it creates. Its 320 articles and over 200 pages establish a complex regulatory regime that applies to virtually any commercial or governmental activity related to the oceans — from seaborne shipping, to drug and weapon interdiction, to operating a manufacturing plant near a coastal waterway.

"The terms of the treaty," they added, "are not only expansive, but often ill-defined." Indeed, much of the agreement's interpretation is left up to its legislative organ, the International Seabed Authority — (ISA), and its various tribunals — tribunals over which the United States would have little to no control and whose judgments are binding. The highest court under LOST, the International Tribunal for the Law of the Sea, "can resolve any dispute concerning interpretation of the treaty" and "has compulsory jurisdiction over disputes concerning the seabed beyond national borders and power to grant preliminary injunctive relief whenever it deems necessary 'to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment,'" the senators wrote.

Moreover, they observed, because LOST "expressly provides that decisions of the tribunal 'shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought,' " some tribunal rulings "would automatically constitute enforceable federal law."

"Because the treaty authorizes international legislative and judicial bodies to give shape and substance



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to ... open-ended commitments,” Portman and Ayotte noted, “the United States would be binding itself to yet-unknown requirements and liabilities.” In this they echo concerns dating back to the Reagan administration, which opposed LOST ratification from the outset in part because the potential exists that the Senate could ratify one version of the treaty only to see it modified afterward by the ISA Assembly, in which the United States would possess just one vote of 163, or by one of the international tribunals.

LOST “could also spawn international environmental tort claims directly against U.S. businesses and citizens,” the Senators wrote. In fact, they pointed out, when residents of Papua New Guinea sued a U.S. mining corporation under the federal Alien Tort Statute (ATS) in 2002, “a federal district court in California held that the plaintiffs had stated a valid ATS claim under the environmental provisions of the Law of the Sea treaty.” Joining LOST, they said, “would only strengthen” similar claims — which is why environmental activists are salivating at the prospect of U.S. accession.

Portman and Ayotte also found LOST boosters’ arguments wanting, remarking that “even treaty proponents recognize that” the provisions they cite as reasons to ratify the pact “primarily clarify rights that the United States already possesses under customary international law and has other means of asserting,” including bilateral negotiations and military might. They conclude:

The real issue is not *whether* the United States will defend its maritime rights, but rather *who* will have the final say on the scope of those rights. We simply are not persuaded that decisions by the International Seabed Authority and international tribunals empowered by this treaty will be more favorable to U.S. interests than bilateral negotiations, voluntary arbitration, and other traditional means of resolving maritime disputes. No international organization owns the seas, and we are confident that our nation will continue to protect its navigational freedom, valid territorial claims, and other maritime rights. [Emphasis in original.]

With that, enough senators have unequivocally stated their opposition to LOST that it can pass only if one or more of them cave.

“This is a great victory for American sovereignty to finally defeat this UN treaty bill that would have enacted a backdoor Kyoto Protocol, force the U.S. to pay energy taxes to terror-supporting nations and give control over U.S. military operations to a UN tribunal,” DeMint spokesman told the Daily Caller.

Of course, the Constitution requires the consent of only “two thirds of the Senators present” during a treaty vote for it to pass, and a quorum to do business in the Senate is but a bare majority of its members. Democrats could call for a vote on LOST at a time when many treaty opponents are out of town or use other parliamentary procedures to overcome this seemingly insurmountable obstacle to ratification; but as long as the 34 LOST opponents are present during a vote on the treaty — and remain true to their word — it will be defeated.

For that reason, despite the desire of the Obama administration and its Senate allies to get the treaty ratified this year, the vote may simply be delayed until the composition of the Senate changes or the political winds shift in favor of LOST. LOST fans in Washington — and their [globalist cronies](#) — would undoubtedly prefer a deferred victory to an immediate defeat.

Sen. John Kerry (D-Mass.), chairman of the Senate Foreign Relations Committee and LOST proponent, has already indicated that he will bide his time until after the November election, possibly bringing the treaty up for a vote during the lame-duck session following it.

“Senator Kerry has been here long enough to know that vote counts and letters are just a snapshot of



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where our politics are in this instant, and it's not news to anyone that right now we're in the middle of a white hot political campaign season where ideology is running in overdrive," his spokeswoman Jodi Seth said in a statement Monday. "No letter or whip count changes the fact that rock-ribbed Republican businesses and the military and every living Republican secretary of state say that this needs to happen, and that's why it's a matter of 'when' not 'if' for the Law of the Sea."

Still, a fairly certain LOST defeat is worth celebrating. The fact that opposition was quick to mount is also an encouraging sign: More than a third of our senators still appear to care enough about U.S. sovereignty and the Constitution to refuse to sign either away to the UN. For Americans' liberty, perhaps all is not yet lost.

Photo of Sen. Jim DeMint: AP Images



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