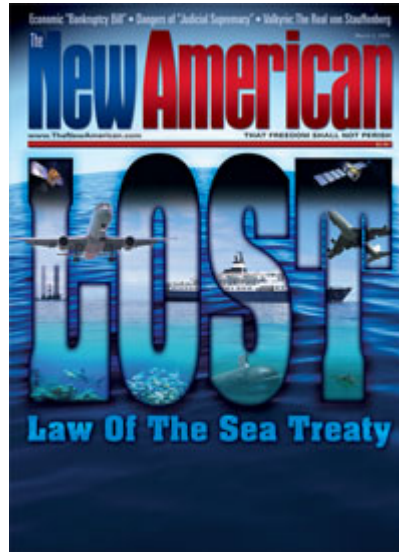




## LOST: Law of the Sea Treaty

The United States Senate may vote very soon on one of the most far-reaching and dangerous treaties our government has ever considered for ratification: the United Nations Convention on the Law of the Sea (also known as the Law of the Sea Treaty, or LOST). The treaty, which has simmered on the back burners of the Senate Foreign Relations Committee for decades, would give the United Nations control and jurisdiction over the world's oceans, nearly three-quarters of the surface of our planet.



According to the National Oceanic and Atmospheric Administration (NOAA), oceans cover 71 percent of the Earth's surface and contain 97 percent of the planet's water. The agency also notes, "one of every six jobs in the United States is marine-related and over one-third of the U.S. Gross National Product originates in coastal areas." Of course, the oceans are important not only for our commercial transportation, recreation, food production and energy production, but also for our national security; our navy's unhindered access to the ocean seas is crucial to our defense at home and the protection of our interests abroad.

The Law of the Sea Treaty would jeopardize all of this by subjecting America to the rules and jurisdiction of UN bodies and the incessant harassment of lawsuits by foreign nations and activist non-governmental organizations (NGOs). The LOST proponents snort in derision at these concerns, insisting that the treaty merely codifies customary international maritime law already in effect, and actually *strengthens* American sovereignty. "One of the most common criticisms of the treaty is that ratification will lead to the largest transfer of sovereignty and wealth in US history," says the United Nations Association of the USA (UNA-USA) in its "fact sheet" on LOST. "Instead," asserts the UNA-USA, "the treaty strengthens and extends U.S. sovereignty over vast amounts of ocean territory and resources."

However, when we look closely at what the authors of the Law of the Sea Treaty say in various international fora and publications, and when we examine the admissions and boasts of the UN's officials and legal experts, we find that they have baited a very big trap. Their public assurances notwithstanding, they have designed and birthed a monster that they intend will do far more than they openly concede when seeking state ratification. Here's what the UN's Division of Ocean Affairs and Law of the Sea (DOALOS) had to say at the official celebration of the "25th Anniversary of the United



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Nations Convention on the Law of the Sea" on October 17, 2007:

The United Nations Convention on the Law of the Sea ... is perhaps one of the most significant but less recognized 20th century accomplishments in the arena of international law.... Its scope is vast: it covers all ocean space, with all its uses, including navigation and overflight; all uses of all its resources, living and non-living, on the high seas, on the ocean floor and beneath, on the continental shelf and in the territorial seas; the protection of the marine environment; and basic law and order.... The Convention is widely recognised by the international community as the legal framework within which all activities in the oceans and the seas must be carried out.

Please note that DOALOS, the UN agency in charge of administering LOST, claims the convention covers "all ocean space," including everything on, in, under, and above the oceans. Note also the heavy use of the adjective "all," as in "all uses," "all resources," "all activities." But wait; as we shall see, the claims go even far beyond this to include global regulations that will override domestic laws covering not only coastal waters and shorelines, but also human activities in rivers and inland waterways, and land-based activities that may be claimed — no matter how far-fetched — to be harming the marine environment.

Moreover, LOST may confer upon the UN, for the first time, the ability to tax Americans directly, without congressional approval.

Many Americans have experienced firsthand just how burdensome U.S. regulation of our own waterways, including wetlands regulations, can be. But how about *international* regulations of our waterways? What national interest can be served by subjecting ourselves to the regulatory ministrations and taxing authority of UN bureaucrats and judges and the litigational ploys of foreign dictators and anti-American NGOs? Obviously, none. Nonetheless, Senate ratification of LOST is a "top priority" for the new Obama administration.

At her January 13 hearings for confirmation as Secretary of State, then-Senator Hillary Clinton was asked by Sen. John Kerry (D-Mass.), a LOST supporter: "If confirmed, do you intend to make ratification of the Convention your top treaty priority at State?" Sen. Clinton responded: "The President-Elect and I both supported ratification of the Law of the Sea Convention as senators.... If confirmed, its ratification will be one of my top treaty priorities at State, and the new administration will work with the Senate to secure approval."

### **The LOST Boys ... and Girls**

The new administration will be well packed with LOST boys and girls. Vice President Joseph Biden, for instance, was a longtime Senate champion of the Law of the Sea. He will be presiding over the Senate in the 11th Congress. President Obama's recently confirmed ambassador to the United Nations, Susan Rice, served as understudy in the Clinton administration, first to Anthony Lake, and then to Secretary of State Madeleine Albright, both of whom were (and are) LOST enthusiasts. For the past several years, Rice has worked at the liberal-left Brookings Institution under the tutelage of Clinton's former Deputy Secretary of State Strobe Talbott. This is the same Strobe Talbott who approvingly predicted in his 1992 *Time* magazine essay, "The Birth of the Global Nation," that someday "nationhood as we know it will be obsolete; all states will recognize a single, global authority." LOST would be a very important part of the emerging global authority Talbott envisions. So it is not surprising that this same Strobe Talbott, a foreign-policy adviser to Barack Obama and Susan Rice's Brookings boss and mentor, is one of the "101 prominent Americans" who signed a letter to Senate leaders in 2007 urging approval of



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LOST.

Leon Panetta, President Obama's choice to head the CIA, is also a major LOST promoter. Until recently, Panetta served as co-chair of the Joint Ocean Commission Initiative, one of the main organizations pushing the convention.

The new Democrat-controlled Senate is the friendliest environment the LOST proponents have ever faced, but it is the Republicans who are causing the most worry. On January 9, just a week and a half before handing over the White House to Barack Obama, President Bush issued National Security Presidential Directive 66 (NSPD-66) on "Arctic Region Policy." The executive order (also labeled Homeland Security Presidential Directive 25, HSPD-25), which brims with environmental shibboleths, declares:

The Senate should act favorably on U.S. accession to the U.N. Convention on the Law of the Sea promptly, to protect and advance U.S. interests, including with respect to the Arctic. Joining will serve the national security interests of the United States, including the maritime mobility of our Armed Forces worldwide. It will secure U.S. sovereign rights over extensive marine areas, including the valuable natural resources they contain. Accession will promote U.S. interests in the environmental health of the oceans. And it will give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted.

In addition to the citation above, NSPD-66/HSPD-25 specifically endorses LOST four more times. The Bush executive order may not have been prominently featured in the major media (indeed, it seems few Americans are even aware it was issued), but the message certainly reached Republicans in the Senate. For the umpteenth time, and now as one of its last acts in office, the Bush administration was signaling its strong support for LOST.

Many of President Bush's staunchest supporters, as well as many of his harshest Democratic opponents, were shocked when, on November 27, 2001, Ambassador Sichan Siv, U.S. Representative on the UN Economic and Social Council, made the following statement in the UN General Assembly: "The United States has long accepted the UN Convention on the Law of the Sea as embodying international law concerning traditional uses of the oceans.... I am pleased to inform you that the Administration of President George W. Bush supports accession of the United States to the Convention."

On December 17, 2004, President Bush issued a report entitled the "U.S. Ocean Action Plan: The Bush Administration's Response to the U.S. Commission on Ocean Policy." This presidential response stated that "as a matter of national security, economic self-interest, and international leadership, the Bush Administration is strongly committed to U.S. accession to the UN Convention on the Law of the Sea. The Administration urges Congress to provide advice and consent to this treaty as early as possible in the 109th Congress."

President Bush's unstinting support for LOST, along with endorsements from his top State Department officials (Secretaries Colin Powell and Condoleezza Rice, and Deputy Secretary of State John Negroponte) and military appointees (General Richard Myers, former chairman of the Joint Chiefs of Staff and Admiral Vern Clark, former chief of Naval Operations), has been used by treaty advocates to undercut Republican and conservative opposition to the globalist scheme for UN control of the oceans.

Senator Richard Lugar (R-Ind.) is now the most senior Republican in the U.S. Senate and one of the most ardent supporters of the Convention on the Law of the Sea. Although usually described by liberal media commentators as "moderate," Sen. Lugar is an avid internationalist and promoter of the United

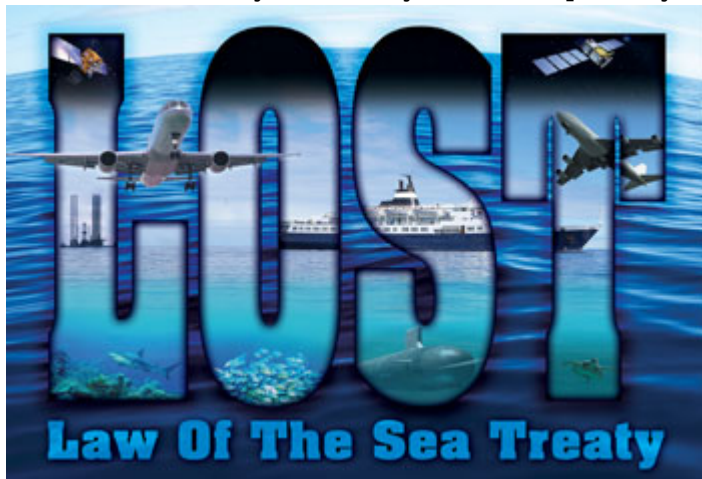


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Nations. He has been instrumental in stacking the deck in favor of LOST at committee hearings, allowing pro-treaty witnesses to outnumber anti-treaty witnesses by three or four to one.

### **LOST: Spawn of the UN**

The product of nearly a decade of negotiations at UNCLOS conferences, the treaty was finalized in 1982. However, the world's most politically and economically powerful state, namely, the United States of America, which also happens to be the greatest naval power, refused to ratify the treaty. President Ronald Reagan opposed it for a number of reasons, though the one feature of the document that has received almost exclusive attention as being unacceptable, then as now, is the International Seabed Authority (ISA). The ISA is the UN entity that claims authority over all seabed resources as "the common heritage of mankind." LOST declares that companies intending to mine the ocean floor must obtain permits from and pay royalties and fees to ISA, which then, supposedly, will distribute the proceeds equitably to all mankind. (And we *know* from vast experience that UN bureaucracies are famous for honesty, efficiency, and transparency, right?)



President Bill Clinton negotiated a few minor changes in the convention, declared that its defects had been remedied, and signed it. However, the Senate did not ratify it, as is required by the Constitution for a treaty to enter into force. Although hearings have been held several times over the years, the full Senate has yet to vote on it. The UN declared LOST to be in force in 1994, after it had been acceded to by 60 nations. There are now 157 nations on board, the United States being the main holdout.

### **Sovereignty Sellout**

In his April 8, 2004 testimony before the Senate Armed Services Committee, William J. Middendorf II, a former secretary of the Navy and former ambassador to the Netherlands and the Organization of American States, identified "loss of sovereignty" as the most important problem with the Law of the Sea Treaty.

Ambassador Middendorf warned:

Traditionally, treaties, with only narrow exceptions, have been defined as formal agreements between and among sovereign states that help define their relations to each other as sovereign states. They are inherently political agreements. The option to change such relations and the concomitant power to discontinue adhering to the terms of a treaty is solely the prerogative of the sovereign. First and foremost, the Convention represents a departure from that tradition. It establishes institutions with executive and judicial powers that in some instances are compulsory.

Part XV of the convention, notes Middendorf, "establishes dispute settlement procedures that are quasi-



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judicial and mandatory. Once drawn into this dispute settlement process, it will be very difficult for the U.S. to extricate itself from it.”

Advocates for LOST contend that fears of loss of sovereignty are utterly ridiculous. Professor John Norton Moore, a negotiator on LOST and one of the main guns called upon repeatedly to testify in favor of the treaty, had this to say at a conference on LOST at the Council on Foreign Relations (CFR) in New York on March 28, 2008:

What’s the principal argument we heard initially out of the opponents? This was going to remove the sovereignty of the United States. They cannot point to an ounce of removal of sovereignty for the United States.... There is no loss of U.S. sovereignty whatsoever.

Prof. Moore knows better. In the area of pollution control alone, the treaty presents serious threats to national sovereignty, creating, in essence, a global Environmental Protection Agency. Some of the most extreme environmental activists have announced their intention to use LOST as a back door to force global regulations, such as the Kyoto Protocol on climate change, on the United States.

Consider LOST’s Article 194, which says: “States shall take ... all measures consistent with this Convention that are necessary to prevent, reduce and control pollution from any source ... and they shall endeavor to harmonize their policies in this connection.”

Article 194 goes on to say that the measures taken shall be designed “to minimize to the fullest possible extent” pollution “from land-based sources” as well as “from or through the atmosphere.”

Article 213 says: “States shall ... adopt laws and regulations and take other measures necessary to implement applicable *international rules and standards established through competent international organizations or diplomatic conference* to prevent, reduce and control pollution of the marine environment from land-based sources.” (Emphasis added.)

As previously noted, legal activists are eagerly anticipating the havoc they would be able to inflict on the U.S. constitutional system and the potential for building world government through these and other provisions of the Law of the Sea Treaty.

William C.G. Burns, an environmental law professor and global-warming alarmist, contends LOST “may prove to be one of the primary battlegrounds for climate change issues in the future.” He notes that “the potential impacts of rising sea surface temperatures, rising sea levels, and changes in ocean pH as a consequence of rising levels of carbon dioxide in sea water” could “give rise to actions under the Convention’s marine pollution provisions.”

This a golden opportunity for environmental activists. “While very few of the drafters [of LOST] may have contemplated that it would one day become a mechanism to confront climate change,” Burns says, “it clearly may play this role in the future.”

Extrapolating from current and recent past experience, it should not take too much imagination to visualize the horrors this would unleash. Lawyers from Greenpeace, the Natural Resources Defense Council, and the World Wildlife Fund (to name but a few) would keep every court in the land (as well as every international tribunal) flooded with perpetual litigation aimed at every productive enterprise. Forget about drilling any new oil or gas wells, building any new refineries or power plants, or opening any new mines. Farmers, ranchers, manufacturers, processors, transporters — virtually everyone who does anything on land, air, or sea is a potential target.

One of LOST’s most avid proponents is University of Miami Law Professor Bernard H. Oxman, who



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served on the convention's drafting committee and has sat as a judge *ad hoc* of the International Tribunal for the Law of the Sea. Writing in 1996 in the *European Journal of International Law*, Prof. Oxman acknowledged that the convention's text was definitely lacking in the crisp, clear meaning its adherents often ascribed to it. "Like many complex bodies of written law," he wrote, "it is amply endowed with indeterminate principles, mind-numbing cross-references, institutional redundancies, exasperating opacity and inelegant drafting, not to mention a potpourri of provisions."

The UN's Division for Ocean Affairs and the Law of the Sea insists LOST is not "a static instrument, but rather a dynamic and evolving body of law." This mind-numbing, "dynamic and evolving" mélange of "indeterminate principles" and "exasperating opacity" is causing elation amongst those who would undermine our constitutional foundations and, at the same time, inspiring dread amongst those who contemplate the havoc that subversive lawyers and activist judges could inflict on our republic.

University of Virginia School of Law Professor John Norton Moore, a supporter of the treaty, calls it "one of the most important law-defining international conventions of the Twentieth Century."

"This is quite an assertion," Ambassador Middendorf says of Moore's statement. "In fact, it is the most troubling aspect of the Convention." Middendorf continues:

Unacknowledged in the language about fostering the rule of law in international relations is the reality that in this particular case it entails subordinating the powers of the participating states to the dictates of an international authority.... The Convention is a vehicle for transferring these essential powers from the participating states to the international authority established by the treaty itself. It represents the establishment of the rule of law *over* sovereign states more than it is establishing a rule of law made *by* them.

Doug Bandow, a senior fellow at the Cato Institute, warns that "LOST could be treated as self-enforcing, that is, found to create obligations enforceable by U.S. courts." In *Medellin v. Texas*, he notes, the U.S. Supreme Court rejected a challenge to a criminal conviction for failure to fulfill the Vienna Convention on Consular Relations. The majority ruled that the consular treaty does not constitute "directly enforceable federal law."

Bandow, who was a special assistant to President Reagan and served as deputy representative to the third UN Conference on the Law of the Sea, says:

Treaty advocates make the same claim for LOST. However, Annex III, Article 21(2) states that LOST tribunal decisions "shall be enforceable in the territory of each State Party." And in *Medellin*, Justice John Paul Stevens contrasted the Vienna Convention with LOST, which he opined did "incorporate international judgments into international law."

"The issue isn't going to be settled," says Bandow, "until a suit is filed under LOST, if the U.S. is foolish enough to ratify the Treaty."

Ratification would be foolish indeed. The treaty proponents have offered no pressing exigencies to justify the claim that U.S. ratification of LOST is "urgently" needed, or that any supposed benefits outweigh the evident dangers we would be inviting. Contrary to the claims of proponents, failure to adopt the treaty will not harm the operations of our navy or our commercial shipping.

On the other hand, ratification would almost certainly lead to actions that would be very harmful to our naval and commercial operations. Critics predicted chaos at our failure to ratify LOST in 1982. They were wrong; the United States has functioned quite well without it. No nation has had the will or the



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wherewithal to challenge our use of the seas. And if they had, the UN and LOST would not have helped. Americans must let their senators know in no uncertain terms that LOST was unacceptable in 1982 and nothing has changed to make it acceptable now.

[Click here](#) to send an email (updated as of May 18, 2012) to your senators in strong opposition to the ratification of the LOST treaty.

[Click here](#) for updated information as of May 18, 2012, regarding Senator Kerry's plans for a hearing on the LOST Treaty on May 23, 2012, and his further plans to hold a vote on the ratification of the LOST treaty in 2012, possibly as early as June.

For more on how the internationalist Council on Foreign Relations is serving as the key player among the global-governance organizations promoting LOST, [click here](#).



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