

LAW OF THE SEA TREATY MAY BE IMPROVED, BUT REMAINS DEEPLY FLAWED

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One of President Ronald Reagan's finest hours was in 1982 when he killed that year's version of the Law of the Sea Treaty. With the apt acronym LOST, the treaty would have ceded sovereignty and taxing authority over the oceans throughout the world to the United Nations.

Now, the Law of the Sea Treaty is back, supposedly refurbished so well in a 1994 reworking of the agreement that some say Reagan now would support it. The new version is supported by President George H.W. Bush, Reagan's vice president, and by President George W. Bush, as well as by five Republican secretaries of state: George Shultz and James A. Baker III, who served in that post under Reagan, Henry Kissinger, Colin Powell and Condoleezza Rice.

"Flaws in the treaty regarding deep-seabed mining, which prevented President Ronald Reagan from supporting it, were fixed in 1994," the five secretaries wrote in the Wall Street Journal on May 30. They added that other problems had been dealt with. Some Senate Republicans already have pledged support: Dick Lugar of Indiana, Lisa Murkowski of Alaska and Olympia Snowe of Maine.

But not so fast. Writing June 5 in the Los Angeles Times, former Reagan Attorney General Edwin Meese III insisted that Reagan would not sign the treaty today because it still poses "a direct threat to American sovereignty." He added, "President Reagan so strongly opposed the United Nations Convention on the Law of the Sea that he didn't just not sign the treaty. He very publicly refused to sign it. He also dismissed the State Department staff that helped negotiate it." Tough guy.

"Reagan would not support it," Doug Bandow told us; during the LOST debate 30 years ago he helped craft Reagan administration policy as a deputy representative to the Third United Nations

Conference on the Law of the Sea, which concluded in 1982. He is now a senior fellow at the libertarian Cato Institute. Seabed mining, in fact, remains a problem in his view, even though changes have made the section “better than it was.”

These seabeds under the world’s oceans—71 percent of the world’s surface—effectively would become U.N. property and the Law of the Sea Treaty would empower a new international bureaucracy, the International Seabed Authority. Only recently was America even granted a permanent seat on the governing council. “But that doesn’t mean anything,” Bandow said, because America easily could be outvoted by 35 other council members.

The authority could tax income and redistribute proceeds from America’s and other developed countries’ production on those seabeds to Third World countries—or, as is so often the case, to Third World despots’ Swiss bank accounts. LOST’s language even says the money could be given to “peoples who have not attained full independence or other self-governing status”—that is, almost anybody.

Supporters cite certainty, China

The U.S. Chamber of Commerce supports LOST, arguing that the treaty “provides certainty in accessing resources in the Arctic and Antarctic and could ultimately enable American businesses to explore the vast natural resources contained in the seabeds in those areas.”

LOST supporters, such as a May 9 editorial in the Christian Science Monitor, also contend that it would help temper Chinese claims to large portions of the South China Sea and other areas. China is one of 162 countries that have signed the treaty. “I am utterly baffled by how they think the Chinese will behave better under the treaty,” Bandow said. “China already said LOST doesn’t apply to the South China Sea. In a real crisis, it won’t matter. These are issues of great power politics.”

Currently, American sea interests are protected by the U.S. Navy, by far the most powerful naval force on earth. Critical shipping lanes such as the Strait of Hormuz or the Strait of Malacca are more likely to be kept open by the U.S. Navy, not by treaty.

Finally, Sen. Jon Kyl (R-Ariz.) proposes a “Madisonian” approach that would retain valuable navigation rights for businesses and the U.S. Navy, but allow Congress to dispense with other

provisions that encroached on American autonomy. But, the treaty can't be split into "good treaty" and "bad treaty."

Senate 1994 rejection

The treaty was signed by President Bill Clinton in 1994, but he couldn't muster the two-thirds approval needed in the Senate to make it a binding treaty, and the Senate has not voted on it since. Hearings were held May 23 this year by the Senate Foreign Relations Committee, chaired by Sen. John Kerry, (D-Mass.) He said more hearings are forthcoming. But a vote wouldn't happen until after the presidential election. At that point, even if Republicans take back control of the Senate, the treaty could be approved by the lame-duck Democratic majority joined by renegade Republicans. So, it's possible a treaty signed by a Democratic president back in 1994 could be approved by a Democratic Senate repudiated by voters in November.

In short, the Law of the Sea Treaty is still LOST, even if improved. It is not the best path, the only path and certainly not a guaranteed path toward America's energy self-reliance. In fact, relinquishing even a limited measure of U.S. sovereignty to a worldwide organization could precipitate mischief we can't begin to imagine.