



## *LOST should be sunk by the Senate*

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Have you been following the debate over the Law of the Sea Treaty (LOST)? If you haven't perhaps you should. This UN-backed treaty, which requires ratification by the United States, may not seem important since it deals with a rather mundane issue. However, it [could become a vehicle for more nefarious propositions](#); including backdoor cap-and-trade, a policy that was defeated in Congress back in 2009.

LOST has some powerful supporters in the Senate and among special interests, for example, the United States Chamber of Commerce [supports its ratification](#). However, a number of Republicans in the Senate [are looking to derail it](#), permanently:

*The Obama administration's all-out push to join the United Nations international maritime treaty is just four votes short of being doomed after two more senators this week added their names to the list of lawmakers who have vowed to oppose it.*

*Senate Minority Leader Mitch McConnell (R-Ky.) and Sen. Charles Grassley (R-Iowa) are the two latest senators to sign on to the letter, The Hill has learned, bringing the total to 30. Treaties need a two-thirds majority to pass in the Senate, meaning 34 signatures would effectively kill it.*

*Accession to the treaty is championed by a powerful coalition that includes the U.S. Navy, the business community and the oil industry but that hasn't been enough to assuage concerns that the convention would impinge on U.S. sovereignty.*

*"We are writing to let you know that we believe this Convention reflects political, economic, and ideological assumptions which are inconsistent with American values and sovereignty," reads the letter addressed to Senate Majority Leader Harry Reid (D-Nev.).*

Writing in Forbes backing March, Doug Bandow, senior fellow at the Cato Institute, [explained the very specific problems with LOST](#), leading one to conclude that the Senate should reject it outright:

*Three decades ago President Ronald Reagan rejected LOST, an omnibus agreement which would have redistributed wealth from Western industrialized democracies to Third World dictatorships. The so-called G-77, or developing state lobby, hoped to create a new International Seabed Authority (ISA) to control seabed resources and mulct private mining operations.*

[...]

*Washington should have pushed to sever the seabed regulations from more broadly supported treaty provisions governing navigation and other issues. However, treaties attract State Department diplomats like flames attract moths. The Bush and Clinton administrations decided to “fix” the seabed provisions by renegotiating LOST. The resulting compromise eliminated some of the convention’s most obnoxious rules but preserved the overall Rube Goldberg structure of organizations, committees, commissions, chambers, and more unchanged.*

*Worse, the revised text left regulatory landmines buried throughout. For instance, one of LOST’s biggest failings was the mandatory transfer of proprietary technology to Third World states as well as the Enterprise, which was to mine the seabed for the Third World-controlled ISA. The LOST “fix” only deleted one of two sections governing technology transfer.*

*Left intact was the requirement that the Authority “promote and encourage the transfer to developing States of such technology and scientific knowledge.” The Authority and member governments also were directed to “initiate and promote” programs “for the transfer of technology to the Enterprise and to developing states,” including “facilitating the access of the Enterprise and of developing States to the relevant technology.”*

*The revised text even added a new requirement: “If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology.” The Authority could use this language to recreate the mandatory technology transfer requirement.*

*Other regulatory ghosts haunt the revised text. The original treaty perversely limited mineral production; ambiguous language in the new version could yield the same outcome, despite claims that the accord now is market-friendly. Such controversies could end up in international court.*

*Although LOST focuses on the high seas, it includes language covering domestic pollution. The provisions are surprisingly expansive, or “stunning in their breadth and depth,” as Steven Groves of the Heritage Foundation observed in a new study. A decade ago Ireland relied on LOST to sue Great Britain over the commissioning of a mixed oxide plant because of the latter’s alleged impact on the Irish Sea. The plant had been approved not only by Britain, but also the European Union (EU). Ireland dropped the suit, but only because the EU sued Ireland for not filing its case in the European Court of Justice.*

*Many environmentalists believe that LOST could be used against the U.S. in the same way. A few years ago an environmental activist mistakenly sent me an email after our debate on the treaty. He acknowledged that it might be difficult to convince Americans that the treaty would not similarly bind America when the World Wildlife Federation and Citizens for Global Solutions were promoting LOST by claiming that the convention would stop Russia from polluting the Arctic. He worried that this inconsistency suggested that the treaty was in fact “some kind of green Trojan Horse.”*

*It is. Groves noted that “Some environmental activist groups have already demonstrated a propensity for supporting, participating in, and in some cases actually filing climate change lawsuits against U.S. targets, as well as taking other legal actions relating to the marine environment in U.S. courts and international forums.”*

*LOST also incorporates the so-called “no harm” rule, which obligates countries to regulate activities in order to avoid negatively impacting neighboring states. The duty makes sense as a guiding principle in designing domestic regulations and undertaking specific international obligations. But, warned Groves, approving LOST would transform “a sensible principle to regulate conduct between two neighboring countries into a seemingly unconstrained doctrine to impute global liability for alleged acts of atmospheric pollution.” Unaccountable international legal forums then would enforce the rule.*

*Worse, the debate over climate change has opened up grand new litigation vistas. And treaty enthusiasts are anxious to take advantage. William C.G. Burns of the Monterey Institute of International Studies exulted that LOST “may prove to be one of the primary battlegrounds for climate change issues in the future.”*

As noted above, only a few more Senators are needed to kill this treaty. Unfortunately, it seems that Senate Democrats are prepared to vote for LOST since none of them have vocally come out against it. But defeating this treaty isn't about defeating the Obama Administration. It is, however, an opportunity to take a stand against backdoor policies that harm our economic well-being.