



# Don't Open the Door to Law of the Sea Litigation

By: Steven Groves - January 10, 2013

---

Doug Bandow of the Cato Institute warns of the dangers of litigation if the United States joins the U.N. Convention on the Law of the Sea, more commonly known as the Law of the Sea Treaty (LOST).

Some of the litigation “greatest hits” highlighted by Bandow include:

- The recent intrusion of the International Tribunal on the Law of the Sea—an international court established by LOST—into a commercial dispute being litigated in Ghana. In that case, the tribunal disregarded the well-reasoned opinion of a Ghanaian judge and ordered Ghana to release an Argentine naval vessel that was being held to satisfy a debt caused by Argentina’s massive \$80 billion bond default.
- The “MOX Plant” case, where Ireland sued the United Kingdom under LOST for having the temerity to build a nuclear fuel reprocessing plant on *its own territory*.
- Threats made by international environmental activists and lawyers to use LOST as a vehicle to sue the United States for alleged climate change damages. Naturally, the proponents of U.S. accession to LOST don’t include these nasty lawsuits in their talking points or Senate testimonies. That is by design. Major advocates of LOST such as the University of Miami’s Bernard Oxman have warned their allies to stay away from such matters—at least until the U.S. has joined the convention. As Bandow points out:

*Years ago, Bernard Oxman wrote in the European Journal of International Law urging treaty proponents to keep quiet about issues which might concern ratifying governments, calling for “restraint in speculating on the meaning of the convention or on possible differences between the Convention and customary law.”*

*After all, he explained, “The Convention is an easy target.” Thus, advocates should shut up: “it is essential to measure what we say in terms of its effect on the goal [i.e. universal ratification]. Experienced international lawyers know where many of the sensitive nerve endings of governments are. Where possible, they should try to avoid irritating them.”*

So, “mum’s the word” on international lawsuits until the U.S. is foolish enough to ratify.

But exposure to litigation is not the only serious flaw in the convention. If the U.S. joins LOST, it will be required to siphon off billions of dollars in hydrocarbon royalties to the International Seabed Authority in Kingston, Jamaica, for redistribution to the

“developing world.” Membership would also require the U.S. and its mining companies to submit themselves to the complete regulation and control of the Authority in regard to deep seabed mining.

In private practice, attorneys regularly advise their clients on ways to avoid exposure to baseless and expensive litigation. The U.S. can avoid costly and embarrassing international lawsuits by remaining a non-party to LOST, as it has done for the past 30 years.