

The Executive Memorandum

The Heritage Foundation

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A LETTER TO GEORGE SHULTZ

RE: LAW OF THE SEA

Dear Mr. Secretary of State:

It has been brought to our attention that you have recently received a letter addressed to "Dear George" from "Elliot." The writer, it appears, was Mr. Elliot Richardson, Chairman of Citizens for Ocean Law and former Ambassador to the United Nations Law of the Sea Conference, who was asking you to reconsider U.S. refusal to join the Law of the Sea process.

Though we cannot address you by your first name, we feel compelled to state our conviction that it would be neither in your interest nor in that of our nation to follow Mr. Richardson's advice. President Reagan has made clear that sound reasons prevent this nation from endorsing the Law of the Sea Treaty. Nor should the U.S. participate in the Preparatory Commission (PrepCom) for the Law of the Sea Convention. The PrepCom's sole task, after all, is to establish the rules, regulations, and procedures for seabed mining under the control of the International Seabed Authority, which the President has rejected.

More important, just when the rest of the world looks to the United States to assume global leadership by establishing a comprehensive national oceans policy, you should urge the President to proclaim an Exclusive Economic Zone (EEZ) for the United States.

In Heritage Foundation Background No. 188 of June 1982 provided to the Department of State, we outlined the basic problems in the Law of the Sea Treaty text. We maintained that it was not in the interests of the U. S. to sign the Treaty, and suggested alternative arrangements and options that the U.S. could pursue to ensure its continued access to all ocean resources, the maintenance of its navigational rights, and traditional high seas freedoms.

This paper pointed out that the U.S. delegation to the Third Law of the Sea Conference was ready to negotiate with other nations at the Conference toward a settlement that would benefit all nations by encouraging mining in the deep seabed and would reaffirm the rights and privileges of navigation and fishing and jurisdiction over continental shelf areas for coastal states. To this end, the President outlined six objectives for the Treaty that would make it acceptable to the United States. These objectives asked, first and foremost, that the Treaty not deter development of any seabed mineral resources; that it provide a decision-making role in the deep seabed regime that fairly reflects and protects the economic interests and financial contributions of participating states; and that it be receptive to the advice and consent of the U.S. Senate. Despite the U.S. representatives' efforts to negotiate for them in good faith, not one of the President's objectives was achieved.

RUSH!

Treaty provisions distress other nations as well as the U.S. The political, economic, and ideological assumptions that underlie the Treaty, and with which developing nation negotiators from the Group of 77 have armed themselves in deliberations for the Treaty throughout the past decade, are essentially antithetical to American values. These values are inherent in U.S. promotion of free enterprise, protection of private property, and opposition to monopolistic power and governmental discrimination in the marketplace. Had the Treaty not violated these values, the U.S. surely would have signed the accord.

The revisions needed to correct this fundamentally flawed document cannot be attained through U.S. participation in the PrepCom, and the President is right in refusing to permit the U.S. to pay a United Nations assessment for the PrepCom. It is an improper assessment under the U.N. Charter and is not legally binding upon members. We urge you to support the President in continuing to reject U.S. participation in the PrepCom either now or in the future.

With the U.S. rejecting the Law of the Sea Treaty and further participation in any of its bodies, the time is right for the President to assert U.S. leadership and to proclaim, at the earliest possible date, a national Exclusive Economic Zone (EEZ), extending 200 miles into the coastal waters of the U.S. and its territories and claiming jurisdiction over resources that are rightfully ours to own and economic activities that are properly ours to control.

Today, approximately fifty-six nations claim an EEZ of 200 miles. In addition, some twenty-three nations, including the U.S., claim exclusive fisheries zones of 200 miles. Clearly, customary international law already recognizes jurisdiction in the continental shelf and the 200-mile fisheries zone and is beginning to recognize it in the EEZ. The EEZ also appears in the Law of the Sea Treaty text, reflecting wide international agreement on this issue. Thus, extensive state practice, impressive international consensus, and noteworthy legal authority would support the establishment of a U.S. EEZ. The likely view of the world community, and our Allies in particular, is that the establishment of an EEZ would represent a positive approach to the elaboration of ocean law.

It is also important that the U.S. act to ensure traditional high seas freedoms within the EEZ. By carefully shaping the EEZ to allow maximum freedom of the seas consistent with U.S. resource-jurisdiction, we would favorably influence the behavior of other nations. This influence would be even stronger, if the President's Proclamation, and subsequent legislation in both the House and the Senate, basically conformed to the text of the Law of the Sea Treaty. We urge you to support this Proclamation to be made at the earliest possible date. The President's State of the Union Address would certainly be an appropriate occasion for this statement of U.S. resolve.

Roger A. Brooks
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For further reading:

Theodore Kronmiller, "The Exclusive Economic Zone," paper prepared for the University of Virginia, Center for Ocean Law and Policy, 7th Annual Seminar, Montego Bay, Jamaica, January 7, 1983.

Doug Bandow, "The United States and the Law of the Sea Treaty," The Journal of Social, Political and Economic Studies, Fall 1982.