

The Executive Memorandum

The Heritage Foundation

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THE LAW OF THE SEA TREATY: UNWISE AND UNNECESSARY

In agreeing to changes to the United Nations Law of the Sea Treaty (LOST) on July 29, the Clinton Administration has once again placed the interests of the United Nations ahead of the United States. While the Administration claims to have resolved many of the onerous provisions that caused President Ronald Reagan to reject the treaty in 1982, many of these drawbacks still are part of the treaty. The treaty will enter into force on November 16, 1994. Soon after, the Senate will begin its formal ratification process. There are several reasons why the Senate should be skeptical of it.

REASON #1: The LOST establishes a huge and cumbersome international bureaucracy to govern nearly all aspects of the world's oceans. The LOST would require the U.S. to pay 25 percent of the start-up costs of a large new U.N. bureaucracy, the International Seabed Authority. The U.S. would have only limited veto power over the decisions of this organization. And like the U.N., its bureaucracy would be dominated by poor Third World countries which view the U.S. as sort of a cash cow for foreign aid. The International Seabed Authority would be controlled largely by countries that would oppose U.S. companies mining beneath the world's oceans. Instead of letting the free market determine the outcome of sea mining, this Authority would effectively control and centrally plan the mining of seabed minerals. The result will be higher costs and lower productivity for U.S. companies.

REASON #2: The LOST requires U.S. mining companies to share technology and revenues with Third World mining interests. The Seabed Authority would force U.S. mining consortiums to subsidize the mining activities of developing countries. It would levy a \$250,000 application fee for U.S. consortiums to mine, subject them to a lengthy and uncertain approval process, and collect annual fees and royalties based on their profits. The mining arm of the International Seabed Authority, called the Enterprise, would use this money to compete with American and foreign mining firms. These firms also would be forced to develop some portion of their proposed mining sites in a "joint venture" with the Enterprise. Seabed mining is a lengthy and expensive process, taking from 20 to 30 years and as much as \$1.5 billion before any profit is realized. U.S. companies will not take this risk under the conditions imposed by the LOST. On March 15, 1994, the United States Ocean Mining Licensees stated: "It is the view of the United States [mining firms] that, if the present course is maintained, there will be no private investment in ocean mining exploration or production under the Convention."

REASON #3: The means for resolving disputes under the treaty are inadequate. The treaty establishes the International Tribunal for the Law of the Sea and the Sea-Bed Disputes Chamber to adjudicate disputes over claims, fees, and regulations. The treaty does not allow companies to sue, but instead requires their national governments to bring the claim on their behalf to these U.N. agencies. Thus, U.S. companies will have to depend on the State Department to represent their business interests before a U.N. body. The State Department may be more interested in defending the integrity of the LOST Treaty than in protecting the business interests of U.S. companies. Moreover, as with the U.N.'s high court, the International Court of Justice, the U.S. has little control over who sits on either of these tribunals.

REASON #4: The LOST establishes an international-style welfare program, transferring wealth from industrialized nations to the Third World. The treaty refers to the seas as the common heritage of mankind. This is a vestige of the now-discredited New International Economic Order, a collectivist concept popular at the United Nations in the 1970s which is fundamentally inconsistent with American values and free market practices. The International Seabed Authority establishes an economic assistance fund, drawn from fees and royalties received from U.S. and other companies. It will use this fund to compensate land-based mineral-producing states for the lower prices their exports will fetch after seabed minerals reach the open market. The U.N. will end up spending American money to subsidize less efficient foreign producers, thereby giving them an unfair advantage over U.S. companies that can compete in the open market.

REASON #5: By agreeing to the treaty, the U.S. could be bound by its provisions for four years even though the Senate has not yet consented to its ratification. The LOST allows nations to abide by its provisions for up to four years—until November 16, 1998—if they officially notify the U.N. that this is their intention. For the U.S., this means that Clinton appointees and functionaries at the State Department may subject American mining companies to the burdensome conditions imposed by the treaty even though the Senate has not consented to its ratification. This practice is unheard of elsewhere in international law, and probably is illegal. All treaties should be approved by the American people through their elected representatives, not by bureaucrats at the Clinton State Department. The Senate should consider insisting that the President not implement the treaty by administrative fiat.

REASON #6: The U.S. has protected its interests for over 200 years without a comprehensive Law of the Sea treaty. The U.S. is already party to dozens of treaties and agreements governing use of the sea. These include high seas, seabed, and naval transit agreements. The Clinton Administration's principal arguments for signing the LOST are that it better protects U.S. freedom of navigation, gives U.S. military forces better guarantees in flying over foreign territories during military operations, and formally establishes a 12-mile limit for territorial waters and a 200-mile exclusive economic zone (EEZ) for commercial exploitation. However, these rights are already recognized in customary international law. The U.S. Navy has never been denied access to any strait or other strategic waterway. There is no need for the LOST to protect a freedom already secured in international law.

The LOST Treaty will weaken U.S. sovereignty, harm U.S. businesses, damage the economy, and create yet another ineffective bureaucracy at the United Nations. It will destroy incentives for sea mining by establishing a huge international bureaucracy with the power to regulate, tax, and levy exorbitant fees on U.S. mining firms. It will require American firms to subsidize Third World mining enterprises which will then turn around and compete unfairly with U.S. companies. Whatever benefits it offers already are provided by existing treaties, customary international law, and the power of the U.S. Navy. As a means of advancing American interests, this treaty is both unwise and unnecessary.

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