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Why Reagan Would Still Reject the Law of the Sea Treaty

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There is an ongoing debate regarding the position of President Ronald Reagan in regard to the U.N. Convention on the Law of the Sea, better known as the Law of the Sea Treaty (LOST). Fortunately, there are multiple sources indicating precisely what Reagan would do if presented with LOST today: He would reject it.

President Reagan on LOST. On January 29, 1982, Reagan issued a Presidential Statement expressing his intention to reject LOST. It said, “While most provisions of the draft convention are acceptable and consistent with United States interests, some major elements of the deep seabed mining regime are not acceptable.”¹

The proponents of LOST selectively use Reagan’s statement to support their contention that the seabed mining provisions were the only source of Reagan’s objections to LOST. For example, in recent Senate testimony, Deputy Secretary of State John Negroponte testified that Reagan declined to sign LOST solely “[d]ue to deep flaws in the deep seabed mining chapter—Part XI of the Convention” and that subsequent negotiations had resolved “each of the objections that President Reagan had identified.”²

In a subsequent hearing, Senator Richard Lugar (R-IN) repeated that contention: “It is telling that the President did not raise any objection to any provision of the Convention outside the deep seabed mining section. President Reagan made no demands for any other changes in the treaty.”³

Those characterizations of Reagan’s objections are demonstrably false. In the recently published book *The Reagan Diaries*, Reagan delivered the coup de grâce to the argument that Reagan’s objections to LOST were limited to the deep seabed provisions. A diary entry from June 29, 1982, reads, “Decided in [National Security Council] meeting – will not sign ‘Law of the Sea’ treaty even without seabed mining provisions.”⁴ This private diary entry remains the best proof that Reagan would have rejected LOST even if the seabed mining provisions had been removed.

A January 1982 Presidential Statement also shows that Reagan’s objections were not confined to the treaty’s seabed mining provisions. Reagan stated that LOST was “not acceptable” as drafted, and would become acceptable only if it was revised in a manner that

will not allow for amendments to come into force without approval of the participating states, *including in our case the advice and consent of the Senate*; ... and;

will be likely to receive the advice and consent of the Senate. In this regard, the convention should not contain provisions for the manda-

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tory transfer of private technology and *participation by and funding for national liberation movements*.⁵

Senator Lugar should take note: Reagan's objection to LOST being amended without the advice and consent of the U.S. Senate is clearly "outside the deep seabed mining section." His objection to the participation of "national liberation movements" is also wholly unrelated to deep seabed mining.

Objections Remain Unresolved. Contrary to the vociferous declarations made by today's LOST proponents, President Reagan's objections were not "fixed" by the 1994 revisions to LOST made during the Clinton Administration.

Amendments to LOST. The treaty provision relating to LOST amendments has not been altered since 1982. Article 314 of LOST (located not in Part XI of the treaty, as asserted by treaty proponents, but rather in Part XVII) empowers the bureaucracy created by LOST to amend the provisions of the treaty—even over the objection of any member state.⁶ In other words, the LOST bureaucracy—dominated by the developing world—may vote to amend the terms of the treaty over the objections of the United States and without the advice and consent of the U.S. Senate. Reagan rightly singled out Article 314 as objectionable when he rejected LOST in 1982. The 1994 Agree-

ment affirmed that Article 314 was the proper provision for amending LOST.⁷

Participation of "National Liberation Movements" in LOST. Reagan was clearly disturbed by the provisions of LOST that allowed "national liberation movements" to participate and benefit from the treaty. As was (and still is) customary at the United Nations, the vast majority of U.N. member states viewed the Palestinian Liberation Organization (PLO) as a "national liberation movement" and not as a terrorist group. As such, the U.N. extends full rights and benefits of U.N. membership to the PLO. Participation in LOST was no exception. At least two parts of the treaty guaranteed the PLO's interests in LOST, including the following declaration:

In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development.⁸

The LOST signatories also permitted these "national liberation movements" to sign the final act of the conference in their capacity as observers.⁹ In 1982 and 2007, the PLO was and is com-

1. Ronald Reagan, "Statement on United States Participation in the Third United Nations Conference on the Law of the Sea," January 29, 1982, at www.reagan.utexas.edu/archives/speeches/1982/12982b.htm (hereafter "Presidential Statement, January 29, 1982").
2. Testimony of John D. Negroponte before the Senate Foreign Relations Committee, Hearing on the U.N. Convention on the Law of the Sea, September 27, 2007, at <http://foreign.senate.gov/testimony/2007/NegroponteTestimony070927.pdf>.
3. Statement of Senator Richard Lugar, Senate Foreign Relations Committee, Hearing on the Convention on the Law of the Sea, October 4, 2007, at <http://foreign.senate.gov/testimony/2007/LugarStatement071004.pdf>.
4. Ronald Reagan, *The Reagan Diaries*, Douglas Brinkley, ed., HarperCollins, 2007.
5. Presidential Statement, January 29, 1982 (emphasis added). A subsequent Presidential Statement issued by Reagan on March 10, 1983, did not alter or amend Reagan's previously stated objections in any manner. See Ronald Reagan, "Statement on United States Oceans Policy," March 10, 1983, at www.reagan.utexas.edu/archives/speeches/1983/31083c.htm.
6. United Nations Convention on the Law of the Sea, Part XVII, Article 314, at www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
7. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, Section 4, at www.un.org/Depts/los/convention_agreements/texts/unclos/closindxAgree.htm.
8. Final Act of the Third United Nations Conference on the Law of the Sea, Resolution III, at www.un.org/Depts/los/convention_agreements/texts/final_act_eng.pdf.
9. *Id.*, at Resolution IV.

posed of groups that are designated as foreign terrorist organizations by the U.S. government. Such groups include the Popular Front for the Liberation of Palestine and the Palestine Liberation Front.¹⁰ The LOST provisions guaranteeing the interests of such movements remain in full effect and were not mentioned—much less “fixed”—by the 1994 Agreement.

An International Bureaucracy Controlling the Oceans. The creation of a new international bureaucracy with the power to regulate the oceans was repellent to Reagan because he knew it would be used to favor the underdeveloped world at the expense of industrialized countries. He rejected such notions even before he entered the White House. In an October 1978 radio address, Reagan declared that “no national interest of ours could justify handing sovereign control of two-thirds of the earth’s surface to the Third World.” Reagan recognized that powerful U.N. voting blocs composed of nations from the developing world would not bend in any international forum, and were committed to the redistributionist provisions of LOST: “No one has ruled out the idea of a [Law of the Sea] treaty—one which makes sense—but after long years of fruitless negotiating, it became apparent that the underdeveloped nations who now control the Gen-

eral Assembly were looking for a free ride at our expense—again.”¹¹

Conclusion. In his public statements before and during his presidency and in his private diary, President Reagan expressed strident objections to LOST. His objections were well founded and remain relevant today. In addition to the participation of the PLO, Americans should be skeptical about a U.N. treaty that gives control over the world’s oceans to an unaccountable international bureaucracy. Reagan correctly assessed that the powers that control the U.N. General Assembly were determined to establish a treaty regime that favored underdeveloped countries at the expense of developed countries like the United States.

Reagan’s objections to LOST have been neither addressed nor resolved. In deciding whether to ratify LOST, members of the U.S. Senate may choose between two divergent approaches: Side with President Reagan in defense of U.S. national interests; or side with those who erroneously claim that the Clinton Administration resolved his objections.

The choice should be clear.

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10. Fact Sheet, Office of Counterterrorism, U.S. Department of State, October 11, 2005, at www.state.gov/s/ct/rls/fs/37191.htm.

11. William P. Clark and Edwin Meese, “Another U.N. Power Grab,” *The Wall Street Journal*, October 8, 2007, at www.opinionjournal.com/editorial/feature.html?id=110010705, citing “Ocean Mining” radio address, October 10, 1978.