

# Big Trouble for Law of the Sea



By J. MICHAEL WALLER

The treaty that seemed ready to coast to passage in the Senate may be sunk as opponents reveal it is a U.N. boondoggle that only can benefit America's enemies.

**A** United Nations treaty awaiting confirmation before the Senate, national security experts warn, would, if approved, cripple the U.S. Navy, empower potential enemies including China, make the nation vulnerable to submarine cruise-missile attack, and help terrorists. Nonetheless, momentum has been building stealthily in the Senate to ratify the treaty. And this time Republicans can't point fingers at their liberal Democratic colleagues or even at the former Clinton administration. The culprits behind the sneak move, Capitol Hill sources say, are senior Republican senators and key figures in the administration of President George W. Bush.

At issue is the U.N. Law of the Sea Treaty (LOST), which has been in the works since the 1970s, when the Soviet Union and the so-called Non-Aligned Movement tried to use the United Nations to wrest control of the seas from the United States and its allies. Under LOST, a global U.N. agency called the International Seabed Authority (ISA) would take control of the world's oceans, seven-tenths of the earth's surface. The ISA would not be accountable to dues-paying members but would be a self-financing entity imposing a tax on countries that exploit natural resources on the ocean floor.

In 1982, President Ronald Reagan refused to sign the treaty, officially called the U.N. Convention on the Law of the Seas (UNCLOS). But President Bill Clinton signed it in 1994, claiming that provisions that attack U.S. interests had been changed, and asked the Senate to ratify it. The Republican-controlled Senate sat on it. Today, Senate Foreign Relations Committee Chairman Richard Lugar (R-Ind.) has been quietly but forcefully pushing LOST through the ratification process under a sense of priorities that mystifies some of his colleagues.

Lugar's committee has given LOST precedence over consideration of other pending international agreements to fight weapons proliferation and terrorism. In October 2003 the liberal Republican held two days of hearings and permitted only treaty supporters to testify. After a State Department official working on the Senate staff drafted the resolution of ratification, Senate sources tell *INSIGHT*, the committee "refused" to provide other Senate armed services and intelligence committees with the text and opposed a State Department briefing sought by an Intelligence Committee staffer. Without listing names of those present, the Senate Foreign Relations Committee, by unanimous consent, advised passage of the treaty. Sen-

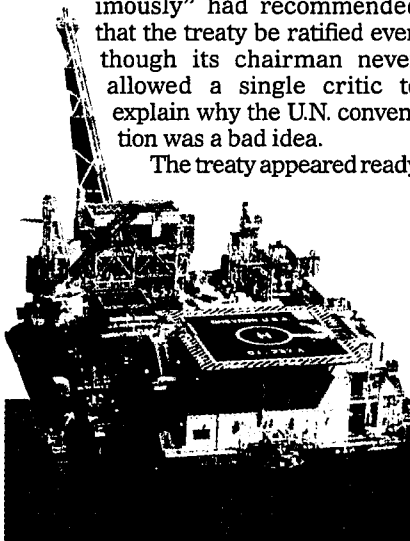
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ate sources say proponents planned to bring LOST before the full Senate without debate for a voice vote that would have shielded lawmakers from certain public wrath.

State Department officials and Vice President Dick Cheney say they support the treaty because it provides an international legal framework for competition for the oceans' resources. A U.S. ambassador stated in 2002 that Washington supported ratification, saying, "We intend to work with the U.S. Senate to move forward on becoming a party."

Apparently President Bush, preoccupied with waging the war on terrorism and winning a second term in office, had never even heard of the treaty until earlier this year, when conservative friends brought it to his attention, sources close to the president say. By that time the Senate Foreign Relations Committee "unanimously" had recommended that the treaty be ratified even though its chairman never allowed a single critic to explain why the U.N. convention was a bad idea.

The treaty appeared ready



to sail through the Senate without the customary discussion and troubleshooting until a handful of conservatives ran a sword through it in March. Some met with President Bush and alerted him about their concerns. "There is an element within the Bush administration that wants this treaty ratified," said Free Congress Foundation president Paul Weyrich, who is appealing to grass-roots activists to show their opposition. The pro-LOST element, according to Weyrich, gained "the upper hand."

Not for long. Frank Gaffney, president of the Center for Security Policy, blew the whistle loud and long, and with a handful of others, magnified by talk-radio hosts including Rush Limbaugh and online news services such as *WorldNetDaily.com*, alerted grass-roots conservatives.

Sen. James Inhofe heard the call. Chairman of the Senate Environment and Public Works Committee, the Oklahoma Republican jumped into action, claiming jurisdiction over LOST because the convention governed environmental issues and his committee had not been alerted. He invited two informed witnesses: Peter Leitner, a senior strategic trade adviser in the Office of the Secretary of Defense who had been following the development of the treaty for more than 30 years; and Gaffney, a former senior Reagan Pentagon official who has dissected other flawed treaties, including

the 1997 Chemical Weapons Convention, and was a major force behind the discrediting and ultimate abrogation of the 1972 Anti-Ballistic Missile (ABM) Treaty. Unlike Lugar, Inhofe invited both sides to testify.

That hearing, held March 24, blew a shotgun blast into the treaty's chest and all but ensured that it would not reach the Senate floor in the near future. Leitner, who had been part of the U.S. LOST negotiating team, testified as a private citizen who had written a book about the treaty: "This seriously flawed document was rightly rejected by President Reagan, as it embodies a wide range of precedents, obligations and restrictions that are deleterious to American national- and economic-security interests. Indeed, the treaty and its many precedent-setting provisions is a direct assault on the sovereignty of the United States and the supremacy of the nation-state as the primary actor in world affairs."

As worded, LOST would deny the United States the right to intercept terrorist vessels or proliferators, according to Leitner. The President's Proliferation Security Initiative, designed to battle proliferation of weapons of mass destruction with as little effect on commerce as possible, would be illegal under the treaty. "This U.S.-led, multinational program of high-seas interdiction and vessel



PHOTO ILLUSTRATION BY RENE TRUJILLO/INSIGHT

## How Communist China Invoked LOST to Obtain U.S. Naval Secrets

The United States already has allowed the People's Republic of China (PRC) to invoke provisions of the unratified Law of the Sea Treaty (LOST) to acquire extremely sensitive naval technology. A Pentagon official whose job was to track Chinese attempts to obtain U.S. military technology says that the Clinton administration gave the PRC technology that has compromised American submarine movements and could enable Beijing, undetected, to run submarines immediately off the U.S. coast.

Calling itself a "pioneer investor" in ocean mining, Beijing demanded highly sensitive underwater technology from the United States under the pretext that it would be used to mine manganese nodules on the floor of the Pacific Ocean. "Unfortunately, the level of technology

they were attempting to acquire greatly exceeded the level of capability that either the United States or our industrialized allies used in undertaking such work," said Peter Leitner, a senior strategic trade adviser in the Office of the Secretary of Defense.

"The quality of the side-scanning sonar, deep-ocean bathymetric equipment, cameras, lights, remotely operated vehicles and associated submersible technology provided them the capability to locate, reach and destroy, or salvage early-warning and intelligence sensors vital to our national security," Leitner told the Senate Environment and Public Works Committee at a March 24 hearing.

"Additionally, such technology also imparted an offensive capability to our chief potential military adversary by enabling

them to map any portion of the ocean or continental shelves to determine submarine routing schemes or underwater bastions where missile-launching or intelligence-gathering submarines may operate undetected just off the U.S. coast," Leitner said. "The ultimate nightmare would be a close-in, submarine-launched cruise-missile attack upon the continental U.S. to which we are completely vulnerable and defenseless."

Leitner fought a long and lonely battle to prevent Beijing from receiving the technology, but in 1994, under Bill Clinton, in his words, "The zealous advocates of the treaty in several government agencies saw to it that the technology was provided to the PRC so as not to undermine the 'spirit of the treaty.'"

— JMW

boarding is barred by the Law of the Sea Treaty yet it is our overriding national-security interest to execute," Leitner said. "Ratification of the treaty would effectively gut our ability to intercept the vessels of terrorists or hostile foreign governments even if they were transporting nuclear weapons. We must ensure that we are not binding the government of the United States to a legal regime that makes us more vulnerable and trades the lives of our innocent civilians for the sake of participating in yet another unnecessary treaty."

Even worse, according to Leitner, is what he calls "the creation of yet another international court where the United States or our citizens can be dragged before politically motivated jurists to adjudicate and set penalties."

The treaty imposes limitations "on measures we might take to ensure our national security and homeland defense. If, for instance, foreign vessels operating on the high seas do not fit into one of three categories (i.e., they are engaged in piracy, flying no flag or transmitting radio broadcasts), LOST would prohibit U.S. Navy or Coast Guard vessels from intercepting, searching or seizing them," Gaffney testified.

So who could be behind such a scheme? "The most vigorous supporters of the treaty are largely a constellation of narrow single-interest groups that are willing to overlook treaty shortcomings as long as their pet rock is included," Leitner says. And the supporters are not just left-wing activists and bureaucrats. Many in the oil industry favor the treaty as a way of providing an internationally accepted regime for underseas drilling. The Navy, still dominated by admirals who received stars for political correctness under the Clinton administration, supports the evenhandedness of a multilateral approach to governing the seas.

According to a report by the Congressional Research Service (CRS) of the Library of Congress, "The increasing number of claims made by other states over offshore high-seas areas — such as territorial sea, fishing zones, economic zones — were expected to limit freedom of navigation to an unacceptable extent and increase the likelihood of international disputes over access to the world's oceans." LOST limits areas "over which states may claim jurisdiction" and "protects high-seas freedoms" throughout states' 200-mile exclusive economic zones and "innocent passage" through territorial seas, as long as those activities (in the words of the treaty) are not "prejudicial to the peace, good order or security of the coastal state."

That's all well and good, military analysts say, but the United States "already

benefits" from these provisions "on the basis of customary international law," according to the CRS report.

The State Department disagrees with treaty critics. "As the world's leading maritime power, with the longest coastline and the largest exclusive economic zone in the world, the United States will benefit more than any other nation from the provisions of the convention," John F. Turner, assistant secretary of State for Oceans and International Environmental and Scientific Affairs, told Inhofe's committee. His specific testimony, with point-by-point rebuttals of critics, was one of the most comprehensive and specific pieces of political action yet produced under the Bush administration.

A professional environmental activist before his State Department appointment, Turner said that while LOST "addresses seven-tenths of the earth's surface," the ISA "does not." He denied that LOST gives the United Nations the

## Concerns About the Law of the Sea Treaty

After the Senate Foreign Relations Committee prevented critics of LOST from testifying in 2003, the Senate Environment and Public Works Committee held its own hearing in late March 2004. Among the critics' concerns are that LOST and its International Seabed Authority (ISA) would have unprecedented powers to:

- Regulate 70 percent of the surface area of the earth.
- Impose global taxes on sovereign nations.
- Impose quotas for production of underseas oil and mining.
- Benefit the protected nickel-mining industry of France.
- Regulate or control oceanographic exploration and research.
- Regulate or even prohibit U.S. intelligence collection and submarine transit in territorial waters.
- Force the United States to transfer military technology that would assist countries such as China in developing antisubmarine warfare capabilities and conducting submarine-launched cruise-missile attacks.
- Ban the United States and its allies from conducting maritime interdiction of weapons proliferators.
- Impose its authority through an already functioning global court.

— JMW

Source: Senate Environment and Public Works Committee documents

authority to levy taxes but acknowledged what he called "revenue-sharing provisions" and "administrative fees" for oil, gas and deep-seabed mining operations. The ISA, he claimed, "has no authority or ability to levy taxes." He urged senators not to worry about LOST's International Tribunal for the Law of the Sea, saying that in a dispute "the United States would elect two forms of arbitration rather than the tribunal." And he stated that, under the 1994 Clinton amendments, "there is no transfer of wealth and no surrender of sovereignty." Turner testified, "The mandatory technology-transfer provisions of the original convention were eliminated in the 1994 agreement" by President Clinton.

Even the navigational language in LOST is dangerous to U.S. interests. The CRS report, titled *The Law of the Sea Convention and U.S. Policy*, says LOST compels submarines in territorial seas to "navigate on the surface and show their flags." That requirement presents major problems for the United States. Among them, it would make American submarines vulnerable to attack by forcing them to reveal their locations by surfacing. It also effectively would prevent the growing fleet of U.S. and allied special-operations submarines from being used to infiltrate commandos into hostile areas. The current pre-9/11 language of LOST would handicap the United States in the global war on terrorism.

As for worries that the treaty might allow Beijing to exert control in the South China Sea, Turner was soothing: "China has consistently maintained that it respects the high-seas freedoms of navigation through the waters of the South China Sea."

Treaty proponents, including Turner, claim that the flawed parts of LOST were "fixed" in 1994. In fact, the CRS report offers three pages of unresolved issues. Among them is a compulsory dispute-settlement requirement that the report says the Senate "has historically been reluctant to accept," a "still to be examined ... relationship between the various parts of the Convention and the body of current U.S. law" and unclear definitions of how the convention "defines and interprets" its principle that ocean resources "are the common heritage of mankind."

Meanwhile, administration officials have been unable to answer simple questions about all of this. As Weyrich comments, "It is disturbing when the answer provided by the General Counsel to the question, 'Will Americans be stopped from searching suspicious foreign ships in our waters?' is, 'I don't know.'"

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