

# OPINION & COMMENTARY

FROM DAILY BUSINESS REVIEW EDITORS & GUESTS

COMMENTARY Michael T. Moore

## It's time for U.S. to ratify Law of the Sea Treaty

The Treaty of the Law of the Sea, also referred to as the Law of the Sea Treaty or LOST, is again under consideration by the U.S. Senate.

The Third United Nations Convention on the Law of the Sea and the proposed treaty that came out of it, has been presented for passage many times since the convention concluded in 1982. But it has always come up short.

In the past, opposition to LOST has come mostly from conservative think tanks. This opposition may now be softening — and even shifting to support.

The treaty's failure to obtain U.S. Senate approval has not been from lack of consistent support from the highest levels of our government: Presidents Clinton, both Bushes and Obama all support its passage. I think you could reasonably infer that if President Reagan were alive, he too, would be supportive; his previous objection, having to do with deep-sea mining rights, was removed in 1994.

From a recent piece published in the Wall Street Journal, it is now clear that former Secretaries of State George Shultz, James Baker III, Colin Powell and Condoleezza Rice also support ratification of the treaty. Since President Obama supports it and Defense Secretary Leon Panetta is pushing its passage, we can also assume that Secretary of

State Clinton supports it.

I have personally spoken to high ranking military officers who would go public but for concerns over appearing to lobby for its passage. They have confirmed to me that every Commandant of the United States Coast Guard has supported passage of the proposed law since it was first proposed for passage. Yet, the treaty has yet to be ratified by the United States.

Why is it so difficult to get this treaty ratified? It may be that this treaty aspires to be a law to address no less than the vast and global immensity of the world's oceans. The idea of a law to govern that which has been mostly ungovernable is a daunting and challenging concept for our lawmakers to consider. In scope, the oceans constitute 90 percent of the Earth by volume, hold 50 to 80 percent of life on Earth and make up 76 percent of the Earth's surface. The world's oceans, unlike frontiers which divide one country from another, divide and connect but are vast and — so far — ungoverned liquid places.

The Law of the Sea Treaty will create exclusive economic zones extending 200 nautical miles from shore. The EEZ for the United States would be larger than that of any country in the world and would cover an area greater than the land mass of the lower 48 states.

Many believe we are at one of those moments when we must act to deal with a transition. Here, in brief, is some of what the treaty will address if ratified.



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First is national security. Our military is already deployed globally but gunboat diplomacy no longer has the efficacy it once had. LOST will assist in defining the global limits of national territories and economic zones. It is not desirable to go forward with an endless — and increasing — series of confrontations without a set of laws to guide us. Even though it may seem the U.S. Navy presence is “everywhere,” we have today, in relative terms, the smallest Navy we have had since 1916. Fundamentally, since one vessel can only be in one place at one time we need this law, which will always be in position to guide our interactions as nations.

We need to rethink the current world order as it pertains to the oceans. LOST will move us in that direction.

Second, the economy. Critical to the U.S. economy is the safe and secure flow of resources and goods — which is to say the flow of trade on the world's oceans. As a nation, we

require unimpeded use of the sea and the global commons to conduct 90 percent of our trade. The free flow of commerce is absolutely essential for our prosperity and that of other nations.

What we call cyberspace is largely on the bottom of the ocean: 95 percent of what moves in cyberspace moves on cables that rest on the bottom of the ocean. That's the maritime domain. So, in a way, LOST is only a start.

Of equal importance, LOST addresses commercial access to the areas defined by the EEZs. For example, consider the Arctic where Russia has already placed its flag on the ocean floor. Many oil companies who were formerly opposed to its passage are now in favor. Investments of all kinds require reasonable legal predictability.

China, which has ratified the treaty and seems to be stretching its wings these days, says it will limit its military activities to within the 200 mile

economic zone created even though LOST does not require that.

Every lawyer knows we are a nation of laws and inexorably we are becoming a world of laws. Our national security and economic interest are related to those of other nations. And notwithstanding the vastness of the oceans that separates us, we are often reminded of our togetherness. Japan suffers a Tsunami and the effects come ashore on the West Coast of the U.S.

Customary international law is no longer adequate.

Maritime interactions and contested claims are becoming more contentious. While one may argue the U.S. military needs to be in position to deter confrontations by controlling situations and projecting power, we also need the law on our side. Take, for example, the incident in May when the Chinese government blocked Philippines government vessels from arresting a group of Chinese fishermen. Those fishermen were accused of illegally harvesting coral and poaching sharks in disputed waters. Passage of LOST would help protect the global marine environment in various ways including a sort of mass, global educational program.

Frankly, we are at risk and need to act now. Most responsible nations have already signed and ratified LOST. The U.S. is the notable exception and is not at the table. Based on my research and understanding of what is at stake, we need passage now — election year or not.

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