

## True Sovereignty Coalition Calls for Balance in Hearings on L.O.S.T.

Written by Travis Korson  
Tuesday, 15 May 2012 08:43

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*Listen to More than the 'American Anti-Sovereignty Campaign'*

**Washington, D.C., May 11, 2012-** In a choreographed roll-out yesterday – transparently timed to coincide with the end of Senator Richard Lugar’s ill-fated primary race for reelection to the United States Senate, a group styling itself the “American Sovereignty Campaign” announced that it would be mounting an aggressive effort to secure ratification of the obsolete and defective Law of the Sea Treaty (LOST). Given the threat LOST poses to U.S. sovereignty and vital interests, a better moniker for this entity would be the “American Anti-Sovereignty Campaign.”

A previously organized coalition that actually supports American sovereignty – the Coalition to Preserve American Sovereignty – responded by calling on Sen. Lugar, the Ranking Minority Member on the Senate Foreign Relations Committee, and his Democratic counterpart, Chairman John Kerry, to assure the record reflects the insights of the treaty’s many critics, not just its boosters. In a letter to the two Senators (below), the pro-sovereignty Coalition identified a number of LOST’s defects that should require close scrutiny. It also identified a number of expert witnesses who could illuminate them and urged the Foreign Relations Committee to hear from such authorities. The Coalition welcomes an honest, open debate about a treaty that was largely drafted when the Soviet Union and Non-Aligned Nations were still going concerns and dominated the United Nations and Law of the Sea negotiations. If the Senate actually deliberates on this accord – rather than following the appalling 2010 precedent of hastily rubber-stamping the Obama administration’s unverifiable and inequitable New START Treaty, the outcome seems certain: The Senate will reject the LOST Treaty, as did President Ronald Reagan 30 years ago.

### **Text of the Letter**

10 May 2012

Hon. John Kerry  
Chairman, Senate Foreign Relations Committee  
444 Dirksen Senate Office Building  
Washington, DC 20510-0802

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Hon. Richard G. Lugar  
Ranking Minority Member, Senate Foreign Relations Committee  
446 Dirksen Senate Office Building  
Washington, DC 20510-0802

Dear Mr. Chairman and Ranking Member Lugar:

We understand that you will soon convene hearings in connection with possible U.S. ratification of the United Nations' Law of the Sea Treaty (LOST). It is our view that this accord is seriously defective in a number of respects (several of which are enumerated below.) Accordingly, we write to request that the individuals listed below be afforded an opportunity to testify in connection with the Foreign Relations Committee's consideration of LOST with respect to the following problematic provisions of that treaty – an opportunity largely not afforded to critics of LOST during the last round of your panel's hearings on the matter in 2003 and 2007.

First, ratification of LOST would commit the United States to submit to mandatory dispute resolution with respect to U.S. military and industrial operations. While LOST proponents argue that the United States will choose available arbitration mechanisms to avoid legal decisions from the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS), such arbitration panels are no-less perilous for U.S. interests as the decisive, "swing" arbiters would be appointed by generally unfriendly UN-affiliated bureaucrats. The arbitration panels can also be relied upon to look to rulings by the ICJ or ITLOS to inform their own decisions.

Furthermore, while there is a LOST provision exempting "military activity" from such dispute resolution mechanisms, the Treaty makes no attempt to define "military activity," virtually guaranteeing that such matters will be litigated – in all likelihood to our detriment – before one or another of LOST's arbitration mechanisms. And the rulings of such arbitrators cannot be appealed.

Subjecting our military to the risks of such mandatory dispute resolution is all the more imprudent given that LOST provides the Navy with no navigational rights and freedoms beyond those it already enjoys under customary international law and the U.S. Freedom of Navigation Program. The Navy has successfully protected American interests on the seas for the past two hundred years without the United States becoming a party to LOST – including during the thirty years since LOST was concluded, in 1982. We see no compelling reason why that record will be improved upon by entrusting the job to international legal arrangements.

Second, the Law of the Sea Treaty contains provisions that risk putting sensitive, militarily useful information and technology in the hands of America's adversaries and its companies' commercial competitors. That accord's proponents would have you believe that there is no problem with technology transfer since the Treaty's relevant mandates were eliminated by a 1994 agreement relating to the implementation of LOST's Part XI. Unfortunately, this is another area that cries out for close examination by the Senate and the Nation.

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For one thing, it is unclear to what extent the Treaty could be and was amended by the '94 accord. For another, a number of provisions obligating the transfer of potentially sensitive technology and data were not addressed in the latter agreement. For example, LOST arbitration procedures specify that parties to a dispute would be required to provide an arbitral tribunal with "all relevant documents, facilities and information" – a potential avenue for compelling such transfers.

Third, the Law of the Sea Treaty entails commitments that have far-reaching implications for U.S. businesses, far beyond the possibility of mandatory technology transfers. These include: embroiling this country in treaties bearing on commercial activities to which it is not a party; wide-ranging, intrusive and expensive environmental obligations; creating standing for foreign nationals to pursue alien torts in our courts; and jeopardizing our rights under the World Trade Organization, which was established after 1994.

Of particular concern is the fact that LOST creates an international taxation regime. It does so by empowering the International Seabed Authority (ISA) to tax Americans for the purposes of meeting its own administrative costs and of globally redistributing revenue derived from the exploitation of seabed resources. The wisdom of such compulsory payments to the ISA is highly questionable, considering the poor track record of international organizations' management of finances. Moreover, the ISA would be unconstrained in its discretion as to which countries or entities were to receive this redistributed American wealth, the recipients of which could include highly corrupt and undemocratic regimes or even countries identified by the Department of State as sponsors of terrorism.

We believe the Foreign Relations Committee's deliberations on the Law of the Sea Treaty will be incomplete, perhaps misleadingly so, unless they are informed by testimony on these and related points. We formally request that you and your colleagues ensure that the following individuals are afforded an opportunity to provide such testimony:

Donald Rumsfeld	Former Secretary of Defense
Edwin Meese	Former United States Attorney General
John R. Bolton	Former U.S. Ambassador to the United Nations
John F. Lehman	Former Secretary of the Navy
William Middendorf	Former Secretary of the Navy
Douglas J. Feith	Former Under Secretary of Defense for Policy
Admiral James A. Lyons	Former Commander-in-Chief, U.S. Pacific Fleet
Vice Admiral Robert Monroe	Former Director, Research, Development, Test and Evaluation
Phyllis Schlafly	Eagle Forum
Fred Smith	Competitive Enterprise Institute
Frank J. Gaffney, Jr.	Center for Security Policy
Doug Bandow	Cato Institute
Steven Groves	Heritage Foundation
Baker Spring	Heritage Foundation
Thomas P. Kilgannon	Freedom Alliance
Peter Leitner	Author, Reforming the Law of the Sea Treaty

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Kevin Kearns  
John Fonte  
Jeremy Rabkin

U.S. Business & Industry Council  
Hudson Institute  
George Mason University School of Law

Sincerely,

Frank J. Gaffney, Jr.  
Coalition to Preserve American Sovereignty ###