

# Lobbying & Law - Pinging Law of the Sea

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By most accounts, Ronald Reagan is dead. He passed away in California on June 5, 2004. His body lay in state at the U.S. Capitol for two days. Margaret Thatcher delivered a eulogy at Washington National Cathedral, as did President Bush and his father. He was interred at the Ronald W. Reagan Presidential Library and Museum in Simi Valley, Calif.

With Reagan having been out of the presidency for 18 years and buried for three, it is odd that the most salient arguments over whether to ratify the United Nations Convention on the Law of the Sea, which has languished in the U.S. for 25 years, seem to turn on divining the thoughts of the 40th president of the United States. There isn't a question as to what either Bill Clinton or George W. Bush would do -- they both support the treaty. But proponents and opponents alike are suddenly asking, what would Reagan do?

"Reagan is revered, and to the extent that one can claim his mantle for your position, it imputes a certain amount of authority and legitimacy to it," explained Frank Gaffney, president of the Center for Security Policy. Gaffney, a treaty opponent, firmly believes that Reagan would have rejected it today.

The historical answer to WWRD is clear. The complex convention amounts to an agreement among nations on who has what rights on the oceans and how disputes will be settled short of warfare. After World War II, nations with coasts began to claim ocean sovereignty well beyond the historical 3-mile limit. These claims imperiled the navigation abilities of the world's navies and sparked spats over fishing rights that found the U.S. impounding Soviet fishing ships and South American countries seizing U.S. ships. In 1960, the United States and the Soviet Union began discussing ways of bringing legal order to the wild frontiers of the sea. Formal negotiations began in 1974, and the resulting convention, which is sometimes called a constitution for the oceans, was settled in December 1982.

By then, President Reagan had already rejected it. Much of the convention, he said, was reasonable and consistent with U.S. interests. One section, however, dealing with mineral mining in the deep blue yonder, was unacceptable. The developing nations, fearful of losing the ocean's wealth, had demanded a series of concessions from the developed world, including technology transfers and limitations on mining production. "The deep seabed mining part of the convention does not meet United States objectives," Reagan said on January 29, 1982. "For this reason, I am announcing today that the United States will not sign the convention as adopted by the conference."

The contemporary answer to WWRD is less clear. Even though he rejected the treaty, Reagan decided that the United States would adhere to all aspects of the Law of the Sea save for the deep seabed mining provisions. That has been the case ever since. In 1990, President George H.W. Bush began to renegotiate the seabed mining provisions; in 1994, the signatory nations reached an agreement that addressed Reagan's stated concerns. President Clinton signed the treaty, but he

was unable to maneuver it through a Republican Senate. President George W. Bush supported ratification, but he was also unable to get it through a Republican Senate.

Today, however, with a supportive Republican president and a Democratic Senate, proponents see their best chance for U.S. accession to the treaty.

The treaty's proponents are, well, preponderant. There's the president and his Cabinet, the former chiefs of naval operations, and all the living legal advisers to the secretary of State. Also the American Petroleum Institute; the International Association of Drilling Contractors; the Navy League of the United States; the World Wildlife Fund; the Nature Conservancy; and the U.S. Joint Ocean Commission Initiative, as well as 35 other such organizations. There's a letter from 101 "prominent Americans," including former Secretaries of State Madeleine Albright, James Baker, Alexander Haig, Colin Powell, and George Shultz; a handful of governors and former senators and Cabinet members; and, if that's not enough, Walter Cronkite.

And then there's the Gipper.

On September 26, Shultz and Baker, Reagan's secretary of State and chief of staff, respectively, authored an op-ed in *The Wall Street Journal* urging ratification. "Flaws in the deep seabed mining chapter that prevented President Reagan from supporting the convention were fixed in 1994," they said. "If the U.S. finally becomes party to this treaty, it will be a boon for our national security and our economic interests."

Sen. **David Vitter**, R-La., fired back the next day, pulling out Reagan's diary at a Senate Foreign Relations Committee hearing to read aloud: "Decided in NSC meeting -- will not sign the 'Law of the Sea Treaty' even without seabed mining provisions."

Reagan's national security adviser, William Clark, and his attorney general, Edwin Meese, jumped in two weeks later with their own Wall Street Journal piece. "Ronald Reagan's belief in the U.S. as an exceptional shining 'city on a hill' and his enmity toward threats to our sovereignty in general, and global governance schemes in particular, were such that he would likely encourage the Senate to do today what he did in 1982: Reject LOST."

Reagan's other national security adviser, Robert McFarlane, was one of the 101 prominent Americans who urged ratification.

The conservatives are undaunted. "Look. The man is dead. Alas, we cannot consult with him, we can only read what he's left behind," Gaffney said. "I wouldn't make this the definitive reason for rejecting the treaty. I just happen to think it's one of [the reasons] that resonates, especially with people who, like me, revere Ronald Reagan, because they recognize that one of the reasons we revere him is that he was a serious advocate for and defender of American sovereignty."

At the end of a 45-minute interview, Gaffney still brims with reasons to reject the treaty. It encroaches on American sovereignty. It creates a new U.N. bureaucracy, with taxation powers. The 1994 "fix" was no fix at all, because the treaty was not yet open to amendment, and besides, Reagan's objections went far beyond the seabed mining issues. It will allow other nations to sue the United States over land-based pollution. It will allow other nations to sue the U.S. military for moving through their territorial waters. Countries that hate us will be able to out-vote us in the convention bodies. World judges will rule against U.S. interests, and federal judges will

enforce their rulings. The Senate is rushing to a vote, with only two hearings in the Senate Foreign Relations Committee and none at all in Armed Services, Commerce, Energy, Environment, Intelligence, and Judiciary, among others.

None of these claims are quite true, say treaty proponents, including the Pentagon and the State Department. Military activities are exempt from the treaty's dispute-resolution procedures; nobody will be suing the Navy. The land-based pollution provisions essentially call on nations to enact and enforce their own laws, which the United States already does. In the one suit involving land-based pollution, an Irish challenge to a British nuclear power plant, the Irish lost. The U.S. will be able to take all disputes to arbitration, not to judges on world tribunals. The 1994 renegotiation is valid law: Nations often make subsequent agreements based on earlier agreements. The International Seabed Authority, which implements the agreement, strives to make decisions by consensus. It has no actual taxation powers, although members are assessed dues, and it may claim up to 7 percent of revenues from some oil and gas sites; it can also conduct its own hard-mineral mining at some deep seabed locations. The Senate committees held hearings in 2004.

Most importantly, advocates say that it codifies America's rights to use the seas. Under the convention, coastal nations have a 12-mile territorial sea, a 200-mile exclusive economic zone, and the right to claim extensions of their continental shelf. All ships maintain the right of passage through territorial seas and international straits.

"The conventional wisdom is that all the smart people know this treaty is fine," Gaffney said. "And with the exception of some rascals, or worse, like yours truly, everybody's agreed that it should be ratified."

Gaffney foresees the Convention on the Law of the Sea going the way of the immigration bills earlier this year, with a massive popular uprising to stop ratification. The Center for Security Policy, Accuracy in Media, the Eagle Forum, and the Competitive Enterprise Institute are among the conservative organizations maintaining a steady drumbeat of opposition through op-eds, columns, and e-mails to rally people against the convention. "If the American people find out about this treaty, it will not pass," he said.

On the countervailing side, however, is a formidable advocacy force, stitched together, in part, by people who have spent decades working on the convention.

Caitlyn Antrim was an American delegate to the Law of the Sea negotiations under Presidents Carter and Reagan. She's an ocean engineer who grew up in the Ozarks and didn't know that bodies float better in saltwater than in fresh until she was 19, when she first touched an ocean. She earned an advanced degree in ocean engineering at MIT and her thesis, on the economic and technical issues of deep seabed mining, became the basis of the U.N.'s report on such mining. The report, in turn, was incorporated into the convention. "There were no other public models," she recalled. "That meant they had to put me on the delegation so that I could explain it."

When Reagan came into office, she worked on U.S. objections to the deep seabed mining provisions from a post at the Commerce Department. "I've got as good a view of anyone that Reagan wanted only changes in deep seabed mining," she said. The diary entry that Vitter read, according to Antrim, was probably a reference to an approach to the treaty that Reagan

considered and then rejected -- namely, signing the convention without the deep seabed mining provisions. The convention is a package deal, all or none: Reservations, in which a country says it opts out of certain parts of a treaty, were not allowed.

After Reagan rejected the treaty, Antrim went on to other projects and jobs, but she kept abreast of the convention. By 2002, when Bush designated Law of the Sea as an urgent treaty requiring action, Antrim was concerned that its constituency had evaporated. She started working with the Joint Oceans Commission and Citizens for Global Solutions to rebuild that body of support. The resulting network of industry, environmental, law, trade, and professional organizations has been meeting at the Meridian House in Washington ever since.

Their advocacy efforts got a kick in the pants in August when Russia planted a flag beneath the North Pole in an attempt to claim its resources as part of its own continental shelf. As the Arctic ice recedes, there will be a race for the oil, gas, and mineral resources buried there. Because the United States hasn't ratified the treaty, it doesn't have a seat at the table where the 155 nations that have approved it will determine the validity of Arctic claims. U.S. companies want a piece of the action; U.S. environmental groups want a hand in managing what they foresee as environmental chaos.

"What brings us together is basically that the Law of the Sea Treaty establishes the level playing field for all parties," said William Eichbaum, vice president for the marine program at the World Wildlife Fund. "We don't have the same agenda," Brian Petty, senior vice president for government affairs at the International Association of Drilling Contractors, said of his odd coalition with environmental groups. "But that's OK. The oil, gas, and environmental communities are persuaded that we'd rather go forward [in the ocean] with the furthest extension of law than with gunboats."

At its root, the tangle over the treaty comes down to this question of law or guns. Opponents argue that joining the treaty would leash America's power; advocates say that it would allow America to reserve its guns for when they are truly needed.

"Our influence in the world derives from our economic power and most especially our naval power," Gaffney said. "And I cannot for the life of me see how those are going to be enhanced by being party to a treaty that imposes these constraints and limitations, and subordinates our sovereignty and decision-making to these multilateral entities."

Antrim countered: "You can be powerful enough to do anything you want, but you can't be powerful enough to do everything you want. We can't patrol every ocean in the world without the assistance of the coastal states, and to do that we need to not be arguing with them over rights."

As for Reagan, it isn't clear what he would say. He believed in guns, but he also believed in diplomacy. He undertook a massive buildup of American arms, but he also negotiated arms reductions with the Soviet Union. He distrusted the United Nations, but he believed in American business. People can ask what he would do, but he's dead. He can't answer.