Conservatives and the Law of the Sea Time Warp

The treaty has been improved in ways Reagan wanted and it's time the U.S. signed on.


By JOHN NORTON MOORE

In his testimony before the Senate Foreign Relations Committee last month, former Defense Secretary Donald Rumsfeld urged legislators to reject the 30-year-old Law of the Sea Treaty, saying it would force the United States "to pay royalties to less productive countries, based on rhetoric about the common heritage of mankind."

Astonishingly, Mr. Rumsfeld's Senate testimony contradicts the advice his own Defense Department gave President George W. Bush in the early 2000s. The former defense secretary seemed to be in a time warp, harking back to his mission of 30 years ago during the Reagan presidency, completely dismissing the treaty's 1994 renegotiation.

When President Reagan took office in 1981, I wrote him that the Law of the Sea Treaty negotiations had been a resounding success for the U.S. but that Part XI, dealing with seabed mining, contained flaws requiring renegotiation. These included such treaty killers as a permanent seat for the then Soviet Union, but not one for the U.S., on the Council of the International Seabed Authority, and mandatory technology transfer of American seabed mining technology.

After a lengthy review, President Reagan agreed, supporting everything in the treaty but Part XI. When the treaty was adopted in 1982 with Part XI unchanged, Reagan sought to dissuade allies from signing. Accordingly, he asked Mr. Rumsfeld and longtime diplomat Kenneth Adelman to serve as emissaries to allied heads of state (France, Japan, Belgium, Italy, Germany, the U.K. and the Netherlands). The mission delayed acceptance by several of these allies, thus buying time for a renegotiation of Part XI.

All of the Reagan conditions for Part XI were met in a 1994 renegotiation. President Clinton submitted the treaty to the Senate, acknowledging that it met all U.S. objectives, including vital navigational provisions for the Navy, especially submerged transit through international straits for our nuclear submarines. The treaty also extends U.S. resource jurisdiction into the oceans in an area larger than the entire land territory of the nation. And it assures access for U.S. deep-seabed mining companies to mid-Pacific mine sites containing over a trillion dollars in strategic minerals.
The treaty, favorably reported out of the Senate Foreign Relations Committee in 2004 and 2007, was on President Bush's priority list but has never been put to a vote. It is now once again before the Senate, with overwhelming support from military and business leaders, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the American Petroleum Institute, and the Financial Services Roundtable.

Mr. Rumsfeld's opposition to the treaty runs counter to the official position of the Reagan administration, as Reagan's former Secretary of State George Shultz has made clear. It ignores the reality that all countries visited by Mr. Rumsfeld, as well as the European Union, adhered to the treaty more than a decade ago (it is currently in force for 161 countries), and that his co-emissary, Mr. Adelman, announced his support for the treaty a half-decade ago.

Mr. Rumsfeld's opposition focuses on his reading of the treaty as "a sweeping power grab" by Third World countries intent on a massive "redistribution of wealth." His testimony accurately portrays the 1970s Third World rhetoric pushing for a "new economic order" heard in the early years of the negotiation. But the treaty now before the Senate has at its core a 200-mile economic zone and extended continental shelf. This is the greatest expansion of national sovereignty in history.

The renegotiated International Seabed Authority, established under the treaty, provides property rights for U.S. firms to develop deep-sea mining sites that require security of tenure before they can justify the large investments required. Further, the treaty grants the U.S. the only permanent veto as to how the modest royalties, collected in return for secure property rights, are to be distributed to state parties.

Most troubling, when asked by the chairman how he would provide security of tenure sought by U.S. firms, Mr. Rumsfeld suggested that they should operate through joint ventures with other nations. His answer, implicitly understanding that U.S. nonadherence can in no way alter the international regime now in force for 161 countries, and that our firms would still operate under the treaty regime, needlessly throws away U.S. jobs, Treasury tax receipts, and critical U.S. access to strategic minerals. It would also mean no U.S. veto over any distribution of revenues, amendments to Part XI, or rules and regulations for mining.

The treaty provides property rights for miners in an area of the ocean not under the sovereignty of any nation. Absent U.S. adherence, U.S. firms cannot mine the deep seabed—as they will not have the security of tenure necessary to expend the $2 billion to $3 billion for a deep-seabed mining operation. These operations are of utmost importance for the U.S.—at stake is U.S. access to strategic minerals of copper, nickel, cobalt, manganese and rare earths worth about $1 trillion.

Mr. Rumsfeld's mission for President Reagan was a service to the nation. His time-warp testimony, however, does a disservice to a remarkable treaty that expands U.S. sovereign rights, powerfully serves U.S. needs for the Navy and the Coast Guard, and provides American industry with the security necessary to generate jobs and growth.
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