Printed Below is L.Kogan's Response to the Two Rebuttals of his *'LOST' and found* Washington Times Commentary (Aug. 8, 2007)

http://www.washingtontimes.com/apps/pbcs.dll/article?AID=/20070811/EDITORIAL/108110016

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Letters to the editor

August 11, 2007

Vetting LOST

I am pleased that both a former U.S. delegate to the Law of the Sea Treaty and a former Judge ad hoc of the International Tribunal of the Law of the Sea have come forward ("LOST at sea," Letters, yesterday) in response to my Wednesday Commentary "LOST and found," which, due to limited space, suffered the fate of many severely edited articles.

Regrettably, Mr. McManus has squandered his limited space by devoting it to an ad hominem attack and an advertisement for government officials, who, most likely, for political reasons, concluded that the LOST's environmental dimensions were insignificant.

Mr. McManus misrepresents and overstates the purpose of my article. It is neither a "disinformation" nor "opposition" piece. Rather, it is simply an elucidation piece intended to shine much-needed light on the LOST's many deep, broad and intrusive environmental provisions. If LOST is, as Professor Bernard Oxman describes, "the most important and comprehensive international environmental agreement in existence," Mr. McManus and he should agree that ordinary Americans ought to know about it. The American people are entitled to call upon their congressional representatives to hold open public hearings if their private property rights may be compromised and their cost of living increased as the result of U.S. LOST ratification/accession.

It would appear that Mr. McManus, a former government (EPA and NOAA) official, has stated for the record that he opposes government transparency and accountability. Why is he against the Senate holding open public hearings on LOST ratification?

They say the proof is in the pudding. Prior Senate hearings barely reserved any time for discussion of the precautionary principle save for the views of proponents. Senators failed to review and assess the advance of this controversial legal concept in international environmental law, its relationship to the LOST and its accompanying fish stocks protocol already ratified by the United States, the role that it serves within a number of other U.N. environmental treaties that incorporate it, how European or other treaty parties and environmental activists could likely invoke the precautionary principle in a LOST dispute settlement proceeding against U.S. industry and the U.S. government, and the several international trade (World Trade Organization) disputes in which the precautionary principle was aggressively but unsuccessfully invoked by the European Union. Prior hearings, furthermore, failed to examine the potentially negative impact that the precautionary principle would have upon U.S. economic and technological competitiveness, were it to be adopted as U.S. domestic law following LOST ratification.

If Mr. McManus wants proof, he should support my call for public hearings and read my forthcoming law journal article.

As concerns Mr. Oxman, I wish to make two points very clear: First, contrary to your assertion that I misunderstood what you said, you and I both know very well what Senator James Inhofe was getting at when he posed the following question to you during your March 23, 2004 testimony: "Are you certain that the treaty could not be used to impose restrictions or requirements on the United States to limit or expand current or future U.S. laws and policies?" He was referring primarily to environmental obligations, such as the precautionary principle, which could be invoked by other treaty parties pursuant to LOST Part XII,

Section 5. Second, with all due respect, America will be better able to prevent unreasonable foreign restrictions, such as imposition of the precautionary principle, on its global trade, via the WTO, not the LOST dispute settlement procedures.

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