

BACKGROUND

THE LEGAL INITIATIVE

The Issue

The United Nations Convention on the Law of the Sea (UNCLOS) provides a framework for co-operation on management and conservation for the high seas beyond the limits of national jurisdiction. It leaves legal rights and obligations applicable to straddling stocks -- and other stocks not under the exclusive management of coastal states, such as highly migratory species -- in an ambiguous state. The specific rights of coastal states and the obligations of the high seas fishing states are only vaguely sketched out. The resulting legal uncertainty leaves these stocks vulnerable to overfishing on the high seas by fleets from distant-water fishing countries.

The question is how to give practical effect to the obligations of distant-water fishing states to co-operate with each other and the appropriate coastal states in the conservation of fish stocks on the high seas.

A Possible Solution: Canada's Legal Initiative

Canada has been seeking a global solution. The international dimension of the solution for Canada has been to seek an effective, enforceable framework for conservation and management of resources beyond the 200-mile limit: rules consistent with the Law of the Sea by which all states fishing on the high seas agree to abide, that will end unsustainable exploitation of fish stocks.

The attainment of such rules is the purpose behind what has been called Canada's Legal Initiative. These rules would clarify and lend substance to the vague provisions in UNCLOS.

Canada took the lead in pursuing this goal by convening an International Conference of Law of the Sea Experts in St. John's in September 1990. The Experts agreed on certain fundamental principles, including that:

- Members of the international community whose nationals fish in areas of the high seas must co-operate with each other and the adjacent coastal states on conservation including enforcement and dispute settlement;
- Members of regional fisheries organizations have a duty to ensure that their nationals comply with all conservation measures, and that they not resort to techniques such as reflagging vessels to escape controls;