

excluding polar regions, it is understood that the geographical edge of the shelf is well-defined. It is the Canadian view, therefore, that precision would not be forfeit if in these cases the boundary of the shelf were its actual edge. Where the actual edge might be ill-defined or where there is no shelf in a geographical sense the boundary might be set at such a depth as might satisfy foreseeable practical prospects of exploitation of the natural resources of the seabed adjacent to a particular state.

The Commission has adopted the view that the rights of a state over the continental shelf do not affect the legal status of the superjacent waters as high seas, that is they do not affect rights of navigation and fishing. The term "natural resources" is not interpreted by the Commission to include products of fishing except those such as oysters which are "permanently attached to the bed of the sea".

High Seas Fishing

Another important aspect of the International Law Commission's work is its recommendations on high seas fishing. Of particular interest, from a Canadian viewpoint, is the recognition that "a coastal state has a special interest in the maintenance of the productivity of the living resources in any area of high seas adjacent to its territorial sea", and that states have the right in certain instances to adopt unilateral measures of conservation on the high seas adjacent to their coast, subject to arbitration at the instance of another state concerned in the particular fishery involved. In the Canadian view the International Law Commission's recommended regime on high seas fishing should be subject to the so-called abstention principle. Under this principle, where the maximum sustainable yield of a particular high seas fishery is being maintained only as a result of research, regulation of their own fishermen and other activities of one or more states, other states which have not participated within recent times in the fishery would abstain from participating in it. The Commission has not included this principle in its recommendations although it has drawn attention to the problem.

Compromise Necessary

It will have been noticed that the terms of reference of the Conference as set out in the first paragraph of this article contemplated the possibility of the results of the work of the Conference being incorporated in one or more international conventions or such other instruments as may be deemed appropriate. The measure of success of the Conference in reaching general agreement on those matters which are controversial or which represent a new development in the law of the sea will depend upon the willingness of states to compromise. At the same time the usefulness of incorporating the results of the work of the Conference in international instruments will depend upon agreed positions being capable of formulation into meaningful provisions. Although the greatest measure of agreement on the law of the sea is to be hoped for, to anticipate general agreement on all aspects of the Report of the Commission might be to indulge in an excess of optimism. This consideration undoubtedly prompted the Commission to recall that "there has been widespread regret at the attitude of Governments after the Hague Codification Conference of 1930 in allowing the disagreement over the breadth of the territorial sea to dissuade them from any attempt at concluding a Convention on the points on which agreement had been reached", and to express the hope that "this mistake will not be repeated".