

### The territorial sea

For centuries, the distance of a cannon shot, the classical three miles, was the accepted limit of the territorial sea. By 1958, however, it had come to be recognized that, with the advance in technology of all sorts, including the speed of ships, modern communications, the numbers of ships entering and leaving busy ports, the growing efficiency of distant fishing operations – and perhaps also, the longer range of cannons – had led many governments to the conclusion that some adjustment was necessary. The 12-mile concept had gained considerable currency, or at least, a continuous territorial sea and fisheries-protection zone beyond three miles out to 12 miles. Canada, with its important traditional fishing interests put forward such a compromise at the 1960 conference. The 1958 conference, which had achieved an important success on the continental-shelf question, had failed to reconcile the different points of view on the limits of full sovereignty.

The 1960 conference also failed to come to a conclusion, but only by one vote. Since that time, a number of countries have taken unilateral decisions on a 12-mile limit.

In 1970 Canada, for instance, established a 12-mile territorial sea. In the same 1970, amendments to the Territorial Sea and Fishing Zone Act, Canada laid down the legislative basis for proclaiming exclusive fishing zones “adjacent” to its coast. Subsequently, by order-in-council, fishing zones were established on Canada’s east and west coasts.

### The contiguous economic zone

There is also general agreement that some area beyond the territorial area should be under the jurisdiction of coastal states. The 1958 Continental Shelf Convention gave economic and managements rights to the limit of the 100-fathom mark or to the “limit of exploitability” of the coastal shelf. One hundred fathoms was well beyond exploitability on the basis of the technology developed at the time. In the years since the continental shelf convention was drafted, technology has advanced to the point where it can be foreseen that there is virtually no limit, due to the depth of water, of the area that can be exploited, if not today, at least in the near future.

“Canadians may wonder why Canada has taken and is continuing to take such an active interest in resolving the various contentious issues of the Law of the Sea and of the environment. The answer can be deduced in part simply by looking at a map of Canada. Canada is obviously a coastal state. It is said to have either the longest or the second-longest coastline in the world, and that is the first fact of life in determining Canada’s approach to any attempt to resolve Law of the Sea issues. A second major fact of life, which is not quite so evident, is that Canada is not a major maritime power with an extensive shipping fleet, and this affects the Canadian position considerably, compared, for example, to that of many other Western states. A third important fact of life is that Canada is a coastal fishing nation interested in preserving the living resources in the waters adjacent to its coasts rather than a distant-water fishing nation.” (J. Alan Beesley, *International Perspectives* July/August 1972 issue.)

Some 148 states with very different geographical dimensions and attributes are eligible to come to Caracas. Of these, 39 are land-locked. Particularly, the latter look with great interest to the concept put forward some years ago by the Maltese representative at the United Nations, Dr. Arvid Pardo. He argued that beyond the territorial sea and economic zones the exploitation of the seabed should take place for the benefit of all states. The land-locked states quite naturally wish to limit the economic zone of the coastal states as much as possible. They have put forward the idea of a limited 40-mile zone or one extending only to the 200-meter isobath – the old 100-fathom line. This proposal goes back from the “limit of exploitability concept” embodied in the continental shelf convention.

Canada is in the special position of having one of the most extensive continental margins on its east coast, stretching well beyond the 200-mile mark. In some places, Flemish Cap and the Grand Banks – the distance is double and more. However, on the west coast, the shelf runs out barely to 40 miles.

The Canadian position regarding the limits of the continental shelf is based

on state practice – on the 1958 convention itself – and on the 1969 decisions of the International Court of Justice in the North Sea continental shelf cases, which defined the continental shelf as the submerged natural prolongation of the continental land mass. On the basis of these three legal foundations, Canada claims and exercises rights over the whole of the continental margin, including the continental slope and rise as well.

Just as the coastal states have a natural advantage over the land-locked countries, so inevitably will the Maritimes have a special advantage, through the simple fact of geography, in the on-shore storage and processing of the resources from the adjacent seabed area. But if the Maritimes and other coastal areas have this advantage, it also follows that Canada as a whole must, in some way, through federal action, share in the benefits of this new extension of the area of national jurisdiction. We have here an analogy with the position of the land-locked states in sharing, under the Maltese formula, in the “common heritage” of the sea.

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### The common heritage

Some developed countries will soon have the technological capability to extract and process certain mineral resources of the seabed for commercial purposes – the much publicized manganese nodules. Indeed, a number of U.S. and other companies are said to be ready to move to the exploitation stage within two or three years. This possibility arouses strong concern on the part of developing nations.

Canada, along with most developed countries, was unable to vote in favour of a moratorium resolution put forward in 1969 by the developing countries, believing that it would unduly restrict technological progress and cause an unacceptable delay in making these resources available to all.

Of special concern to Canada is the high nickel content of the manganese nodules which have been found in quantity in certain parts of the seabed. Canada is the world’s largest producer and exporter of nickel, and also exports copper and cobalt. We cannot ignore the impact that mining of the nodules could have on our economy. Canada is not alone in this position; for example, Zambia, Chile, and