

Law of the sea: a Canadian opportunity

by Clyde Sanger

Canada was one of the countries to benefit most from the United Nations Law of the Sea Convention which it signed together with 118 other states in December 1982. In the five years since, another forty states have signed the Convention, but a total of only thirty-five countries have ratified — and it takes sixty ratifications to bring the treaty into force. The time has surely come to make a concerted effort with two dozen other countries to consolidate these gains. Canadian officials played an outstanding role in nearly fifteen years of complex negotiations leading to the Convention. It seems appropriate as well as wise for the Canadian government to take up this role again.

Benefits to Canada

To sum up this resolve, it may only be necessary to recall a few of the benefits Canada now enjoys from the hard work its lawyers and scientists put into negotiating the 320-article treaty

- Canada was able to declare sovereign rights over 1,290,000 square nautical miles of continental shelf off its coasts. This is Canada's Exclusive Economic Zone (EEZ), and is the equivalent of adding 40 percent to its land area.
- In this huge EEZ, which off the east coast extends up to 350 miles beyond Newfoundland, Canada is able to control all oil and mineral exploration.
- It is also enabled to regulate fisheries in the EEZ, by deciding the total "allowable catch" and the optimal use. This right has come just in time to arrest the decline in the Northwest Atlantic catch, which became evident in the 1970s from overfishing.
- A special clause to cover salmon (Article 66) gives the states in whose rivers these "anadromous stocks" originate the primary right and responsibility over them. Canadian officials worked hard and effectively to insert this clause.
- Under its provisions for drawing maritime boundaries "for all uses," Canada argued the Gulf of Maine case at the International Court. The line drawn by the Court awarded Canada about one-sixth of Georges Bank, but this included the best sector for scallop fishing.
- In a special provision (Article 234) for "ice-covered areas," so named because the Soviet Union did not then want to open up discussion on the Arctic (Mr. Gorbachev has since done so in his Murmansk speech of October 1987) the Convention endorses Canada's unilateral action in making regulations within a 100-mile zone in its Arctic Waters Pollution Prevention Act of 1970.

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- The provisions for marine scientific research give coastal states — and Canada has one of the world's longest coastlines — the right to regulate and authorize (and in specific circumstances withhold consent to) research in their EEZ. This is some protection against the bigger maritime powers carrying out military activities under the guise of research.
- Canada resisted any suggestion that the Northwest Passage was "a strait used for international navigation," and thereby subject to the newly-minted "right of transit passage," which allows, for example, submarines to pass submerged and without notification to the coastal state. So Canada's claim to complete sovereignty over the Passage was undented by the Convention.

Even opponents gain

To go beyond Canada's own gains, the Convention offered every country some benefit, in what the conference's president, Tommy Koh of Singapore, called this "comprehensive constitution for the oceans." The United States gained most of all, from transit passage for its warships through strategic straits, to an enormous accretion of EEZ — some 4,820,000 square nautical miles, mainly in the Pacific. But the Reagan administration chose to oppose the Convention over its provisions for seabed mining, and together with Britain and West Germany, did not sign it within the 2-year time limit. They will now have to "accede" (sign and ratify in one leap) if they are ever to participate.

The signing ceremony in the ballroom of a Montego Bay hotel on December 10, 1982, was the culmination of nearly fifteen years of remarkable work and, with no doubt a sideways look at the United States across the Caribbean waters, Tommy Koh said: "Let no nation put asunder this landmark achievement of the international community." The United States has not succeeded in putting it asunder, and has failed to organize a mini-treaty of the industrial powers in its place; but some might conclude the Reagan administration has managed to put it aside.

In actual fact, a good deal has been achieved, especially in the last few months, in working out a viable system for mining the seabed, even though the prospect of exploiting the resources of the ocean floor is probably twenty years away because of depressed mineral prices. This has been done through patient work in the Preparatory Commission that was set up in 1983 to make detailed rules for the International Seabed Authority and the International Tribunal. The United States has refused to have anything to do with the "Prep Comm," but Britain and West Germany (by virtue of having signed the Final Act of the conference) have attended as observers and indeed have played active roles. The Prep Comm's work has reached the stage where a concerted effort should be