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Statement by Mr. Alvin Hamilton, Minister of Northern Affairs and National Resources, in the House of Commons, July 25, 1958

I would like to take advantage of this debate on external affairs to report to the House of Canada's participation in a very important international gathering which took place some three or four months ago...the International Conference on the Law of the Sea held at the European headquarters of the United Nations in Geneva between February 24 and April 28 of this year. Sometimes in our preoccupation with the high principles and great hopes of the peoples of the world for the achievement of a family of nations living at peace with one another we forget the ordinary workaday procedures of the many hundreds of delegates and representatives of various countries who work, without the bright lights of publicity upon their efforts, and yet move steadily forward in man's progress towards a more peaceful state. This report is a record of one of the more prosaic but none the less tangible steps forward made by mankind in its long and slow progress towards a peaceful civilization.

This Conference is one of the most significant of international conferences of recent years and one that has achieved far-reaching results. It is true that much more was heard of the failure of the Conference to reach agreement on the matter of fishing limits and the breadth of the territorial seas but may I remind the House and the nation that this was merely one article of 74. One hardly ever hears of the articles passed and which became part of international law, but this had a tremendous range of conflicting interests, namely those of 86 different nations. In order to achieve any sort of agreement with so much complexity and among so many nations is in itself a very substantial achievement.

It will, I know, be a source of satisfaction to hon. members on all sides of the House to learn that during the deliberations the Canadian Delegation played a leading role

and its contribution, throughout the nine weeks of the conference will long be remembered as one of the outstanding features of the Conference. A good deal of the credit for this must go to the Honourable George Drew who gave such vigorous and imaginative leadership to the Canadian Delegation and to the able and devoted team of officials who assisted Mr. Drew as members of the Delegation. During my own brief visit to Geneva I was able to observe at first hand that Mr. Drew was regarded on all sides as one of the persons playing a very major part in the Conference and one to whom the success of many of the negotiations was due.

It is worth while recalling here that the last conference of a similar type on the Law of the Sea was held at The Hague in 1930. It was known as The Hague Codification Conference. At that time some 40 nations participated and the International Conference broke down on a single issue, the question of the breadth of the territorial sea. Twenty-eight years later with twice as many nations participating it seems rather significant that this same obstacle to agreement did not bring the Conference to failure. The significant thing is that the participants achieved many things that went far beyond anything achieved in the whole history of international law since mankind first began to keep its history.

Specifically, the Conference produced four international conventions as well as a protocol providing for the judicial settlement of disputes. These four conventions were (1) a convention on the high seas; (2) a convention on fishing and the conservation of the living resources of the high seas; (3) a convention on the continential shelf; and (4) a convention on the territorial sea and contiguous zone. It was on April 29 that Mr. Drew signed these conventions on behalf of Canada as well as the protocol on the settlement of disputes and the final act of the Conference. I might say that Canada was the first nation to sign all six of the instruments embodying the results of the Conference. The four conventions and the protocol on the settlement of disputes are, of course, subject to ratification by the Government of Canada and will not enter into force until ratified by at least 22 nations....

Background

Before dealing in more detail with the conventions and their significance to Canada it might be of interest to provide a little background on the events leading up to the Confernce and the method of work adopted by the Conference. The Conference was called as a result of a resolution by the General Assembly of the United Nations on February 21, 1957--Resolution 1105XI. It grew out of the studies and recommendations made over the years by the International Law Commission of the United Nations which had been meeting since the initial formation of the United Nations in 1946. The Commission had given very intensive study to all aspects of maritime law and

then produced an extremely comprehensive report. It provided for 73 articles and was a compilation of all the rules of the sea which have been adopted over the years by the various nations. These 73 recommendations or rules have two different aspects to them. On the one hand they sought to codify all existing international law where there was already in existence extensive practice, precedent and doctrine. Then, on the other hand, they were concerned with the progressive development of international law on matters such as the continental shelf that were as yet largely unregulated because 30 years ago at The Hague Conference they hardly thought of such a thing. And then, in addition, the Conference was asked by the General Assembly to consider a matter not included within the compass of the International Law Commission report, the question of access to the sea by landlocked countries.

After a brief plenary session the conference resolved itself into five committees of the whole, each of which was charged with the consideration of a group of related articles. The results of the committees' work were considered in the final plenary sessions during the last week of the Conference. The committees and the subject matter referred to each were as follows: Committee I, the territorial sea and contiguous zone, and specifically Articles 1 to 25 and Article 66 of the original I.L.C. report; Committee II, the high seas, general regime, and specifically Articles 26 to 48 and 61 to 65; Committee III, the high seas, fishing, and specifically Articles 48 to 60; Committee IV, the continental shelf, and specifically Articles 67 to 73; and Committee V, access to the sea of landlocked countries. That was a new subject to be discussed at the Conference itself. It will be seen that the breakdown of the Conference into these five committees follows in general the subjects of the conventions I have already listed.

Agreement on Shelf

It may be of interest at this point to comment briefly on some of the results of the Conference which were of particular significance to Canada. In commenting on this I might point out that for the first time in history there is now an international agreement on the continental shelf. I mention this first because it is usually lost sight of because this subject was uneventful in terms of news coverage and as far as producing quarrels or differences is concerned.

The Continental Shelf Convention gives to the coastal state sovereign rights over the exploration and exploitation of the natural resources of the sea bed and subsoil off its coast out to a depth of 200 meters. It also provides that these rights may be exercised beyond the depth if the exploitation of the resources is a practical possibility. In the long term, this agreement may have consequences of far-reaching importance to Canada in the development of underwater oil and mineral resources. It means, in effect, a very substantial addition to the potential area of Canada's natural resources. Those

who have followed with interest the development of techniques in the exploration of resources know that we can drill for oil at depths of 1,500 feet under the surface of the sea.

It is not without significance that it was a proposal put forward by Canada in Committee IV that led to the adoption of the Convention on the continental shelf nor is it without significance that it was a Canadian proposal to the final plenary session that led to a prohibition against reservations to the three main substantive articles in the Convention. To have permitted these reservations might have undermined the whole purpose of the Convention. Finally, it was not without significance that it was Canada which proposed that this Convention should enter into force when signed by 22 nations instead of 50 as proposed by another power.

High Seas Fishing

The second convention dealt with fishing and the conservation of the living resources of the high seas. The Convention on High Seas Fishing is the first such general convention regulating high seas fishing and it accords well with Canadian interests. It recognizes the special interest of the coastal state in maintaining the productivity of the living resources of the high seas in areas adjacent to its territorial sea. It also entitles the coastal state to take part on an equal footing in any system of research or regulation of purposes of conservation in that area even though its own nationals may not carry on fishing there. To all people who understand the importance of fishing to under-developed countries, the significance of this particular article is self-evident. Further, it provides that when conservation measures in the high seas have been adopted by a coastal state, they must be observed by fishermen from other countries. And then finally, under emergency circumstances, coastal states may unilaterally enact the necessary conservation measures on the high seas.

The third feature to Canada was the question of straight base lines and bays. To those of us who live in the island portions of Canada the fact that our coastline is very irregular hardly comes to our attention but in trying to define territorial waters the sinuosity of our coastline is a matter that gives us considerable concern and therefore these regulations in this regard, as drafted and codified by this International Law of the Sea, are very important to the future of our country.

In the Convention on the territorial sea and the contiguous zone, Article 4 provides that where the coast is deeply indented the method of drawing straight base lines from headland to headland may be followed in setting the boundary of the territorial sea rather than following the sinuosities of the coastline. I think the importance of that can be realized. Thirdly, our shoreline now in so far as the territorial sea is concerned is not the line of the high water mark or the low water mark; it is a line drawn

from headland to headland. This provision, which reflects the 1951 decision in the well-known Anglo-Norwegian fisheries case is of particular interest to Canada because much of our coastline is deeply indented, as I have already pointed out.

In the committee stage there was a move to impose a limitation of 15 miles on straight baselines which would have had undesirable results for us. However, action by Canada in the plenary session was successful in having this limitation removed. The Conference also adopted a provision recognizing that bays with mouths of 24 miles or less are to be regarded as internal waters. This limitation would not, of course, affect bays along coasts where the baseline system is applicable.

The fourth convention deals with the general law of the high seas. The Convention on the High Seas has perhaps less significance for Canada than the others because, in the main, it simply codifies existing international law. It provides for the first time a systematic compilation of recognized international law on a number of important matters and seeks to ensure the maximum freedom of the high seas. This applies not only to navigation but to fishing on the high seas, flying over the high seas and such activities as the laying of submarine cables and the building of pipe lines under the high seas.

Among other things, the Convention deals with such matters as the nationality of ships, safety of life at sea, the suppression of piracy and the slave trade, the right of hot pursuit in certain circumstances and the prevention of pollution of the seas by the discharge of oil or the dumping of radioactive waste. It was, Mr. Speaker, a very thorough compilation of the existing laws of the sea into a code which we now hope will be ratified by the great majority of the nations of the world.

I have referred in brief summary, Mr. Speaker, to some of the highlights of the four conventions. Now I would like to turn to the question of the breadth of the territorial sea and the related question of coastal fishing zones. It is on this subject, of course, that the publicity was given which attracted such widespread public interest. It is unfortunate in one way that this aspect of the Conference's work reached so much public interest because it tended to obscure many of the more constructive achievements of the Conference. I would like to give some of the background of this matter of the breadth of the territorial sea to see whether we cannot make clear what the problem is and the importance of Canada's contribution so far and what we think it can be in the future.

There has been no uniform practice, Mr. Speaker, in so far as the breadth of the territorial sea is concerned. Generally speaking, the great maritime nations have accepted and enforced the three-mile territorial sea off the coasts of the various countries of the world. Many countries for

many years have had breadths of the territorial sea off their countries far more than three miles. There are countries with a four-mile territorial sea; there are several with a six-mile territorial sea and there is one with a nine-mile territorial sea--that is Mexico--and the Soviet Union has a 12-mile territorial sea. Some go beyond that, even to the extent of 200 miles. This great variety of claims on the breadth of the territorial sea indicates that there is no such thing as uniformity. Generally speaking, the maritime powers have insisted on and recognized only three miles, even though there has not been any direct challenge to the countries that have territorial seas of different widths. As a matter of interest, the U.S.S.R. has a territorial sea of 12 miles, going back to the days of the Czars and it is not likely that anyone is going to challenge anything that has been in existence for over 50 years.

Having given this background, I think it is now fitting for me to point out that this problem was so complex that the International Law Commission did not make any definite recommendations to this general conference of the United Nations on this matter, but simply pointed out that 12 miles in its opinion was the maximum limit that they thought should exist. Now, for some time Canada has felt that a 12-mile limit was necessary to protect our fishing interests but we have recognized that an extension of the territorial sea to 12 miles might jeopardize the proper interests of those nations and those people who want to maintain freedom of the sea and freedom for air navigation. Therefore, our dilemma was, how could we reconcile the defence interests, freedom of the seas and the freedom of the air, which really requires a very narrow territorial sea, and the needs of our people on our coasts for some priority in harvesting the fish off their shores?

It is a matter of general knowledge, Mr. Speaker, that at the present time by Canadian law we have forbidden Canadian trawlers to fish within 12 miles of our coasts, and yet, because there is no international law, the trawlers from foreign nations can come inside our 12-mile limit and do fish in waters that the Canadian people do not allow Canadian trawlers to fish in. Quite frankly, we would like to reserve those first 12 miles off our shores for the people who cannot afford the big trawlers and who would like to make a living out of this band of water that they can get to and from with their limited resources as far as capital equipment is concerned.

Now, that was the problem that we faced at this Conference, and this goes back for several months and years. The Canadian Government proposed what became known as the Canadian proposal. This was first put forward two years ago. Reduced to its simplest terms it was an attempt to reconcile the interests of defence, freedom of the seas and freedom of

the air with the interest of the people who live in coastal states and whose living is largely dependent on the products of the sea off that coast. This Canadian proposal was very simply to have a three-mile territorial sea but to have an additional nine miles in which the coastal state would have exclusive rights for fishing. This became known in our minds at least as the three-and-nine mile proposal, three miles of territorial sea, and nine additional miles in which the littoral state would have exclusive fishing rights. At the present time under international law coastal states have certain rights in that 12-mile area with respect to sanitation, fiscal arrangements, customs arrangements and immigration and we thought we would like to extend that principle to include fishing.

I think it can be said, Mr. Speaker, that this suggestion was acceptable to Canadians generally and was supported by all political parties. During the Conference the basic conflict was between those states which have fishing interests off their own coasts and those that wish to see the widest measure of freedom to secure or to maintain fishing rights in distant waters off the coasts of other countries. The Canadian suggestion of a fishing zone in which a coastal state would have the same fishing rights as in its territorial sea was an entirely new concept and from the time of its introduction by Mr. Drew at Geneva it affected profoundly the whole course of discussion. Canada played a major role throughout the discussions and negotiations on this matter and it was not for any lack of initiative or good will on the part of Mr. Drew and the Canadian Delegation that the Canadian effort to achieve a satisfactory solution was not crowned with some success.

Here I might note that one of the most significant features of the Conference was the importance of the position taken by Canada to the newer national states. The Canadian Delegation was keenly aware of the legitimate aspirations of these newer nations which have neither traditional claims to establish fishing rights in distant fishing waters nor well developed fisheries in their own offshore waters but which are looking more and more to this important source of food and income as a part of their national birthright. In plain language, Mr. Speaker, Canada took the lead among these newer national states in trying to achieve greater economic security and stability for their own people and at the same time to express the new nationalism of their people in a responsible manner. We were very keenly aware of the legitimate demands of these nations.

Our delegation enjoyed the very closest and friendliest relations with the African and Asian Delegates, particularly with the very able delegates from our Commonwealth partners, Sir Claude Correa from Ceylon, Mr. Bing who represented the new Commonwealth nation of Ghana, Mr. Suffian from Malaya and Dr. Bhutto from Pakistan. I want to acknowledge the constructive

and important contribution of the delegation from India under the leadership of Dr. Sonn.

We also had occasion to work very closely with the delegation from Mexico, particularly Dr. Robles who represented that delegation on the First Committee. I should like to pay a war tribute to Prince Wan of Thailand, the President of the Conference, to the able chairmen of the five main committees and in particular, Professor K.G. Bailey, Solicitor General of Australia, who presided over the deliberations of the First Committee which dealt with the vexing problem of the breadth of the territorial sea and fishing zone.

I should like to relate to the House, if I may, an anecdote which occurred on the Friday preceding the very tense and dramatic voting on Saturday in the second last week of the conference when Mr. Dean made a very brilliant exposition of the United States proposal lasting for 45 or 50 minutes. The hon. Mr. Drew representing the Canadian Delegation spontaneously walked up to the podium without notes and, taking about 45 minutes, put forward in one of the most brilliant presentations the case of Canada and the smaller nations as opposed to those who had so-called traditional fishing claims in distant waters. Professor Bailey, the chairman, got up and told the assembled delegates that they would rarely see such a high standard of parliamentary presentation of argument as they had witnessed that day and the whole convention floor of delegates of 86 nations took time out to applaud these two very fine men.

It is my impression that the significance of the Canadian proposal, which was adopted by a simple majority vote of the Committee but which did not get the necessary two-thirds majority in the plenary session, was made quite evident in spite of the bitter opposition from most of the major powers. It is my impression that the majority vote accorded the Canadian proposal in committee represents the first time in any United Nations conference that an important substantive matter has passed without the support of any of the five permanent members of the Security Council. I wish the House could see the picture as I saw it with the United Kingdom, the United States, China, France and the U.S.S.R., together with all their friends over whom they have influence and exercise persuasion, massed against Canada, India, Mexico, Libya and many of the newer and younger nations reaching out for some claim to fish in the waters off their coasts. I wish hon. members could have been there to see the little nations, in spite of all the pressure of the five permanent members of the Security Council united on one side of a very important substantive issue, mustering a majority. I believe that is the first time the five permenent members have been defeated when they were on one side of an issue.

Although the Canadian proposal was rejected in the plenary session, a new concept of international law has been introduced which must surely be taken into account in any future consideration of this question. In the early stages of the conference the United States of American supported the Canadian proposals. Later, however, the United States Delegation

introduced a proposal of its own for a 6-mile territorial sea with an additional fishing zone. The fishing zone in the United States proposal, however, was not exclusive because it granted so-called traditional rights in perpetuity in the 6-mile zone.

The United Kingdom had introduced earlier a 6-mile territorial sea proposal which was in reality a 3-mile territorial sea with an addition 3-mile fishing zone. The Canadian Delegation made every effort to accommodate these two important and friendly partners. As a matter of fact, it was very much because of our concern over the defence aspects so far as the United Kingdom and the United States were concerned that we originally introduced the proposal for a 3-mile territorial sea and 9-mile fishing zone instead of a straight 12-mile territorial sea.

It was very disappointing when first the United Kingdom and then the United States abandoned the 3-mile rule after we had made such efforts to accommodate them, and after this development the Canadian Delegation felt justified in converting its proposal into a 6-mile territorial sea with an additional 6-mile fishing zone, the form in which it received a majority in the committee vote, in an effort to reach general agreement. Therefore, Mr. Speaker, in the final analysis the central issue before the Conference was not whether there should be a fishing zone but whether it should be subject to existing traditional rights as proposed by the United States or whether it should be exclusive and without impediment as proposed by Canada.

It is quite evident that the Canadian proposal had a tremendous impact on the Conference. Without this concept there would have been no hope whatever of agreement because of the basic conflict between those states interested in coastal fishing rights and those interested in maintaining the maximum freedom of the high seas. This question remains unsettled for the moment, but it has not been forgotten and is still under very active international consideration. I might point out in this connection that the Conference adopted a resolution put forward by Cuba in these words:

--to request the General Assembly to study at its thirteenth session (1958) the advisability of convening a second international conference of plenipotentiaries for further consideration of the question left unsettled by the present conference.

It is felt in New York, Mr. Speaker, that the Canadian Delegation will press for a second conference to be held at the earliest possible date to carry on the consideration of this question. I think it is safe to assume that any solution ultimately arrived at will incorporate the Canadian fishing zone concept in one form or another. At any rate, the Canadian position remains that the concept of an exclusive fishing zone should be adopted, and our efforts will be directed to this end. Agreement on a regime of law is very important to us,

and to all countries. Without it, conflict and disagreement are inevitable, with dangers to the peace and welfare of all countries.

I believe, Mr. Speaker, that agreement can be reached, and when it is achieved Canada will have played a significant part in reaching it. In closing, may I repeat that in spite of the fact that the questions of the territorial sea and the fishing zones have not yet been completely resolved, the Conference on the Law of the Sea can be regarded, both from the Canadian viewpoint and from the standpoint of strengthening international relations, as a most significant milestone.

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