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LAW OF THE SEA CONFERENCE -- II

A Statement to the Standing Committee on External Affairs and National Defence by the Secretary of State for External Affairs, the Honourable Allan J. MacEachen, Ottawa, May 22, 1975.

The Canadian Government and I, and I think the other ministers who were present, are generally pleased with the progress made in attaining most of the objectives that the Canadian Government had set down at the Geneva session of the Law of the Sea Conference. As you know, towards the end of the conference, the chairmen of the three committees were designated to produce a negotiating or unified text, which text was tabled on the last day of the session. Each of these chairmen worked on his own, obviously drawing upon the discussions that had taken place, and on the last day the work of these three chairmen appeared in the form of a unified text that is now to be the negotiating text at the resumed session of the Law of the Sea Conference. So that now the conference has advanced to the point where there is a text ... to which the delegates will address themselves and upon which they will work. This is now called the unified text, or the negotiating text, and it is upon this text that I am giving some impression.

The text demonstrates the fact that there has now been sufficient development of new principles of international law to permit some radical departures from the pre-existing traditional principles of the law of the sea. On fisheries the progress has been dramatic. Most countries have agreed on the new conception of the economic zone, which is neither territorial sea nor high seas, as the key to an accommodation between the interests of the coastal states, on the one hand, and the distant-water fishing states, on the other.

Canada's position has always been that the economic zone must be exclusive in that a coastal state must have complete management rights over fisheries in the zone, coupled with the right to reserve to itself as much of the allowable catch as it has the capacity to take. At the same time, the economic zone must be a shared-resource zone in the sense that the coastal state should allow other states to harvest stocks surplus to its needs under coastal-state control and regulation. There appears to be a basis of agreement emerging on just these principles.

Of particular importance to Canada is the inclusion of a provision in the negotiating text on anadromous (salmon) species whereby fishing

for salmon would be confined to the economic zones only, except where this would create economic dislocation for a state other than the state of origin. The text clearly recognizes the primary interest and responsibility of the state of origin in the anadromous stocks.

This, I think, is a very important development because we had been fighting, so to speak, an uphill battle in promoting the interests of this species of fish, this anadromous species, and, therefore, the fact that it has found its way into this text is of great importance to Canada.

The economic zone should, in Canada's view, also include coastal-state jurisdiction for the purpose of preserving the marine environment. Unfortunately, the negotiating text does not clearly accord to coastal states the right to set national standards in the economic-zone area but only within the territorial sea, with respect to vessel discharges and operations. As to the enforcement of rules for the prevention of pollution from ships, the negotiating text does not go as far as we should have wished in according a role to coastal states as well as to flag states. However, so far as the rights to establish vessel construction, manning and equipment standards in Arctic waters are concerned, the language of the negotiating text makes it clear that the exercise of such rights is in no way contrary to the draft convention and that there is no restriction on such regulatory powers in those areas.

That is another, I believe, important matter from the Canadian point of view.

The single text has adopted the basic conception of transit passage, as advocated by the major maritime powers, as the regime applicable to navigation through international straits. Canada would have preferred to see passage through such straits subject to stricter controls on the part of the coastal states involved. However, the provisions define the straits as only those that are used for international navigation and exclude straits lying within the internal waters of a state. As Canada's Northwest Passage is not used for international navigation, and since Arctic waters are considered by Canada as being internal waters, the regime of transit does not apply to the Arctic and we are therefore able to continue to enact and enforce pollution-control regulations in that area.

Canada's long-standing position that it exercises sovereign rights over the continental margin both within and beyond 200 miles is fully reflected in the negotiating text. At the same time we are conscious of the need to work out equitable arrangements with

respect to those countries that either are land-locked or do not have a continental shelf.

Consequently, we are prepared to explore, prior to and at the next session of the conference, the possibility of financial contributions related to the resources of the continental shelf between 200 miles from shore and the seaward edge of the continental margin.

This idea is also reflected in the negotiating text. This, of course, has reference to the conception of revenue-sharing that has been raised at the conference, and at one stage the Canadian delegation was authorized by the Government to consider and explore this question of financial contributions.

There are, of course, many other important issues referred to in the more than 300 draft articles in the negotiating text. In summary, however, I can say without hesitation that this round of work, or negotiations, in the conference has made great progress. We had hoped that it would be possible to make even further progress. While a unified text has been produced, which can provide an extremely useful basis for future negotiations, it has no legal status yet and will not of itself constitute the proposed convention. Considerable negotiation is still required. Under these circumstances, as I have said several times in the House, the Canadian Government, like many others represented at the conference, will be making a very careful appraisal of the results of the conference with a view to determining what further action should be taken to promote the future development of the international law of the sea.

The Canadian Government will be in the forefront of those attempting to develop equitable and rational solutions to the wide range of problems which we hope will be finally solved by the conference at its next session, which we hope will be held early next year.

I think that, if we were not so vitally concerned about the fisheries as we are, we should generally feel that great progress had been made, and probably, if we were able to establish internationally the regime for the fisheries envisaged in the negotiating text, we would have no real worries. Because of the possible time-lag in the ultimate signing of a treaty or a convention which would cover the fisheries, we obviously are considering and appraising what steps we might take prior to that possibility, or that eventuality.

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