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PROGRESS TOWARDS INTERNATIONAL AGREEMENT ON LAW OF THE SEA

From a Statement by the Secretary of State for External Affairs, the Honourable Allan J. MacEachen, to the House of Commons Standing Committee on External Affairs and National Defence, Ottawa, May 11, 1976.

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The Third UN Conference on the Law of the Sea has just concluded its fourth session in New York, and it is my considered judgment that it has achieved significant progress in most areas of its mandate. There may remain a number of important issues that will require further negotiation before full success is achieved, but the new negotiating text produced by the chairmen of the conference is a considerable improvement over last year's draft.

Let me review briefly developments as they affect the main issues the conference seeks to settle and their impact on Canada's interests.

The first part of the new text deals with the range of complex and radically new concepts that are being developed in order to regulate future activities in the international seabed area beyond the limits of national jurisdiction. It now provides, in my view, many of the basic elements necessary for a true accommodation of interests between developing and developed countries. Whereas the articles drafted in Geneva last year were regarded by the technologically-advanced countries as impracticable, the new text represents a more realistic approach to the problem. At the same time, the concept that the international area will be the "common heritage of mankind" and not an area of renewed colonial expansion has been given more specific and concrete meaning through a series of new draft articles and technical annexes covering a wide range of issues. Admittedly, a number of developing countries have reservations about the new text as they have yet to be fully satisfied that their interests and aspirations are adequately met by the far-reaching provisions of this new draft. Canada places high importance on the satisfactory resolution through further negotiations of the remaining contentious issues. These include some of direct interest to Canada, such as the composition of the proposed council, and more particularly the formula for production controls that would relate seabed to land-based mineral production.

The second part of the new text deals, among other questions, with the "economic zone" concept, a concept we regard as the foundation-stone of any successful Law of the Sea Conference. In spite of the many attempts made by certain groups -- notably the landlocked and "geographically-disadvantaged" states and some of the long-distance fishing nations -- to erode the very nature of the "economic zone", the concept has emerged unscathed and is now firmly entrenched in the consensus that is reflected in the revised Single Negotiating Text. This means that Canada would acquire sovereign rights over living resources (that is, fisheries resources) out to 200 miles, would maintain its sovereign right over the resources of the continental shelf out to the edge of the continental margin, and would have recognized in specific treaty language its right to preserve the marine environment and control scientific research.

On fisheries, the basic compromise reflected in the original Single Negotiating Text accommodated all essential Canadian interests, and has re-emerged intact in the revised text. In fact, there were very few changes to the fisheries articles, and these were mostly editorial in nature, including the change we thought about to the Anadromous Species Article to correct certain editorial problems that had found their way into the original Single Negotiating Text. The most difficult issue that remains to be resolved is the question of rights of access by landlocked and "geographically-disadvantaged" states to the fisheries within the economic zones of coastal states in the same region or sub-region. The revised Single Negotiating Text contains provisions on this subject that will require further negotiations. They contain no provisions that would materially derogate from Canada's sovereign rights over fisheries in the future 200-mile economic zone, nor should we be prepared to accept such derogation in future negotiations.

With respect to the continental shelf, the previous affirmation of coastal states' sovereign rights to the edge of the continental margin was confirmed, together with the concept of revenue-sharing in respect of the seabed resources found between the 200-mile limit and the edge of the margin.

Canada was extremely active in New York in the debate on the preservation of the marine environment. The basic Canadian approach is reflected in the revised Single Negotiating Text on this subject, whereby the draft articles establish an umbrella convention laying down fundamental treaty obligations to preserve the marine environment. The original Single Negotiating Text was already in large measure acceptable to Canada, but it was particularly deficient, in our view, on the subject of the control of pollution from ships. It provided very limited powers to coastal states over ships found in

the territorial sea, economic zone, or in ports (in respect of violations committed elsewhere). The revised Single Negotiating Text contains major improvements. It moves some appreciable way towards striking the balance between, on the one hand, the rights and duties that coastal states, flag states and port states must have to control pollution from vessels, and, on the other hand, the need to maintain freedom of maritime commerce and communications.

Canada has also been seeking a provision in this section of the convention that would provide international recognition that Canada has the right to protect the Arctic marine environment by the imposition of higher vessel-source pollution standards than those agreed to internationally. The revised Single Negotiating Text contains such a provision. The formulation that now appears has been discussed by the states most directly concerned and will, we hope, provide a basis for general agreement.

From the Canadian point of view, the revised Single Negotiating Text articles on preservation of the marine environment still need further refinement. Canadian efforts have made a major contribution to bringing the text to its present form, and we shall continue to provide leadership in further redrafting, to protect not only Canada's own marine environment but the oceans as a whole.

The articles in the revised text on marine scientific research provide, in our view, a large measure of protection to vital coastal-state interests in the economic zone and on the continental shelf, while at the same time ensuring that important international interests in promoting and co-operating in research programs are not impeded. While there will still undoubtedly be some further revisions and changes at the next session, I believe we have a good basis for an eventual compromise on this issue. Likewise, the articles on transfer of technology provide that states shall co-operate in providing the developing countries with the scientific and technological capability they need for the utilization and management of their marine resources and the protection of the marine environment. At the same time, the text recognizes that this co-operation must have proper regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of marine technology.

In my statement to the conference on April 12, 1976, I stated that Canada supported the inclusion of comprehensive dispute-settlement procedures in the convention. I also stated that these provisions must be compatible with the rights and duties of states, particularly within the economic zone; similarly, I stated that these provisions must be based upon a reciprocity of interests of all states, and should not simply stress dispute settlement on matters of interest

to one group of states.

The new Part IV of the Single Negotiating Text on the settlement of disputes appears unduly complicated and will require refinement and simplification. Since dispute settlement was discussed for the first time in the plenary session of the conference in April of this year, it remains one of the outstanding issues upon which negotiation will begin at the next session of the conference. The Canadian delegation will, of course, be actively engaged in these negotiations.

Canada, therefore, has good reason to be pleased with the results of the conference. Unfortunately, the conference was not able to conclude its work. It is encouraging, however, that a further session will be held within a relatively short space of time in New York, beginning August 2 and extending until September 17.

...I have attempted to draw some comparisons between the new revised Single Negotiating Text and the previous Geneva negotiating text in order to provide some indication of the measure of progress achieved at the New York session. I think, however, that members of this Committee should be aware that the real significance of the New York negotiating text is that it reflects the great distances already travelled and maintains the needed momentum in the development of radical new concepts in international law. Canada, together with other states, set out to restructure some of the basic concepts of international law because of our conviction that they no longer reflected the needs of our times. I can say to this Committee that, whatever occurs in the next session of the conference and whether or not the conference concludes in success or failure, radical changes are being effected in international law as a result of the multilateral negotiating process that has occurred within the conference.

I think that members will agree from what I have said that now is the time to intensify our negotiating efforts at the conference. Our goal of establishing a sound legal régime for the world's oceans is worth this effort.

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