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LAW OF THE SEA CONFERENCE  
RESUMED SEVENTH SESSION, NEW YORK  
August 21 - September 15, 1978

Assessment by Canadian Delegation

The resumed seventh session of the Third United Nations Conference on the Law of the Sea convened in New York from August 21 to September 15, 1978. Although the final results did not entirely fulfill expectations, an important measure of progress was achieved and all delegations remain firmly committed to a new Law of the Sea treaty. The work programme in New York resumed where it had left off in Geneva at the end of the first part of the Seventh Session in March/May of this year. A constructive, businesslike atmosphere pervaded the resumed session and by eschewing doctrinal polemics and concentrating objectively on detailed aspects of the international seabed mining regime, the Conference was able to build on the progress achieved in Geneva. Thanks to the intensive discussions in the negotiating groups, the essential elements of a final compromise package concerning the remaining hard core issues have been clearly identified. But having isolated the most difficult remaining questions, the Conference still has exacting negotiations ahead before final agreement on a comprehensive treaty is possible.

This session must be seen in the overall context of the Law of the Sea Conference. Over the course of seven sessions, 150 countries have been engaged in a process of international law-making of a magnitude and importance unprecedented in diplomatic history. The Conference has already a remarkable record of progress to its credit. It has virtually concluded work on most of the elements of a new international oceans regime. Many of these elements are of direct significance and benefit to Canada as well as to the successful outcome of the negotiations. The regime for the 200-mile exclusive economic zone incorporated in the negotiating text has already had an important impact on state practice, particularly in respect to coastal state management of fisheries resources in adjacent waters. The 12-mile territorial sea is now an accepted legal norm. Provisions included in the negotiating text with regard to the concept of archipelagic waters and the regime of passage through such waters and through straits used for international navigation are now generally accepted by delegations. A comprehensive and balanced system for the protection of the marine environment with particular emphasis on vessel-source pollution is embodied in the negotiating text,

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including an article recognizing the right of states to adopt special provisions for the protection of the marine environment in ice-covered waters thus providing important evidence of international acquiescence in Canada's Arctic Waters Pollution Prevention Act. Significant progress has been made in formulating a production ceiling formula designed to ensure a balanced development of both land-based and seabed sources of nickel. At the Geneva session, major progress was realized on other seabed mining issues as well as on the question of the right of access of landlocked and geographically disadvantaged states to the living resources of the exclusive economic zone and on a system of third party adjudication or arbitration of disputes arising out of the application of a law of the sea treaty.

What now remain are the most difficult issues, particularly with respect to the detailed aspects of the parallel system of mining deep seabed resources, and these matters are taking more time to resolve.

Priority in the work programme at the resumed Seventh session was given to aspects of the international system of deep seabed mining, protection of the marine environment, definition of the outer edge of the continental margin and boundary delimitation.

Committee I discussions on seabed issues can best be characterized as modest in terms of consensus achieved in specific areas but encouraging to some degree in view of the extent and depth of negotiations on a range of detailed seabed mining texts. At the political level, the most serious problem remains the serious rigidity of differences between the European Community and the Group of 77 on substantive issues. The Canadian delegation has urged the importance of maintaining the LOS negotiating process which has proved so effective to date and pointing out the serious consequences of an absence of a LOS treaty and of a Conference failure for North-South relations in particular and to the world community at large.

The most significant development in Committee I negotiations has been the presentation of a text on financial arrangements by the Chairman of Negotiating Group 2 (Koh/Singapore) which sets out figures for financial arrangements as between seabed operators and the International Authority. The texts contain basic provisions for a combined system of profit-sharing plus a deductible production charge. On a system of exploitation, the draft text presented by the Chairman of Negotiating Group One (Njenga/Kenya) on Annex II (contract granting system) of the ICNT contains few changes. This is largely the result of the difficult

technical nature of the issues and of the complex inter-relationship between Annex II and the basic exploration/exploitation system contained in the ICNT; it has been impossible to achieve consensus on these areas in the limited time available and therefore the Chairman has wisely taken a cautious approach in maintaining the ICNT Annex II, introducing some modest improvements at this point and hopefully leaving the way open for a more substantive revision of Annex II at the Eighth Session.

Revised texts on subsidiary organs of the Authority, presented by the Chairman of Committee I (Engo/Cameroon), reflect the consensus and appear to be largely non-controversial, embodying two subsidiary organs (Economic Commission and Legal and Technical Commission) with streamlined procedure and functions respecting each.

Pending or planned unilateral seabed mining legislation prompted expressions of concern by the Group of 77 and other countries regarding the potentially serious implications for UNCLOS of such action. At the final plenary, the Group of 77 made a strong condemnatory declaration on this subject, stating that it was contrary to customary international law and relevant UNGA resolutions and would disrupt UNCLOS negotiations. Consistent with earlier Canadian statements, the Canadian delegation, while recognizing and sympathizing with the pressures on industrialized countries to enact such legislation, urged patience in light of the tremendous progress already achieved by the Conference on a wide range of issues. Canada draws a distinction between the right to develop ocean technology and deep seabed activities directed to that end in the absence of a treaty and the actual exploitation of the seabed in the absence of a treaty; the Canadian Government supports the first kind of activity but does not support unilateral action of the kind intended in present circumstances.

The most significant concrete progress achieved thus far at the resumed session has been in the field of the preservation of the marine environment, an issue on which Canada has consistently taken the lead. A list of proposed amendments to the ICNT which offer a substantial improvement to the existing vessel-source pollution provisions have attracted substantial support. As a result of Canadian initiatives, one of the proposals that was accepted strengthens coastal state boarding and inspecting powers in the case of a violation of pollution laws in the economic zone. The other improvements relate to the regional setting and enforcement of pollution laws as a condition of port entry,

the investigation and detention of foreign vessels, and coastal state measures relating to the avoidance of pollution from maritime casualties. It was generally recognized that developments at this session have taken the Conference a significant step toward the successful completion of negotiations on the subject of marine pollution.

On another issue of critical importance to Canada, the definition of the outer limits of the continental margin, there has still been no breakthrough towards final agreement. Notwithstanding steadily expanding support for the Irish formula, employing criterion based on the natural features of the continental margin, efforts to achieve a compromise have been complicated by the unwillingness of the Soviet delegation to withdraw its formula which would impose an arbitrary 300 mile limit on coastal state claims to the continental margin. The question of the definition of the outer limits of the continental margin is closely linked to the issue of revenue sharing in respect of the exploitation of the margin beyond 200 miles for the benefit of developing countries. Wide margin countries have indicated that they will study a revenue sharing formula provided that it does not prejudice the sovereign rights of coastal states to their continental margin. Acceptance of such a formula would be conditional on the acceptance of the Irish formula by the Conference. This item will require more intensive negotiations before a solution can be found.

On the question of delimitation of marine boundaries between opposite or adjacent states, there is still a sharp difference between, on the one hand, those countries insisting on the principle of equidistance and on the other hand those contending that the criteria for delimitation should be equitable principles. However, after intensive discussions in the negotiating group, the Chairman, Judge Manner of Finland, indicated that any text on marine boundary delimitation should contain balanced references to equidistance and equitable principles as criterion for delimitation. Such an approach could conceivably be the basis for a compromise text when this matter is again considered at the next session.

The Drafting Committee chaired by Ambassador Beesley has met frequently during the resumed session and work on polishing the text is well advanced. The fact that it is already producing concrete results is in itself a measure both of the degree of progress achieved and of the confidence which many delegations have in the formulation of final comprehensive convention.

The Conference will recommend to the United Nations General Assembly that an eighth session be convened in Geneva in March 1979 for a period of six weeks. A decision on further sessions will be deferred until the Eighth Session. A number of delegations expressed impatience at the seemingly interminable negotiating process. And while there was disagreement as to whether a rigid target date should be set for adoption of a draft treaty, there was general agreement that general objectives as to the future work programme are highly desirable. There was a strongly held feeling that every effort should be made to conclude the negotiating process during 1979 and to revise the ICNT with a view to the adoption of a draft treaty in 1980.

Against the background of the tremendous progress already achieved over the past 4 years and in light of the critical importance to Canada of the issues still outstanding, notably, a production ceiling for deep seabed mining and a formula for defining the seaward edge of the continental margin, the Canadian Government remains firmly committed to a positive outcome of the negotiations which will ensure full protection for Canadian mining and marine interests, a balanced legal order of the oceans and a more stable and peaceful world.

Legal Operations Division.

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