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CONFERENCE ON THE LAW OF THE SEA

An Address by the Secretary of State for External Affairs, the Honourable Mitchell Sharp, to the Canadian Institute of International Affairs, May 3, 1974, Saint John, New Brunswick.

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The theme I have chosen for my talk to you this evening is the forthcoming Law of the Sea Conference, which will begin next month in Caracas. This conference is perhaps the single most important international meeting to take place in many years. Behind the legal codification of a new international régime for the territorial sea, the continental shelf and the areas of the sea and seabed beyond these, lie all the great problems of global co-operation and organization on which our very survival on this planet depends.

I have mentioned the World Population Conference in August, where, for the first time, will be examined the implications of the tremendous growth of the world's population during this century, and especially since the Second World War. A related conference, on world food problems, will take place in Rome in November. The United Nations special session on resources that has just concluded looked at the problem of food and other raw materials from another viewpoint: the impact on development of the disruption of the international trade and monetary system due to the recent sharp increases in the prices of a number of commodities, especially oil.

All these conferences are concerned with one fundamental problem: the growing pressure of demand on the finite resources of this world. At the forthcoming Conference on the Law of the Sea, an attempt will be made for the first time to regulate and divide equitably the resources, both living and mineral, of a huge area of the earth. The seas and oceans occupy about 70 per cent of the earth's surface. Its riches and its limitations are only beginning to be understood. But already the limitations, the finiteness of the sea's living resources and of its absorptive capacity for pollutants, have become all too apparent.

I do not think that I can overstress to an audience of Maritimers the importance of the sea, its protection and the orderly management of its bounty. The early settlements in this region and your livelihood over the centuries have been bound up with it and the water-borne commerce of Canada entering the outward-bound through your ports. The outcome of the Caracas conference will have a particular and direct bearing on the future development of the Maritimes.

The conference will be drafting texts of international conventions in much the same way that many past conferences have done. The great difference will be the codification of concepts for the management, regulation and establishment of a joint world ownership of a vast part of the globe. This is something very new and very important in the growing interrelations of countries and continents. If the conference succeeds in its work, the world will have taken an enormous step in the direction of working out collectively the responsible global exploitation, use and conservation of world resources.

To accomplish its work, the conference, which will meet throughout the summer and probably again in a further session, will address itself to several broad areas of common concern:

- -- the breadth of the territorial sea;
- -- the further area of national jurisdiction - the so-called economic zone or patrimonial sea;
- -- the water and seabed area beyond the limits of national jurisdiction and concept of "the common heritage of mankind";
- -- navigation in the different zones and areas of the sea;
- -- fisheries and their conservation;
- -- the protection from pollution of the marine environment.

Not only the Maritimes but all Canada has a strong and direct interest in the outcome of the conference in each of these areas.

Territorial sea

For centuries, the distance of a cannon shot, the classical three miles, was the accepted limit of the territorial sea. By 1958, however, it had come to be recognized that, with the advance in technology of all sorts, including the speed of ships, modern

communications, the numbers of ships entering and leaving busy ports, the growing efficiency of distant fishing operations -- and perhaps also the longer range of cannon -- had led many governments to the conclusion that some adjustment was necessary. The 12-mile concept had gained considerable currency, or at least a continuous territorial sea and fisheries-protection zone beyond three miles out to 12 miles. Canada, with its important traditional fishing interests, put forward such a compromise at the 1960 conference. The 1958 conference, which had achieved an important success on the continental-shelf question, had failed to reconcile the different points of view on the limits of full sovereignty.

The 1960 conference also failed to come to a conclusion, but only by one vote. Since that time, a number of countries have taken unilateral decisions on a 12-mile limit.

In 1970, Canada, for instance, established a 12-mile territorial sea. In the same 1970 amendments to the Territorial Sea and Fishing Zone Act, Canada laid down the legislative basis for proclaiming exclusive fishing-zones "adjacent" to its coast. Subsequently, by Order-in-Council, fishing-zones were established on Canada's east and west coasts.

Contiguous economic zone

There is also general agreement that some area beyond the territorial area should be under the jurisdiction of coastal states. The 1958 Continental Shelf Convention gave economic and management rights to the limit of the 100-fathom mark or to the "limit of exploitability" of the coastal shelf. One hundred fathoms was well beyond exploitability on the basis of the technology developed at the time. In the years since the Continental Shelf Convention was drafted, technology was advanced to the point where it can be foreseen that there is virtually no limit, owing to the depth of water, of the area that can be exploited -- if not today, at least in the near future.

Some 148 states with very different geographical dimensions and attributes are eligible to come to Caracas. Of these, 39 are landlocked. Particularly, the latter look with great interest to the conception put forward some years ago by the Maltese representative at the United Nations, Dr. Arvid Pardo. He argued that, beyond the territorial sea and economic zones, the exploitation of the seabed should take place for the benefit of all states. The landlocked states quite naturally wish to limit the economic zone of the coastal states as much as possible. They have put forward the idea of a limited 40-mile zone or one

extending only to the 200-meter isobath -- the old 100-fathom line. This proposal goes back from the "limit of exploitability" conception embodied in the Continental Shelf Convention.

Canada is in the special position of having one of the most extensive continental margins on its east coast, stretching well beyond the 200-mile mark. In some places, Flemish Cap and the Grand Banks, the distance is double and more. However, on the west coast, the shelf runs out barely to 40 miles.

The Canadian position regarding the limits of the continental shelf is based on state practice, on the 1958 convention itself, and on the 1969 decisions of the International Court of Justice in the North Sea Continental Shelf cases, which defined the continental shelf as the submerged natural prolongation of the continental land-mass. On the basis of these three legal foundations, Canada claims and exercises rights over the whole of the continental margin, including the continental slope and rise as well.

Just as the coastal states have a natural advantage over the land-locked countries, so inevitably will the Maritimes have a special advantage, through the simple fact of geography, in the on-shore storage and processing of the resources from the adjacent seabed area. But, if the Maritimes and other coastal areas have this advantage, it also follows that Canada as a whole must in some way, through federal action, share in the benefits of this new extension of the area of national jurisdiction. We have here an analogy with the position of the landlocked states in sharing, under the Maltese formula, in the "common heritage" of the sea.

Common heritage of mankind

The matter of national limits of jurisdiction over seabed resources became particularly important with the introduction of Dr. Pardo's resolution at the United Nations in 1967. This resolution led to the establishment of what became the United Nations Committee on the Seabed. The Maltese proposal called upon the United Nations to examine reserving the seabed and ocean floor and its subsoil, beyond the limits of national jurisdiction, "exclusively for peaceful purposes... and the use of their resources in the interests of mankind". The 1970 Declaration of Principles Governing the Seabed confirmed that there is an area of the seabed and ocean floor beyond the limits of national jurisdiction that constitutes the "common heritage of mankind", and which is not subject to national appropriation or claims of sovereignty. Thus, attention was focused on the crucial question -- what are the "limits of national jurisdiction" over seabed resources?

Simultaneously, with the definition of an outer limit of national rights over offshore minerals, the powers of the proposed International Seabed Authority must be defined.

The developing nations would like to see all mineral-resource exploration and exploitation activities in the international area, including scientific research, to be carried out by the International Seabed Authority and not by individual states. However, many now recognize that the high cost of seabed exploration and exploitation would be beyond both the financial and technical means of the Authority alone, at least at first. Accordingly, some are coming around to the view that joint ventures and other forms of collaboration between the Authority and individual contracting states may be necessary. Several developed countries, on the other hand, want a simple licensing scheme, allowing them to go ahead on their own with the Authority's role largely confined to issuing and registering the necessary licences. I can, however, foresee Canada playing an important role in the building up of the technical resources of the Authority.

Once again, Canada advocates an accommodation of national interests on this delicate but highly important issue. The role of the International Authority must be defined in a way that helps narrow the gap between the "have" and "have-not" countries. In the Canadian view, there should be a "mix" of licensing and sub-contracting by the Authority, as well as direct exploitation by the Authority itself when it acquires the means and know-how. It would seem illogical, however, for Canada, with its program of development assistance, which is among the most extensive of any, not to give the Authority every support so that it could in time become an important source of material and financial assistance to the developing countries.

Some developed countries will soon have the technological capability to extract and process certain mineral resources of the seabed for commercial purposes -- the much-publicized manganese nodules. Indeed, a number of U.S. and other companies are said to be ready to move to the exploitation stage within two or three years. This possibility arouses strong concern on the part of developing nations.

Canada, along with most developed countries, was unable to vote in favour of a moratorium resolution put forward in 1969 by the developing countries, believing that it would unduly restrict technological progress and cause an unacceptable delay in making these resources available to all.

Of special concern to Canada is the high nickel content of the manganese nodules that have been found in quantity in certain parts of the seabed. Canada is the world's largest producer and exporter of nickel, and also exports copper and cobalt. We cannot ignore the impact that mining of the nodules could have on our economy. Canada is not alone in this position; for example, Zambia, Chile and Zaire, all with large copper outputs, have a comparable interest. Therefore, Canada is pressing for an orderly regime for the development of the international seabed area, under which the law will keep up with technology, and the abyssal seabed resources will truly benefit all mankind.

Navigation

The increased jurisdiction being proposed or already claimed by coastal states has given rise to conflicts with the navigation interests of major maritime powers. On the resolution of these conflicts, more than anything else, may hinge the success of the Law of the Sea Conference. As I have said, the majority of states already claim a 12-mile limit for the territorial sea. The coastal state exercises full sovereignty over this area, but must permit foreign vessels innocent passage through it. Submarines must surface in another nation's territorial sea and warships must cover their guns. Passage is "innocent", according to the 1958 Convention on the Territorial Sea, if it is not prejudicial to the peace, good order and security of the coastal state. If the coastal state decides that passage is prejudicial on these grounds, it may take action to stop it.

But can the passage of a polluting ship be innocent? Should Maritimers or British Columbians be forced to stand helplessly by while a passing vessel contaminates the shores on which they live? You have had sufficient unpleasant experiences already to understand the serious economic, social and recreational damage even a relatively small spill can cause.

Canada maintains that "environmental integrity" is as valid a conception as "territorial integrity", and that every state has the right to protect itself by legitimate means against acts of what might be called "environmental aggression". Canada asserts that a coastal state can suspend the passage of a foreign vessel through its territorial sea where a serious threat of pollution is involved. We shall seek to have this right explicitly confirmed in international law. On this point we are opposed by major maritime powers, who fear that such an interpretation of innocent passage would entitle coastal states to interfere unduly with the movements of their naval and merchant vessels.

Another area of conflicting views is the right of passage through straits used for international navigation. On the one side, there are the military and commercial concerns of the major maritime powers, who would like a "free transit" conception to replace "innocent passage", now that many of the world's most important straits such as Gibraltar and Malacca will become territorial waters through the adoption of the 12-mile rule. The strait-owning states oppose this concept and insist on the continuation of "innocent passage" to protect their security and their environment.

Canada looks favourably upon the development of the archipelagic waters theory, which is closely related to the straits issue. This has been put forward by the states composed of many islands, such as the Philippines, Indonesia and Fiji. Even though it does not apply directly to the Arctic archipelago, which is a coastal one adjoining a large land-mass state, it appears to be a move in the right direction, at least so far as economic jurisdiction is concerned. The thorny issue of transit through straits and archipelagos will doubtless cause major difficulties at the Conference.

Fisheries

In 1609, the renowned Dutch jurist Hugo Grotius wrote:

> "Most things become exhausted with promiscuous use. This is not the case with the sea. It can be exhausted neither by fishing nor by navigation, that is to say, in the two ways in which it can be used."

This statement is no longer correct on two important counts. But for some 350 years it accurately summed up the relationship of man and the sea. Any politician must agree that being considered right for that long is a highly enviable reputation. But Grotius underestimated both mankind's energy and ingenuity. There are certainly more than the two traditional uses of the sea that he cites. Also, and very troublingly so, we know that the sea <u>can</u> be exhausted by the indiscriminate use of modern fisheries techniques. The last years have seen the developments of methods of fishing that resemble vacuum-cleaning more than anything else. As ancient and vast as it is, the sea cannot indefinitely be abusively exploited. Like everything else in our world, it has its limits. Human technology can now fish whole species to virtual extinction.

With an expanding world population and an ever-increasing demand for protein, the living resources of the sea become daily more important. Long-range "factory" fleets go to sea for months at a

time, equipped with self-contained processing and freezing plants and sophisticated fish-detecting equipment, hunting hundreds and even thousands of miles from their home waters. These fleets are well known in the waters off our coasts.

But the end to expansion is in sight. In the foreseeable future, all major fish stocks useful to man will be exploited to the maximum these stocks can bear, or even beyond. With unrestricted competition for these scarce resources, overfishing and consequent reductions in yields would inevitably follow. Already in some of the world's most valuable fisheries, such as herring, the declines have set in. For some species of whale, overfishing has caused such a serious depletion that 50 years will be required to assure their restoration. In this light, there is an urgent need for establishment of management regimes to tailor fishing pressure to the capacity of the resources to regenerate themselves.

It is ironic that, if it had not been for the Second World War, these resources might have reached the depletion point even earlier. The six years that mankind devoted to the destruction of his own species gave a needed respite to the creatures of the sea, and they multiplied virtually undisturbed during that time.

For the coastal fisherman of the Maritimes or of British Columbia, dependent on the stocks that in turn depend upon his home waters, overfishing by others can spell the end of his livelihood. Only by applying management controls, such as quotas and seasonal limits -- for example, during spawning --, can the maximum yield be available each year to coastal fishermen and long-range ships alike.

Perhaps the greatest difficulty in preventing overfishing arises from the "freedom of the high seas" idea. If fishing vessels in increasing numbers can go wherever they please and harvest any stock to the limits of their capacity, two dangerous problems arise:

- conservation becomes impossible, and
- coastal states with foreign fleets on their doorsteps are deprived of a resource on which they depend.

Canada is directly affected by both these problems. With fishing communities on both coasts, we must protect the fisherman's livelihood, as well as the resources on which he depends. Farther from home, proper conservation measures will have to be applied throughout the world, or there will not be enough fish left for

anyone, anywhere. This is becoming strikingly true for the tuna fisheries in the offshore waters of both the Atlantic and Pacific.

Canada's approach to these problems is good management of fisheries, as part of the broader need for management of the whole marine environment.

A consensus appears to be emerging that, within a 200-mile economic zone, coastal states should have exclusive rights over all living resources. This trend meets Canada's main objectives. It would allow the coastal state to have a determining voice in both the management and the exploitation of fisheries resources.

Of course, this 200-mile conception does not entirely cover Canada's needs. There exist off the East Coast large concentrations of fish stocks beyond that rather arbitrary limit. However, I believe it will be possible to marry this zone-limitation with our more functional approach. This approach was designed to provide specific solutions for the specific problems arising from the different life habits of the various types of fish and other comestible marine creatures. What is likely to come out of the conference is a regime that will ensure that the coastal state can take fish to the limit of its capacity. With this right, there would be an accepted system that would provide for adequate management of all stocks by the coastal state. At the same time, other states would be allowed to participate in the harvesting of the surplus available.

There will, of course, also have to be special arrangements to handle special problems, such as the paramount rights of coastal states over what are called the "anadromous" species, like salmon, and other special categories of fish, such as the wide-ranging species, like whales and tuna.

Over the last few weeks, we have had strong indications that such extended jurisdiction for the coastal state will indeed attract the support of a large majority of states.

Protection of marine environment

I am sure all of you share my great concern over the continuing degradation of the marine environment. More particularly, all of us have become acutely aware that indiscriminate utilization of the sea may inflict long-lasting damage upon this environment.

In the search for new sources of food, the world has come to rely more and more on the sea and shoreline, which abound in nutritious living organisms. Maritimers, particularly, also understand the great attraction of the sea environment for health and recreation.

Oil-spills or seepages from the seabed can have disastrous effects. Norms are needed to keep man's activities in, over, below or on the sea within acceptable limits. One should, however, bear in mind that the pollution of the oceans is primarily caused by land-based sources.

Protection of the marine environment from contamination has so far been discussed in two main international forums: the Intergovernmental Maritime Consultative Organization (IMCO) and the 1972 United Nations Conference on the Human Environment.

Since its inception, IMCO has administered a number of conventions aimed at regulating navigation so that it will cause as little deterioration as possible of the marine environment. Last year, the IMCO Assembly created a Marine Environment Protection Committee to underline the Organization's growing work in the environmental field.

The 1972 Stockholm Conference elaborated a Declaration on the Human Environment, whose widely-accepted statement of principles may be considered as laying down the foundation for the future development of international environmental law.

A Statement of Objectives Concerning the Marine Environment, which was endorsed by the Human Environment Conference, recognizes the particular interests of coastal states with respect to the management of coastal-area resources.

The groundwork, therefore, seems to be sufficiently advanced for the Law of the Sea to elaborate a legal instrument pertaining to the whole realm of the marine environment -- an "umbrella" treaty that would become the organic link between all existing and future instruments aimed at controlling specific sources of pollution of the marine environment.

The protection and preservation of the marine environment would embrace all sources of pollution, not only pollution from ships but also pollution caused by seabed activities; from land-based sources; through run-offs or through the atmosphere; and that arising from the disposal of domestic and industrial wastes. Regulating the latter will, of course, remain within the purview of individual states.

Canada does, of course, subscribe to the idea that competent international organizations should establish appropriate, stringent standards of universal application against marine pollution.

But Canada, with its long coastline and its very special environmental conditions and physical hazards, considers that coastal states must retain the power to prescribe and enforce their own anti-pollution standards, to the extent necessary, over and above the internationally-accepted rules, not only in their territorial waters but also within their areas of jurisdiction beyond. It is on that basis that Canada adopted in 1970 the Arctic Waters Pollution Prevention Act and related regulations under the Canada Shipping Act.

Pollution control will assuredly be one of the crucial problems to be resolved by the Law of the Sea Conference. Extensions of coastal-state jurisdiction automatically mean restrictions on some of the freedoms still cherished by many of the seafaring nations. But the marine environment is precarious and the disastrous consequences of unchecked abuses are beginning to be understood. Freedoms that have existed heretofore should be balanced by obligations. Of course, there should be guarantees on the part of coastal states not to overreact, not to over-control, so that legitimate activities are not interfered with unduly.

Marine scientific research

Another question that the conference will be looking at is the rules governing research vessels. We recognize the need for intensifying world-wide research into the many secrets of the sea. Mankind is on the threshold of much greater involvement with the ocean areas of the planet, as population pressures and need for resources impel us into this vast new frontier region.

Knowledge of what it contains must be shared, and also put at the disposal of the Seabed Authority. But research also has commercial, economic and security implications that can give one nation advantage over another. We believe that states should have the right to control and even disallow research activities in waters adjacent to their coasts. Coastal states must have the right to participate in research conducted in areas adjacent to their coasts by foreign states, and must have access to data and samples collected, through prompt and full reporting of results and their effective dissemination.

With all these complex problems before it, we can have no illusion that the conference will be an easy one, or that it will readily resolve all the issues before it. But I have been struck by the universal seriousness with which nations have confronted these issues during the long preparatory sessions of the past years.

These meetings, which have ranged from formal conferences to small working groups of like-minded states, have produced a widespread understanding of the range of implications involved in each issue.

I believe that there is a general political will to come to acceptable conclusions, based on a recognition of the importance of success and on the unacceptable risks and dangers of failure.

The Canadian delegation will take a prominent part in working for the success of the conference, as Canada has done at the many preparatory meetings. A great deal is at stake for Canada's future. But perhaps as important is the role of the conference as a demonstration that states have understood the facts of interdependence, not only for the admittedly important reasons of national security and economic well-being but for the overriding requirement of co-operation for our survival on this planet.

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