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CANADA EXTENDS ITS TERRITORIAL SEA

Statement to the House of Commons on April 17, 1970, by the Secretary of State for External Affairs, the Honourable Mitchell Sharp.

The proposed amendments to the Territorial Sea and Fishing Zones Act contain two major provisions: the first would establish the territorial sea of Canada at 12 miles in substitution for the present limit of three miles, and as a result would eliminate the present nine-mile fishing-zone, which would become incorporated within the 12-mile territorial sea; the second would authorize the Government, by Order in Council, to create exclusive Canadian fishing-zones comprising areas of the sea adjacent to the coasts of Canada.

There are a number of reasons why the Government is proposing to extend its territorial sovereignty from three to 12 miles. Basically, the reason is that the limited fisheries jurisdiction which Canada at present exercises over the outer nine-mile zone is no longer sufficient to protect the full range of Canada's vital coastal interests. The 12-mile territorial sea would have the following advantages: (a) It would provide the comprehensive jurisdictional basis which Canada requires to enforce anti-pollution controls outside Arctic waters off Canada's east and west coasts up to 12 miles from the baselines of Canada's territorial sea, rather than merely three miles as at present. (b) It will permit Canada to expedite the conclusion of negotiations with the European countries which have been permitted to continue their fishing activities in Canada's nine-mile fishing-zone. (c) It will further protect Canada's security interests by permitting Canada to exercise greater control over the movement of foreign ships.

The legal *régime* of the territorial seas permits the coastal state to determine whether a particular passage is innocent. This bill extends that right for Canada up to a distance of 12 miles from the territorial sea baseline. All the reasons why a state requires a three-mile territorial sea apply with equal vigour to the 12-mile territorial sea. From the point of view of security, the danger is removed farther offshore and the coastal state can take all measures open to it on its own territory within a wider belt of 12 rather than three miles. Then (d), since the inner limit of the continental shelf is measured from the outer limit of the territorial sea,

the 12-mile territorial sea will have the effect of pushing the inner limit of Canada's continental shelf seawards a distance of nine miles.

The U.S. Government has made clear its willingness to accept a 12-mile territorial sea provided this is achieved by multilateral agreement and not by the continuing development of customary law through state practice. The Canadian Government sympathized with the U.S. desire for accepted rules of law on these questions. Canada has repeatedly shown its good faith in the multilateral approach to these questions by participating vigorously and constructively in every effort in the last 40 years to achieve agreed rules of law on the breadth of the territorial sea and the nature and extent of contiguous zones.

I do not wish to belabour the point, but I would remind the House and the international community that Canada attempted to get agreement first on a three-plus-nine basis -- three-mile territorial sea and nine-mile contiguous zones -- in 1958, and, when this did not prove possible, we campaigned for the famous "six-plus-six" formula comprising a six-mile territorial sea and six-mile contiguous zone for certain purposes. We warned that the law was developing toward wider and wider assertions of territorial sovereignty and that the international community must recognize the legitimacy of extension of jurisdiction beyond the territorial sea for limited specific purposes. Unfortunately, we had only limited and belated success in enlisting the support of the U.S.A. for our proposal.

Later, in 1960, we campaigned very actively for the six-plus-six formula. (We made representations in capitals all over the world through our diplomatic representatives there. Might I point out parenthetically that our efforts then and the exercise in which we are now engaged require the existence of a well-trained foreign service and the presence of Canadian representatives in capitals all over the world, for many reasons, but particularly when we are seeking the support of the international community, as now, for a Canadian initiative.... We are very fortunate in having a foreign service generally accepted as one of the very best in the world....)

It will be recalled that in 1960 our proposed six-plus-six formula fell short of success by a fraction of one vote. We did not, however, even then, abandon the multilateral approach. We joined with Britain in canvassing countries round the world to ask them if, in spite of the failure at Geneva, they would nonetheless join with us in a multilateral agreement based on the six-plus-six formula. We pressed the U.S.A. to join with us in these representations, but the U.S.A. declined.

Subsequently, when, as a result of our extensive and protracted canvassing efforts, we and our British friends found that we had the support of over 40 countries for such a proposal, provided the U.S.A. and other major powers would agree, we approached the U.S.A. again with this evidence. Unfortunately, we were told, after waiting a further period of many months for the U.S.A. reply, that the U.S.A. did not consider it timely or appropriate to join with us in our efforts. I hope it will not be taken as a sign of anti-Americanism but merely as an affirmative sign of Canadianism for me to say that we really are not prepared, in light of these developments, to accept the proposition that it is always desirable to proceed multilaterally instead of unilaterally.

I mentioned yesterday that we decided in 1964 that it was necessary to do it alone, and so we did; we passed the Territorial Sea and Fishing Zones Act laying down the legislative basis for delimiting the territorial sea from straight baselines rather than from the sinuosities of the coast, and established a nine-mile fishing-zone contiguous to our three-mile territorial sea. Subsequently, we established straight baselines over long stretches of our coast. The United States, while expressing its disagreement with our legislation, followed suit in 1966 in establishing its own nine-mile fishery zone. It is, however, a reflection of the close and friendly relations between our two countries that it was agreed from the outset on both sides that the fishermen of either country would be allowed to fish freely in the contiguous zones of the other. This remains the Canadian position with respect to any new Canadian fishing-zones.

There are now in process discussions in many capitals concerning the desirability of a third Law of the Sea Conference, the agenda for such a possible conference and many other difficult and delicate questions. The United States has made known, as has the Soviet Union, that it would be willing to support an agreement providing for a 12-mile territorial sea, a high-seas corridor through international straits and certain limited rights to coastal states over offshore fisheries. As I have stated previously, we shall participate actively in any such conference. We cannot, however, accept the notion that a coastal state's fisheries conservation and protection jurisdiction must cease at 12 miles from shore.

The developments since 1960 have proved that there is no magic in the 12-mile limit. Unlike the deer and bears in national parks, who become aware after a period that they are safe when they enter the sanctuary of the park, the fish do not seem to know that they are safe -- except, of course, from Canadian fishermen -- when they enter the 12-mile limit. Massive fishing expeditions by other states covering the surface of the sea with trawlers and mother-ships are rapidly depleting the living resources of the sea. We cannot wait longer for the international community to realize the danger and move to meet it. Once again, Canada, after long and serious deliberations, has decided to go it alone.

I shall now turn to the question in which all parties have expressed great interest, namely, the implications of the establishment of a 12-mile territorial sea for Canada's Arctic sovereignty. I should like to emphasize that there is no difference of views concerning Canada's sovereignty over the islands of the Arctic archipelago or Canada's sovereign rights to explore and exploit the mineral resources of Canada's northern continental shelf. There is no need even to comment concerning Canada's long-established and universally-accepted sovereignty over the land....

With respect to the seabed, Canada is a signatory of the 1958 Geneva Convention on the Continental Shelf, which recognizes the "sovereign rights" of coastal states over the continental shelf adjacent to their coasts for the purposes of exploring and exploiting its natural resources....

The Convention says that the rights are exclusive in the sense that, even if the coastal state does not exploit them, they cannot be exploited by other states without the express consent of the coastal state itself. The

Convention provides also that the rights of coastal states over the continental shelf do not depend upon occupation, effective or notional, or on any express proclamation. The Convention defines the continental shelf (and this is a point of some importance) as "the seabed and subsoil of the submarine area adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the subjacent waters admit of the exploitation of the natural resources of the said areas". Of particular interest with respect to the Arctic is that, in defining the shelf, the Convention makes clear that it applies also "to the seabed and subsoil or similar submarine areas adjacent to the coasts of islands".

Canada is engaged, in its capacity as a member of a special UN committee on the seabed, in active discussions and negotiations concerning the development of a legal *régime* for the peaceful use, in the interest of mankind as a whole, of the seabed beyond national jurisdiction. Such discussions may inevitably develop into consideration of a new and more precise definition of the area where the new international *régime* is to apply and, thus, where national jurisdiction ends. The Canadian Government knows of no basis, however, for any doubt concerning Canada's sovereign rights over Canada's northern continental shelf, and I feel no need to elaborate further on this issue.

Turning to the status of the waters, Members of the House are aware that the United States Government has publicly called into question the Canadian view that the waters of the Arctic archipelago are Canadian. We respect, of course, the right of the United States to their view, but we cannot and shall not abandon the long-standing Canadian position on this question. The Government was criticized yesterday concerning the possible effects of the Arctic Pollution Prevention Bill and the bill we are now debating upon Canada's claim that the waters of the Arctic archipelago are Canadian.

I referred yesterday to the decision of the Permanent Court of Arbitration in 1910 in the North Atlantic coast fisheries case between Britain and the United States. The subject matter of that dispute was the privileges enjoyed by the inhabitants of the United States, in common with British subjects, to the fisheries of Newfoundland, Labrador and other parts of the North Atlantic coast. In particular, the historic bays of Chaleur, Conception and Miramichi were called into question.

The tribunal referred to the argument of the United States that Britain during the period preceding the hearing of the case had abandoned its claims that these bays were historical, and therefore the three-mile limit should be applied to them. I propose to quote from the decision of the tribunal on this abandonment argument:

> "Neither should relaxations of this claim, as are in evidence, be construed as renunciations of it; nor should omissions to enforce the claim in regard to bays as to which any controversy arose, be so construed."

It is quite clear that, whether or not the Canadian Government chooses to establish at this time its claim to the whole of the waters of the Arctic archipelago by drawing straight baselines from island to island so as to enclose the waters, the facts that this Government does not draw such baselines, and that

previous Canadian Governments have not done so, do not thereby weaken our sovereignty claim.

Similarly, the establishing of a 12-mile territorial sea and the establishment of pollution-control zones in these waters cannot be construed as an abandonment of the Canadian position concerning the status of these waters. I should like to quote again from the decision of the Permanent Court of Arbitration, from which I previously quoted on this issue, as follows:

> "Such a construction by this tribunal may not only be intrinsically inequitable, but internationally injurious, in that it would discourage conciliatory diplomatic transactions and encourage the assertion of extreme claims to their fullest extent."

I have made clear, as has the Prime Minister that we shall not back down one inch from our basic position on sovereignty, but there is no interest on the part of the Canadian Government in the exercise of chauvinism.

What, then, is the effect of the 12-mile limit with respect to the Northwest Passage? It is known that the United States regards the waters of the Northwest Passage beyond three miles from shore as high seas. I think I have already demonstrated the weakness of the legal basis for such an assertion. The 12-mile territorial sea is far too widely recognized for it to be ignored by any state. Indeed, a state that refuses to recognize the 12-mile territorial sea of another state is itself unilaterally opting out of a developing rule of law.

Since the 12-mile territorial sea is well established in international law, the effect of this bill on the Northwest Passage is that under, any sensible view of the law, Barrow Strait, as well as the Prince of Wales Strait, are subject to complete Canadian sovereignty. Whether or not those who disagree with us wish to allege that other waters are not Canadian, they cannot realistically argue any longer concerning these two bodies of water.

The question was asked whether Canada will admit a right of innocent passage through such waters, since the right of innocent passage pertains in the territorial sea but not in internal waters. There is considerable misunderstanding on some of the technical, legal questions involved here. Firstly, it is incorrect to argue that there can be no right of innocent passage in internal waters. The 1958 Geneva Convention on the Territorial Sea and Contiguous Zones makes specific provision for the right of innocent passage through internal waters where such waters have been established as such by means of the straight-baseline system. I do not cite that rule as now applicable to these waters but merely so as to point out that the difference between the *régime* of internal waters, over which a state has complete sovereignty, and the *régime* of the territorial sea, over which a state's sovereignty is subject to the right of innocent passage, is not as clear-cut as is alleged.

There is a school of thought, for example, that the status of the waters of the Arctic archipelago fall somewhere between the *régime* of internal waters and the *régime* of the territorial sea. Certainly, Canada cannot accept

any right of innocent passage if that right is defined as precluding the right of the coastal state to control pollution in such waters. The law may be undeveloped on this question, but if that is the case we propose to develop it. I hope I have said enough about the implications of this bill for the Arctic to allay any fears, real or imagined, about its effect upon our sovereignty....

The fisheries provisions of this bill will provide the Government with greater flexibility for completing the delimitation of Canada's exclusive fishing-zones in those coastal areas where straight baselines have not so far been drawn from headland to headland. These provisions are enabling only; the creation of the proposed new Canadian fishing-zones will require executive action by way of Order in Council.

Under the existing legislation, Canada could not exercise exclusive fishing rights within such bodies of water as the Gulf of St. Lawrence, Bay of Fundy, Dixon Entrance, Hecate Strait and Queen Charlotte Sound. With the proposed amendment, Canada could now, where appropriate, draw what might be called "fisheries-closing lines" across the entrances to these bodies of water and thereby establish them as exclusive Canadian fishing-zones. In this way, Canada would have the required domestic legal basis for managing the fisheries resources of these areas.

The new fishing-zones will be established only where Canada's primary interests relate to fisheries, and in areas where Canada has historic claims. In such areas, the bill would, in keeping with the Government's approach to the question, enable us to separate fisheries jurisdiction from the complete sovereignty which states exercise in their territorial sea and internal waters. This separation of fisheries jurisdiction from sovereignty already underlies the concept of the contiguous fishing-zone which has become an established principle of customary international law, owing in good measure to the pioneering activities of Canada.

In our view, the application of the conception of the exclusive fishing-zone to some or all of the special bodies of water in question is justified on geographic, economic and historic grounds, as well as by the urgent need to provide for the rational management and conservation of fisheries resources. Although the fishing-zone conception is best established with respect to the contiguous fishing-zone extending 12 miles from the baselines of the territorial sea, it is our view that the conception is equally applicable to Canada's special bodies of water.

I must emphasize that the fisheries provisions of this bill reflect our belief that there is an urgent need for bold and imaginative approaches to the problems of fisheries management and conservation and harvesting. So long as there was an abundance of fish for everyone, so long as the living resources of the sea seemed inexhaustible, it was necessary for states to exercise only a relatively limited control over the fisheries adjacent to their shores. With growing populations and technical developments of fishing vessels and gear, which have virtually transformed fishing activities from a harvesting to a mining process, it has become dramatically evident that the resource itself could disappear. The coastal states which depend on this resource have a responsibility to ensure its conservation and to manage it on a rational basis.

Canada was one of the pioneering countries in efforts to bring about international arrangements for the conservation of the living resources of the sea. Since the beginning of this century, Canada has become a party to seven international conventions which, within the scope of their limitations, have been relatively successful but which have failed to bring about a truly effective *régime* for the protection of fisheries resources.

The Canadian Government is convinced, on the basis of its lengthy experience in this field, that neither existing customary international law nor contemporary conventional international law are adequate to prevent the continuing and increasingly rapid depletion of the living resources of the sea. It is for this reason that we propose to extend our fisheries jurisdiction in the manner I have described. It is our expectation that other governments will take similar action since it is only too evident that there is no other effective way of preventing the rapid depletion of the living resources of the sea.

It seems anomalous that, whereas international law recognizes the right of coastal states to control the exploitation of mineral resources and of the so-called sedentary species of shellfish on the continental shelf adjacent to their shores, it has not yet developed an equally effective system for the management of the "free-swimming" fish in coastal areas. A coastal state may licence foreign *entrepreneurs* to exploit the mineral resources of its continental shelf, but so far only a few states have taken a similar approach to controlling the exploitation of coastal fisheries resources.

Now that the world is becoming aware that living resources are not infinitely renewable and that they can, indeed, be exhausted or depleted by over-exploitation or wiped out by means of pollution of the sea, it is vitally necessary to apply to the exploitation of these resources some of the techniques which have been developed for offshore mineral resources. The action now being taken by Canada is a step in this direction, a step toward a more logical and systematic approach to the management of living marine resources.

Exclusive rights to harvest may be necessary, but they are not an end in themselves. The end we have in mind is conservation and rational management, and for this purpose we require jurisdiction. That jurisdiction, however, does not rule out the possibility of sharing fisheries exploitation with other countries; it does, however, allow us to set rules for that exploitation, to impose licensing requirements if necessary and thus to share the financial burden of conservation as well as the financial rewards of exploitation.

Following the establishment of Canada's new fishing-zones, we intend to conclude negotiations for the phasing-out of the fishing activities of the countries which have traditionally fished in the areas concerned -- namely, Britain, Norway, Denmark, France, Spain and Italy. With respect to the fishing activities of the United States in these areas, it is intended that they should continue on the basis of the *ad referendum* agreement on reciprocal fishing privileges we have recently negotiated with that country. Apart from traditional fishing practices, the United States and France also have certain treaty rights off Canada's east coast, and these rights will, of course, be respected.

Before concluding, Mr. Speaker, perhaps I might refer to the note which was delivered to our Ambassador in Washington on Apil 14 and the reply which he delivered yesterday on behalf of the Canada Government. When the question was raised two days ago, I made clear that we had already requested U.S. consent to dispense with the usual diplomatic practice of declining to publish exchanges of notes, but that I should, nontheless, raise the question again. Our Ambassador has since stressed to the State Department the importance of publishing the exchange so as to lay at rest, once and for all, the misinformation appearing in some American newspapers to the effect that the United States note contained threats. I have already assured the House that the note contained no such threats and that the summary of the note published by the State Department accurately summarized its substance.

We have today received the response of Secretary of State Rogers to my proposal that the text of the diplomatic note of April 14 be published. His response is as follows:

> "The Secretary of State regrets that he cannot agree to the proposal of the Canadian Government that we depart from the usual diplomatic practice of not publishing exchanges of notes between governments in the case of our note of April 14, 1970, relating to the introduction by the Canadian Government of legislation on pollution in the Arctic, fisheries and the limits of the territorial sea. Because of the public interest in the matters discussed in the note, the United States did include the substance of its note in its press statement of April 15, 1970."

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