

External Affairs  
Supplementary Paper

No. 53/63 THE CONTINENTAL SHELF  
AND FISHERIES

(Report of the International Law Commission)

Text of a statement made on November 24, 1953, by the Canadian Representative on the Sixth Committee of the eighth session of the United Nations General Assembly, Alan Macnaughton, Q.C., M.P., on the question of the continental shelf and fisheries arising in connection with agenda item 53.

Note: The text of the resolution adopted on this question by the Sixth Committee on November 25, 1953 and results of the voting are to be found at the end of this statement.

The Canadian Delegation has welcomed the division of our debate on the report of the International Law Commission. We are now debating Chapter III of that report which concerns The Regime of the High Seas. We consider that it is proper and in fact necessary to discuss in the one debate the work which the International Law Commission has completed on the three different aspects of this general subject, namely "The Continental Shelf", "Fisheries", and "Contiguous Zone". Although there may not be an immediate and direct connection between these three topics, I think all delegations will agree that the three topics are related and have some connection with one another, and that in a general debate of this kind it is not possible to discuss the effect and implications of articles relating to one without referring at times to the articles relating to either one or both the other topics. They are not entirely distinct or unrelated either in the physical or legal sense. To undertake extensive examination of one topic, without bearing in mind its connection with the others, would be to conduct our deliberations in an atmosphere of unreality. Moreover, the three topics we are now considering are related to other aspects of the Regime of the High Seas such as the territorial sea, superjacent waters, and high seas. My Delegation would therefore have preferred to consider the three items now before us in conjunction with the International Law Commission's recommendations concerning all the other aspects of The Regime of the High Seas. I do not mean by this to criticize the efforts of the International Law Commission or to suggest that its work has been unco-ordinated or unduly delayed. On the contrary, we commend the Commission for the excellence of its work in drafting articles on these difficult and important subjects in such a relatively short time. We think these articles, once approved, constitute a major contribution to the development of international law.

I would first like to make some observations on the draft articles relating to the Continental Shelf. In recent years there have been an increasing number of assertions, proclamations and declarations by different countries with respect to their claims to jurisdiction and the extent of that jurisdiction over their Continental Shelves. Some of these declarations have been moderate and contain terms and language which have precise legal connotations. Others have not been so precise and have given rise to doubts and uncertainty. My Delegation therefore welcomes the efforts of the International Law Commission to draft a formula which would establish a uniform code that could be accepted and applied on a universal basis.

The Canadian Delegation considers that there has been altogether too little time between the publication of the International Law Commission's report and our present discussion. I think most delegations will agree that their Governments have not had sufficient time to consider and study the draft articles and to investigate their full implications. In this connection I would like to point out that the draft report of the Commission which was dated August 12, 1953, recommended in its paragraph 38, "that the General Assembly shall take no action, the report having already been published". In its final and printed form the Commission's report, which incidentally was not made available until a few weeks ago, makes an entirely different recommendation in paragraph 91 and urges that the General Assembly actually approve and adopt the draft articles at the present session. This is an extremely important change in the recommendation of the International Law Commission; in our view it calls for further careful consideration and study by governments. We therefore urge that governments be given more time to fully examine the effect and implications of the draft articles on the Continental Shelf, which are now before us.

Turning to the principles involved in these draft articles I would like to make a few observations on behalf of my Government. The first observation concerns the decision of the Commission not to include a separate article relating to sedentary fisheries. The Commission decided to deal with this matter by providing that the sovereign rights of the coastal states should extend to exploiting natural resources, rather than mineral resources. We think that this decision might give rise to further and unnecessary confusion. For instance how can we reconcile the words "sovereign rights" of Article II, which have an accepted legal meaning, with the view expressed in paragraph 71 of the report that the exclusive rights of the coastal state may not be exercised in a manner inconsistent with existent rights of nationals of other states with regard to sedentary fisheries? Are these "sovereign rights" to be more restricted in the case of such natural resources as sedentary fisheries, than in the case of other natural resources? I am not attempting to suggest that established rights should be denied the normal and customary protection of international law. We do, however, think that this apparent inconsistency can be avoided if the Commission were to reconsider its decision not to propose a separate article on sedentary fisheries.

Our second observation also relates to another potential complication regarding sedentary fisheries. It arises under draft Article 6 which reads: "The exploration of the Continental Shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or fish production". The question may arise whether the intention of the Commission in framing this article was to provide that the exploitation of sedentary fisheries must not result in unjustifiable interference with other forms of fishing. Whether the Commission had this in view, such would appear to be the effect of the present wording. It seems to my delegation that this amounts to a curious and even illogical rule and is probably the result of an attempt to assemble too much under one heading. My purpose in drawing attention to the matter of sedentary fisheries in some detail is not academic. It arises out of very realistic and practical considerations at the present time. My delegation therefore feels that there may be great advantage if further consideration were given to the topic of sedentary fisheries in the light of these observations.

My third observation relates to Article 1 which now limits the Continental Shelf to a depth of water not exceeding two hundred meters. In this regard the Commission has abandoned the criterion of exploitability which it adopted in 1951 in favor of a more or less arbitrarily fixed criterion of two hundred meters. This may work to the advantage of some states and to the disadvantage of others. There may be serious doubt whether the advantages in satisfying the requirement of certainty will in the final analysis outweigh the advantages of a more flexible formula based on the practical possibilities of exploration and exploitation. We must bear in mind that, with the steady advance of scientific and technical knowledge, what is not exploitable on a practical basis today might well be exploitable in the near or distant future. My Government would like to reserve its position in this change until it has given the matter further study.

I turn now to the draft articles on "Fisheries". This is a subject of great interest and practical concern to many nations including Canada. I need not stress here that fisheries are a basic means of livelihood and even sustenance of large segments of the population of many countries. Consequently, we can expect that maritime nations will have great interest in any proposals which the United Nations might adopt with a view to regulating fisheries on an international scale. In this connection, there may be serious and widespread opposition to a far-reaching set of rules which are drafted by a commission on which governments are not represented. We appreciate that governments have been given the opportunity to express their views, but I suggest that in this instance this may not be adequate to command sufficiently widespread support to ensure their adoption on a universal basis.

The Canadian delegation is particularly concerned about the fact that three of the most important fishing countries in the world, the United States, Japan, and Canada have as yet not expressed their views on this subject to the International Law Commission. Furthermore, the United States and Canada

are perhaps the most experienced in this small group of countries which have so far experimented with international action for the regulation of the high seas fisheries. Canada is a party to six international conventions on this subject, which include the "International Convention for the North-West Atlantic Fisheries" and the "International Convention for the North Pacific Ocean". International Commissions have been established under four of these conventions and these commissions are empowered to make recommendations or regulations concerning the protection of the fisheries involved. A fifth Commission, which is provided for under the terms of one of the remaining two conventions is about to be established and it is expected that it will begin to function shortly.

My Government considers that the creation of the international commissions such as I have referred to might be considered a first step towards that general international regulation of fisheries which the International Law Commission has in mind. It also considers that the draft articles now under consideration should be studied in the light of the experience which some nations now have and are constantly expanding in the interest of international joint action. From the practical experience of Canada in this particular field, my delegation is fully conscious of the complex problems which may and do arise where international regulation of fisheries is undertaken. For instance, Canada and the United States have two international commissions for the regulation of the halibut and sockeye salmon fisheries in the Pacific. The Commission in each case regulates the catch of only one species, fished by the nationals of these two states only. We can envisage the immensity of the problem involved in the establishment and operation of an international authority which would be concerned with regulating not one but many species of fish in many parts of the world for the many nations that might be involved or affected.

The two conventions I have referred to represent the result of long and technical negotiations between the two parties. Under the draft articles, which we are now considering and as we interpret them, if a third state did not wish to adhere to these conventions it would take the matter up with the new proposed international authority. Consequently, the fruit of years of negotiations between parties immediately and directly involved would be destroyed and the whole matter of regulation taken out of the hands of the existing commissions and transferred to the new international authority. My government considers, and this may be the opinion shared by other governments which are parties to these conventions and by many other delegations in this Committee, that to adopt articles with this implication involves a far reaching reorientation of principles, which cannot be willingly undertaken without further consultation among the governments involved. I should not like to have members of this Committee conclude from these remarks that Canada is anxious to protect vested interests and that we are seeking to preserve some closed systems of restriction which we have adopted to further national interests only. My country's object in concluding the series of conventions I have mentioned has been to prevent that excessive

exploitation of fishing grounds which, if unchecked, would lead to complete extinction of the fish concerned and thereby constitute a loss to all mankind.

The draft articles are also open to objection on other grounds. In some ways they are more restrictive than existing practice, for instance I refer to the first sentence of Article 1. Does this mean, as it appears to mean, that for any purpose other than prevention "against waste or extermination", a state could not regulate its own nationals where only its own nationals are involved in a fishery? Again Article 2, as it now reads, would give rise to an undesirable situation whereby two countries, situated side by side, could not make regulations affecting only their own nationals in areas where fishing is done only by the nationals of one or the other country. This, in the opinion of my delegation, is contrary to existing practice and does not seem to be either a practical or a progressive provision.

These are only some of the more obvious points which in the opinion of the Canadian delegation give rise to serious questions concerning the proposed draft articles on Fisheries. They are points which require further study and careful examination by governments before they can be expected to pronounce themselves on these articles. We think that the answer to many of these questions will be determined only as a result of further practical experience arising from the work of international commissions which now exist. These commissions are relatively new ventures in the field of international co-operation as it relates to the beneficial use and control of fisheries. Not only participating countries but all nations will have much to learn from these experiments. It is only after the experience of their operations and after careful observations and study of the inherent problems that the International Law Commission and the United Nations will be in a position to consider the establishment of an overall international supervisory body. The experience of Canada shows that advances in this field are best made by gradually and progressively building upon foundations already laid. My delegation takes the position that it is altogether premature to attempt to establish now such an international body to govern and regulate Fisheries as is envisaged in Article 3.

To sum up the Canadian Delegation cannot support the recommendation of the International Law Commission that the General Assembly at this session should adopt by resolution the draft articles on "Fisheries". We strongly urge that governments be given a further period of time to study, and if they feel so inclined to comment on, the effect and implication of these articles which represent a radical departure from international practice in this important field, as we have known it up to the present time. We also have considerable misgiving concerning the recommendation that consultation should be entered into with the United Nations Food and Agriculture Organization and would like to reserve our position with respect to that suggestion. We maintain that any convention which incorporates the principles of the draft articles on Fisheries, like the proposed code on International Arbitral Procedure, must be accepted by as many countries in the world as possible and particularly by those countries which have a direct interest in fisheries, if such a convention is to achieve its objectives.

My delegation has considerable sympathy for the suggestion contained in the draft resolution which has been circulated by the delegation of Iceland. We think there is much merit, from a practical and realistic point of view, to defer final decision on articles relating to specific aspects of the regime of the high seas until the International Law Commission has completed its studies on all aspects of this general subject. On the other hand, we fully appreciate the desire of other delegations to have the United Nations approve drafts on specific aspects in which they have a direct and immediate interest. It is our view that the recommendation contained in the draft resolution circulated by the distinguished delegate of Panama is impractical and unrealistic. We cannot ask the International Law Commission to do what that resolution requires; neither can we expect that most governments will be ready to discuss all aspects of the regime of the high seas at the ninth session of the General Assembly next year. It is for these reasons that Canada was pleased to co-sponsor draft resolution (A/C.6/L.318) which recommends postponing of a final decision on the articles relating to "the Continental Shelf" and "Fisheries" until the tenth session in 1955. The reasons we prefer the tenth rather than the ninth session are: First, we have a heavy agenda next year including the two very important items, the definition of aggression and international criminal jurisdiction; in second place, it would give governments more time to conduct the proper study and investigation which the importance of this subject requires; and the third reason is that possibly, by the tenth session the International Law Commission may have completed more studies on other aspects of the regime of the high seas. I think all delegations will agree that it would be more desirable and realistic to discuss the items now before us in the light of the recommendations of the International Law Commission on other topics relating to the regime of the high seas.

Note: The following is the text of the resolution adopted by the Sixth Committee on November 25, 1953. It was approved by a vote of 19 in favour, 14 against (including Canada) and eight abstentions. The resolution was sponsored by Iceland (U.N. DOC A/C6/L 314)

The General Assembly,

Considering that at its fourth session the General Assembly recommended that the International Law Commission study simultaneously the regime of the high seas and the regime of territorial waters, and

Having regard to the fact that the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf and the superjacent waters are closely linked together juridicially as well as physically,

Decides not to deal with any aspect of the regime of the high seas or the regime of territorial waters until all the problems involved have been studied by the International Law Commission and submitted to the General Assembly.