



# Statements and Speeches

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## LAW OF THE SEA CONFERENCE -- I

A Statement by the Honourable Allan J. MacEachen, Secretary of State for External Affairs, at a Press Conference in Geneva on May 8, 1975.

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I am in Geneva for two purposes: I have come to make a personal appraisal of the results of the Law of the Sea Conference and to express the Canadian position on the Non-Proliferation Treaty Review Conference, which I did yesterday in a statement in plenary. The Law of the Sea Conference, however, is the main reason for my presence here. I am interested not merely in the progress made in achieving Canadian objectives but in the progress in the conference as a whole, since Canada is deeply committed to the attainment of a global constitution of the oceans. This presupposes that the interests of all states must be taken into account. In order to assist me in making this appraisal, I have been consulting with the Canadian delegation and a number of other delegations -- not only those that support Canada's position on the issues at stake but also those that take a different position. I have also consulted with the officers of the conference, including its president, Ambassador Amerasinghe of Sri Lanka.

I am generally well satisfied with the progress made in attaining Canadian objectives at this conference, and even before it in various informal negotiating groups during the period between the Caracas and Geneva sessions. I hope and expect that this progress will be reflected in the unified text that will emerge from this conference. Unfortunately, perhaps, the negotiations at this session of the conference have been confidential, and it is only recently that the results have been emerging and becoming known to the public.

On fisheries the progress has been dramatic. At Caracas the positions of the territorialists at one end of the spectrum and the distant-water fishing states at the other end of the spectrum were so far apart that the gap seemed almost unbridgeable. It was our view, however, that there was a way of bridging the gap through the conception of the economic zone. In Caracas, some countries considered the economic zone a kind of quasi-territorial sea of 200 miles. We heard from other delegations that it was simply "high seas" under another name, with only certain narrow preferential rights accorded to the coastal state. During this session at Geneva we have found for the first time that countries supporting these two opposing

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points of view have now come close to agreement on the new conception of the economic zone -- which is neither territorial sea nor high seas -- as the key to an accommodation between the interests of the coastal state, on the one hand, and the distant-water fishing states, on the other, while taking into account at the same time the interests of landlocked states and those "disadvantaged" states that are not able, because of their geographical location, to claim a 200-mile zone.

Canada's position has always been that the economic zone must be "exclusive" in that a coastal state must have complete management rights in the economic zone, coupled with the right to reserve to itself as much of the allowable catch as it has the capacity to take, including the right to take up to 100 per cent of the allowable catch of certain stocks. At the same time, the economic zone must be a "shared" resource zone, in the sense that the coastal state should allow other states to harvest stocks surplus to its needs under coastal-state control and regulation. We have insisted that such matters as conservation measures and the quotas allocated to foreign fishermen up to the "optimum" sustainable yield must be determined wholly by the coastal states. The advice of appropriate international organizations would be taken into account by the coastal state, but the decision-making would fall to the coastal state. We were among the first states to take this position in the Seabed Committee and the Law of the Sea Conference, and it is with considerable satisfaction that we now see the basis of agreement emerging on just these principles. We consider the position a reasonable one, and an equitable one.

The economic zone as it has emerged from this conference includes the fundamental coastal-state fisheries jurisdiction, which I have mentioned. It also includes, however, the equally important sovereign rights of the coastal state over the seabed out to 200 miles. This development is of great importance to coastal states that do not have a continental shelf that extends as far as 200 miles seaward. Indeed, the economic-zone conception has been criticized as favouring the coastal states at the expense of the international community. This allegation is sheer nonsense. Coastal states comprise the major part of the international community both in numbers and population. Something over 90 per cent of the people of the world live in coastal states. This is not to suggest, however, that we should ignore the needs of those states that will not benefit from the resource rights included in the economic-zone conception. This is a point to which I should like to return.

The economic zone also includes coastal-state jurisdiction for the purpose of preserving the marine environment. Canada has long sup-

ported coastal-state rights and obligations in this regard. It is thus a source of considerable satisfaction to me to see that the new conception of the economic zone is based on a functional approach. Canada has for many years strongly supported such a functional approach to the law of the sea, whereby coastal states would be accorded only those rights and that jurisdiction necessary to protect their interests. This approach presupposes the acceptance by coastal states of duties and obligations that must go hand in hand with their rights. The duty to preserve the marine environment is closely interrelated with the duty to conserve the living resources of the sea. Conservation measures alone will not suffice if the quality of the oceans is allowed to deteriorate to the point where the oceans can no longer sustain the marine life on which we depend. I do not, however, regard coastal-state jurisdiction for the prevention of pollution as being a new right so much as it is a new duty. A complementary duty that coastal states must assume is to ensure continued freedom of navigation in the economic zone. Equally, a complementary duty that must be assumed by flag states is to ensure that their ships do not pollute the environment of coastal states or the marine environment in general. Certain questions remain still to be settled concerning the respective enforcement rights of the coastal state and flag states concerning ship-borne pollution. What is encouraging, however, is the radical change in thinking on these questions. No one wishes to eliminate the doctrine of flag-state jurisdiction. Equally, no one can any longer allege that enforcement of environmental-protection standards can be left solely to the flag state.

The economic zone also includes a certain measure of coastal-state control over marine scientific research carried out in the economic zone. It is the Canadian view that legitimate scientific research should not be hampered but encouraged. It is our further view, however, that the decision as to whether particular research projects are purely scientific or are motivated also by economic and military considerations should be left to the coastal state. I am encouraged that this trend is also reflected in the economic-zone conception as it is emerging from this conference.

One of the key questions to which relatively little attention was devoted in Caracas, and perhaps too little in Geneva, is that of the transfer of technology. I regard this issue as one of the most important in the conference. My country will be in the forefront amongst those developed countries seeking to co-operate with developing countries -- and indeed, with other developed countries -- in the transfer of technology that is so essential if the developing countries are to be enabled to benefit from their new rights and carry out their new responsibilities under the future law of

the sea.

My country is one of those that have a long-standing position concerning the nature and extent of the continental shelf. We are a party to the 1958 Geneva Convention on the Continental Shelf, which recognizes coastal-state rights to the point of exploitability. Our position is based also on the decision of the International Court in the North Sea Continental Shelf Cases, which repeatedly referred to the continental shelf as the submerged natural prolongation of the land territory of the coastal state. In addition, our position is based on long-standing state practice, including the extensive issuance of oil and gas permits on the Canadian continental margin and similar action by other coastal states. Canada does not intend to give up its existing sovereign rights to the edge of the continental margin. At the same time, we are conscious of the need to work out equitable arrangements with respect to those countries that either are landlocked or do not have a continental shelf. Canada is maintaining its position that it is entitled to exercise sovereign rights over the continental margin beyond 200 miles out to the edge of the margin. But we are prepared to explore the possibility of financial contributions related to the net revenues derived from the resources of the continental shelf between 200 miles from shore and the seaward edge of the continental margin. We are prepared to explore that possibility and we are prepared to support that principle in order to promote an accommodation. The two conditions -- and I am underlining this -- on the basis of which Canada would be prepared to support such a principle would be: first, that any agreement worked out would in no way derogate from our established sovereign rights out to the edge of the margin; and secondly, that the financial contributions would go primarily to the developing countries, particularly the least-developed among them.

I have spoken of the economic zone as one of the new and most radical conceptions emerging in the future law of the sea. The other new conception, ranking in importance with the economic zone, is that of the common heritage of mankind. Canada strongly supports the establishment of strong international machinery with an effective legal regime to enable the proper management of the resources of the seabed beyond national jurisdiction. We do not support the idea that the proposed international authority and legal regime should together comprise a mere licensing system. On the other hand, we do support the right of the international authority to participate directly, either through joint ventures with states or private enterprise or through its own operational arm, in the actual exploration and exploitation of the seabed beyond national jurisdiction. We strongly support also the distribution of the benefits derived

from this area for the primary benefit of the developing countries, particularly the landlocked and least-developed among them. We have made much progress on these questions since Caracas and are encouraged that the trend of negotiations on these issues is very much along these lines.

There are other important and controversial issues under negotiation in the conference, such as the archipelagic conception, the problem of passage through international straits, the problems of delimitation of national boundaries, etc. I do not propose to comment on these questions at this time, although I am quite prepared to answer questions.

In summary, I consider that this round of negotiations in the continuing Law of the Sea Conference has made great progress. My country strongly supports the major trend of the conference. I should be less than candid with you, however, if I were to leave with you the impression that we are entirely satisfied with the results of the conference. We had hoped that it would be possible to make further progress. While we shall leave Geneva with a "unified text" that can provide an extremely useful basis for future negotiations, we are all aware that this unified text will have no legal status and will not of itself constitute the outlines of a proposed convention. Much negotiation is still required. In these circumstances, the Canadian Government, like many other countries represented at this conference, must make a very careful appraisal of the results of the conference with a view to determining what future action should be taken to promote the future development of the developing international law of the sea. Canada has tried to play a constructive role in the development of the new legal principles now reaching the stage of crystallization as customary international law. I can assure you that, whatever course of action is decided upon by the Canadian Government, it will be consistent with those new principles of international law. We are determined that the new law of the sea will be based not merely on power and influence but upon equity and sound management principles. It is my own view that the new international law of the sea will be based upon this approach rather than on narrow nationalistic interests.

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