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# CANADA AT THE THIRD LAW OF THE SEA CONFERENCE: POLICY, ROLE, AND PROSPECTS

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# CANADA AT THE THIRD LAW OF THE SEA CONFERENCE:

# POLICY, ROLE, AND PROSPECTS

BY

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# CANADA AT THE THIRD LAW OF THE SEA CONFERENCE:

# POLICY, ROLE, AND PROSPECTS

Barry G. Buzan and Barbara Johnson*

The law of the sea has been characterized primarily as a legal issue, and therefore most analysis of it has focused on the international legal aspects of this subject. This paper tries to offset the imbalance in the literature by emphasizing some of the political aspects of Canadian policy on the law of the sea: in particular, Canadian policy objectives for the Law of the Sea Conference, and the impact on them of the international negotiating process at the Caracas and Geneva sessions of the Conference.

The paper begins with an examination of Canadian policy for the Law of the Sea Conference from the standpoint of the country's geographical and economic attributes. It continues with a discussion of the methods available to Canadian decision-makers to fulfill their policy objectives, and then concentrates on the relationship between Canadian alignment strategy at the Conference and the shifts apparent in Canadian policy objectives as a result of the Caracas and Geneva sessions. The paper concludes with a discussion of the choices now open to Canadian policy-makers in pursuing their law of the sea goals.

Throughout most of the paper the domestic political aspects of Canada's law of the sea policy have been consciously ignored. Canada's pre-Conference position is taken as given, and it is argued that for the duration of the two sessions, international factors were the dominant cause of changes in policy.[1] By the end of the Geneva session, domestic political forces had to be taken into account in explaining shifts in government policy.

## I. Canadian Attributes and the Choice of Policy Objectives

Canada's interest in the law of the sea can be viewed as a product of all its geographical, resource, and functional characteristics that relate to the agenda of the Third UN Conference on the Law of the Sea.[2] These include its vast coastal area and unique geographical and climatic conditions; its resource production, import and export patterns; its numerous marine activities ranging from maritime defence, through fishing, seabed exploitation, and scientific research, to shipping; and the many-sided question of how all these characteristics relate to Canada's definition of its sovereignty in national and international law. What follows is an outline of Canada's national attributes in this area arranged under nine headings that together cover all the major subjects under review by the Law of the Sea Conference. Each of the nine sections is concluded by a synopsis of Canada's stated position on the subject just before the first session of the Conference.[3]

### 1. The Continental Shelf

Canada's continental shelf, or more correctly its continental margin, is the second largest in the world after the USSR. Depending on the measure used, the natural prolongation of Canada's land mass under the ocean covers between one and one-half and two million square statute miles. On the east coast it stretches out up to 600 miles, while on the west coast it barely reaches forty miles from the shore. In the Arctic, the margin falls largely within a 200 mile zone. Most of this area is of the geological type favourable for oil deposits, and there are known placer deposits of silver, copper, iron, nickel, and titanium. By 1973 the government had issued oil and gas exploration permits covering over 1,200,000 square miles and extending up to 400 miles out and 3,500 meters down. Exploratory drilling since 1965 has produced promising finds off Nova Scotia, Labrador and the Beaufort Sea, but up to the end of 1974 there was still no commercial production. The government has a strong desire to achieve oil production off the east coast in order to relieve the eastern part of the country from its current dependence on foreign supplies. Some licenses have been issued for offshore hard minerals, but interest here is relatively low because of the more favourable investment conditions for onshore mining developments.

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[1] That is, Canada is assumed to be a unitary actor responding to pressures and opportunities in her external political environment. There are at least two other policy-making models which can be applied to the making of Canadian law of the sea policy. One is an "organizational model" i.e. an approach that focuses on the major government agency implementing policy. Such an approach is adopted in the discussion of the changing goals of Externals Affairs in the Trudeau period in A.E. Gotlieb and C.M. Dalfen, "National Jurisdiction and International Responsibility: New Canadian Approaches to International Law" in the American Journal of International Law 67 (1973).

A second model needing equal consideration is the "bureaucratic" model of policy-making. This approach focuses on the role of key individuals in government and of external groups in promoting policies. Ann Hollick describes key individuals in the Legal Division of External Affairs in "Canadian-American Relations, Law of the Sea" in International Organization, Vol. 28, No. 4 (1974), pp. 755-780.

[2] On the importance of these factors for Canada's law of the sea policy see J.A. Beesley, "The Law of the Sea Conference: factors behind Canada's stance," International Perspectives, July/August, 1972, pp. 28-30.

[3] All these position statements are taken from the Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No. 22, Appendix H, 6 November, 1973, Ottawa, which was issued by the Department of External Affairs in a pamphlet titled, Third United Nations Conference on the Law of the Sea in November, 1973.

Canada rests its claim to the continental margin on four factors: its ratification in 1970 of the 1958 Geneva Convention on the Continental Shelf; the 1969 International Court of Justice decision on the North Sea case; the precedent set by many other states with similar claims; and the active Canadian presence in the area created by government exploration permits. The Continental Shelf Convention defines the limits of coastal state jurisdiction as extending to the 200 meter depth line or to the limits of exploitation. The exploitation criterion is notably vague, and Canada clarified its position in the Seabed Committee in 1968 by defining its claim as sovereign rights to the exploration and exploitation of the resources of the continental shelf and slope, an area of about one and one-half million square miles.[4] The ICJ decision supported the idea of coastal state jurisdiction extending throughout the natural prolongation of the continental land mass, and this was reflected in Canada's position going into the Law of the Sea Conference. Although Canada's claims are clear, they are not undisputed. Newfoundland claims ownership of the resources of the continental shelf, arguing that the federal jurisdiction established by the Offshore Mineral Rights Reference of 1967 does not apply to it because of the time at which it entered Confederation. Moreover, the delimitation of adjacent continental shelf boundaries between Canada and the United States and between Canada and France remains a subject of dispute.

Canada's position going into the Conference was an extension of the 1968 claim. Arguing on the basis of the four factors outlined above, Canada claimed ". . .rights over the whole of the continental slope and rise as well."[5] The claim was not defined precisely (the rise being a somewhat uncertain area), but at its maximum would add half-a-million square miles to the 1968 claim. In addition, Canada argued against a strict 200 mile limit for coastal state seabed jurisdiction on the grounds that such a limit would unfairly discriminate against it and the handful of other states who would have to surrender what they already owned under existing law.

It should be noted that Canada did not claim full sovereignty over the margin as some Latin American states have done, but followed the 1958 Convention in claiming only sovereign rights over the resources of the area.

2. The Seabed Area Beyond the Limits of National Jurisdiction: Regime and Machinery

Canada's primary concern in this area is the possibility of mineral production from ferromanganese nodules competing with its land-based mineral production in the world metal market. The three metals most likely to be produced from deep sea nodules are copper, nickel and cobalt, and Canada is a major producer and exporter of all three. Manganese may also be produced from the nodules, and Canada imports manganese. Compared to the other three, however, this metal has a low value, and the chance that it will be produced from the seabed in large quantities is relatively small. Even if it was produced, Canada would gain very little from a drop in price. A drop in the prices of copper, nickel, and cobalt resulting from seabed production would, however, have a big impact on Canada. In 1973 Canada was the world's leading producer of nickel, and the third largest producer of copper. Most of this production is exported. Exports of copper, nickel and cobalt (and their refined products) earned the country over 1.94 billion dollars in 1973.

A possible balance to this threat is the prospect of Canadian involvement in the new nodule mining industry. At one point up to five Canadian companies were interested in nodule mining technology, but now only two, INCO and Noranda, are visibly active in the field.

In the Seabed Committee Canada took a compromise position between the developing countries, which wanted an international authority that would itself control exploitation of seabed resources, and the developed countries, most of which wanted a regime dominated by national or private enterprise, which would exploit the seabed under a licensing system. Canada was one of the few countries supporting a regime which would mix these two concepts.[6] The Canadian position going into the Conference was much the same as it had been in the Seabed Committee. After noting Canada's interests as a nickel exporter, and the need to "see that Canadian economic interests are protected" the Department of External Affairs stated that:

> Canada has recognized the necessity of compromise in this delicate issue and has proposed a system involving a mix of licensing, as well as activities contracted by the Authority, including the possibility of direct exploration and exploitation by the Authority itself when it acquires the means to do so. . .This regime, which must ensure that the utilization of these resources will be of benefit to mankind should also provide opportunities for Canada's minerals industry to develop and be protected against the undesirable effects that the substantial increase in the production of certain minerals could have on its own position.[7]

3. The Territorial Sea

In 1970 Canada unilaterally upgraded its three-mile territorial sea, plus additional nine-mile fishing zone into a full twelve-mile territorial sea. This was done at the same time as an extension of Canadian fishing

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[4] A/AC.135/SR.4 p. 24. Canada interpreted its extensive permit issuing as relevant to establishment of a claim under the exploitation provision of the 1958 Convention.

[5] Minutes, op. cit., p. 39.

[6] A/AC. 138/59.

[7] Minutes, op. cit., pp. 45-6.

rights by the implementation of long straight closing lines, and elicited strong protest from the United States. Canada's position going into the Conference was a simple defence of this interest, and was in line with a large majority of the world's states.[8] Acceptance of the twelve-mile limit for Canada, as for many other countries, was, however, clearly dependent on obtaining suitable recognition of coastal state rights regarding pollution control, fishing, scientific research and other matters in a much wider zone.

4. Straits Used for International Navigation[9]

Canada has dual, and potentially conflicting, interests in straits, on the one hand as a user, and on the other as a state having straits within its area of jurisdiction. As a user, Canada's interest is indirect, but strong. While the country has almost no high seas shipping of its own (despite ranking 17th in the world list of registered shipping) a great deal of its import and export trade is carried by sea. This gives Canada a substantial vested interest in the maintenance of unimpeded ship traffic throughout the world. Canadian maritime forces also have an interest in unhindered passage through straits, mostly in the context of access through the Straits of Gibraltar to fulfill NATO commitments.

All but one of the straits falling completely or partially within Canada's jurisdiction are of the type that lead from the open ocean into Canadian internal waters. These include heavily used straits like Juan de Fuca and Cabot, and lightly used ones like Hudson, Belle Isle, and Dixon Entrance. The North West Passage, however, connects the Beaufort Sea with Baffin Bay and the North Atlantic, and, therefore, is physically an international strait. Partly because of the delicate Artic environmental conditions in the Passage, and the extreme hazards to navigation caused by ice, Canada passed the Arctic Waters Pollution Prevention Act in 1970. This Act, combined with the extension of territorial limits to 12 miles, gives Canada a large measure of discretion over use of the Passage. It marks a clear intention on the part of the government to establish the right of coastal states, and in particular "straits states" to take action when the marine environment is threatened. The United States protested vigorously against the 1970 Act, both because of the precedent it might set internationally, and because of the legal rationale which underlay the Act.[10]

In its pre-Conference statement, Canada laid down a defence of both its user and owner interests. However, its position on use of straits did not clarify what balance of rights and duties the government envisioned between strait and shipping states.

> Canada is a major ship user for its exports and imports even though it does not itself possess an extensive ocean-going shipping fleet. For this reason Canada is opposed to any suggestion that would burden navigation with unnecessary and uncalled for constraints likely to impede the sea-borne flow of goods in and out of the country.[11]

On the North West Passage, Canada's position was unequivocal.

> Canada. . .considers the waters of the Arctic archipelago as being Canadian, and therefore it is not ready to accept that the Northwest Passage should be treated as an international waterway free of any coastal state controls.[12]
>
> Canada takes the view that any regime devised for straits used for international navigation would not be applicable to the Northwest Passage since it has not been used for international navigation.[13]

5. Archipelagos

Canada's major interest here is in ensuring the maintenance of Canadian control over the large coastal archipelago in the Arctic. It has no problems with the archipelagos of other states except very indirectly as regards navigation through Indonesian straits. The primary Canadian legislation pertaining to this area is the Arctic Waters Act referred to above. This Act extends Canadian jurisdiction over pollution matters out to 100 miles, which encloses all the islands of the archipelago. It does not constitute a claim to sovereignty over the waters. However, the Act was not derived from the archipelagic concept. Indeed, some observers have held[14] that application of straight base lines around the Canadian Arctic archipelago would have served Canada's interests better.

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[8] Ibid., p. 40.

[9] This issue was closely connected with that of the territorial sea, because acceptance of 12 miles for the territorial sea would bring many straits completely within national jurisdiction by closing off the corridors of high seas that existed under narrower limits. The basic problem was whether or not to limit national sovereignty in the territorial sea where the special case of international straits was concerned.

[10] The most comprehensive discussion of this issue is in Donat Pharand's The Law of the Sea of the Arctic: with special reference to Canada. Ottawa, University of Ottawa Press, 1973. In his conclusion Pharand argues that Canada justified its legislation on the principle of self-defence, whereas a doctrine of self-protection would have been more appropriate. From a political standpoint, the justification that Canada used was and remains unacceptable to the United States.

[11] Minutes, op. cit., p. 32.

[12] Ibid., p. 32.

[13] Ibid., p. 41. The North West Passage is "closed" at two points by a 12 mile territorial sea. This statement implied "use" as part of the definition of an international strait.

[14] See Pharand, op. cit., p. 92.

Canada's pre-Conference position on this question was somewhat ambiguous. "Canada looks favourably upon the development of the archipelagic waters theory (defined as complete sovereignty subject to the right of innocent passage in sea lanes designated by the archipelagic state) even though it does not apply directly to the Arctic archipelago, which is a coastal one."[15] "Canada. . .considers the waters of the Arctic archipelago as being Canadian."[16] While these statements go some way towards a full defence of Canadian interests in this area, they are non-committal, and beg the definition of "Canadian waters," which is a term without accepted legal status.

6. Offshore Islands and Delimitation Problems

Canada has six international maritime boundaries. Four of these are with the United States (Dixon Entrance, Beaufort Sea, Gulf of Maine and seaward of the Strait of Juan de Fuca), one with France (St. Pierre and Miquelon), and one with Denmark (Davis Strait). Negotiation with France has been underway since 1967, and has resulted in a partial territorial sea agreement, but no agreement on the larger more contentious area seaward of the two French islands. The Davis Strait boundary was settled with Denmark in December, 1973. Of the four unsettled boundaries with the United States, only two are actively in dispute. The Dixon Entrance is the scene of a long-standing disagreement over fishing rights, and the Gulf of Maine has become a contentious area since the mid-1960s, when exploration activity opened up possibilities of oil on the Georges Bank. Canada did not mention these problems either specifically, or in reference to the general problem of delimitation, in its pre-Conference statement. Practice seems to indicate a Canadian preference for case by case bilateral negotiations with the state concerned, with each case being argued on its own merits rather than according to general principles like median line or equidistance.[17] Because these questions have not been actively considered at the Caracas or Geneva sessions, we have not dealt with this issue in our discussion of the two sessions.

7. Marine Scientific Research

Canada is one of the relatively small number of states that has a significant capability for marine scientific research, although it is not a leading state in this field. The country spent nearly $22 million on oceanographic and hydrographic research in 1970-71, operates some 26 major research ships,[18] and has a considerable indigenous capability in this area of technology, particularly in building small submarines. Its interest in oceanographic research is large, not only because of its extensive maritime areas, but also because of its marine resource and special environmental concerns. In addition, the military, with its orientation towards anti-submarine capability, has a substantial interest in this type of research. Canada has a great need for accurate scientific information to underpin its many other marine interests, and consequently most, though by no means all, of its oceanographic activity is concentrated in its home waters. Other states also conduct research in Canadian waters, and this raises the thorny problem of distinguishing between scientific and commercial research.

Canada's pre-Conference position reflected the government's predominant concern with research activities in its own waters by envisaging a great increase in the degree of coastal state control over this activity at the expense of the researcher's traditional freedom.

> Canada has considerable technological knowledge in the field of marine scientific research and favours the widest possible freedom for this type of activity. At the same time it is aware that scientific research in the marine environment can have military and economic implications and that it is difficult to define "pure" research. Canada would therefore allow such research in the area of jurisdiction of a coastal state, provided that prior to the commencement of the intended research, and in accordance with an enforceable procedure, the researching country has sought and the coastal state has given permission to conduct the research.[19]
>
> . . .coastal states should have the right to control and, where necessary disallow such activities by foreign states or their nationals. 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.[20]

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[15] Minutes, op. cit., p. 41.

[16] Ibid., p. 32.

[17] Canada's preference is in line with the Convention on the Continental Shelf, which specified bilateral negotiations if states are unable to agree on a median line or equidistance delimination.

[18] The minimum size of those vessels is 70 feet, and twelve are over 200 feet. Ocean research is a very divided activity, with the Department of National Defence operating four ocean-going research ships, the Department of the Environment two, the Ministry of Transport two weather ships and six sounding and survey vessels, the Fisheries Research Board eleven ships over 50 feet in length, and so forth. Gray, Colin S., Canada's Maritime Forces, Wellesley Paper 1, January, 1973.

[19] Minutes, op. cit., p. 32.

[20] Ibid., p. 45. Canada submitted a working paper on marine scientific research to the Seabed Committee in 1973 A/AC.138/SC.III/L.18.

This position encourages Canada's own coastal marine science activities, and supports the government's determination to obtain as much information as possible about its own maritime areas. It does this at the expense of Canada's distant water oceanographic activities, which would meet with parallel increases in coastal state jurisdiction all over the world.

8. Fishing

Canada is favoured with rich fishing grounds off both its east and west coasts. On the east coast, fisheries are associated with the continental shelf, and extend beyond 200 miles. While fisheries contribute only a fraction of the gross national product, they earned the country $346 million in export sales in 1972. Some 50,000 Canadians are employed in primary operations of sea fishing, and because of their regional concentration they are a politically significant group. The industry is very largely coastal, except for a few boats operating in the east central Pacific and Atlantic tuna fisheries.

On the east coast, major fisheries are for cod, redfish, plaice, flounder, herring, scallop and lobster. The east coast fisheries together account for 80% of the employment and 65% of the landed value of the Canadian catch. On the west coast, salmon, halibut and herring are the major fisheries, with groundfish much less important. The salmon industry is of particular importance because of its dominant economic contribution, and because of the investment required to keep the spawning rivers in condition. The sacrifice of hydroelectric power made by not damming the Fraser River has been a contentious economic and political issue.

There are foreign fisheries off both coasts. American, Russian and Japanese boats are involved on the west coast; and on the Atlantic coast boats from the US, the USSR, Japan and eleven European countries are involved. In response to increasing foreign fishing, Canada has steadily increased the breadth of its fishing jurisdiction: from three to twelve miles in 1964; by the adoption of straight baselines in 1967 and 1969; and by the proclamation of fisheries closing lines for the Gulf of St. Lawrence, the Bay of Fundy, Queen Charlotte Sound, and Dixon Entrance and Hecate Strait, in 1970.

Canada has signed a wide range of bilateral and multilateral agreements on fisheries. Most of the bilateral ones have been phase-out agreements made following Canadian extensions of fisheries jurisdiction, and concern the terminating of fishing by European fishing fleets in the Gulf of St. Lawrence. One of these agreements, that between Canada and France, involves a permanent and reciprocal understanding. Such an agreement was made necessary by long-standing French treaty rights off the Atlantic coast of Canada, and by the existence of the French possessions of St. Pierre and Miquelon.

United States-Canadian agreements on fisheries are quite different. The most general of these is the 1971 Reciprocal Arrangement, which grants reciprocal rights in certain areas between three and twelve miles. This is renewed on a year to year basis. A separate agreement deals with salmon.

Besides these agreements, Canada belongs to eight of the regional commissions dealing with marine fisheries. Four of these concern the west coast. The Halibut and Salmon Commissions are joint United States-Canadian management arrangements. These agreements are overlaid by the North Pacific Fisheries Commission. Japan, the United States and Canada belong to this arrangement, by which Japan agrees to abstain from taking Northeast Pacific salmon, halibut and herring unless they are not exploited up to their maximum sustainable yield.

The International Commission for Northwest Atlantic Fisheries regulates the fishery off Canada's east coast. The Canadian and American share of this catch was very low for many years, but has been increasing since 1971. Besides these arrangements which most directly concern its coastal fisheries, Canada belongs to the International Whaling Commission, the Inter-American Tropical Tuna Commission, the International Commission for the Conservation of Atlantic Tuna, the International Council for the Exploration of the Sea, and the North Pacific Fur Seal Commission.

Despite these efforts, the government has remained concerned about both the well-being of some stocks, and about Canada's share of the catch. Politically, this concern is focused on several problems. On the Pacific coast, there is resentment over the US share in the Fraser River pink and sockeye stocks. There is also a continuing fear that some country other than Japan might begin a salmon fishery on the high seas for fish of Canadian origin. With halibut, the situation is different: the incidental catching of immature halibut by the Northeast Pacific trawl fisheries of Japan and the Soviet Union has damaged the stocks. On the east coast, there is evidence that some groundfish stocks have been depleted, and the Canadian share of the ICNAF catch has not increased fast enough to satisfy the government. In addition, the fishing by Denmark and West Germany of Atlantic salmon stocks of Canadian origin in the vicinity of Greenland has been a major issue.

Canada's pre-Conference position was an attempt to meet the perceived threat to coastal fisheries by supporting a massive increase in coastal state jurisdiction. "Canada is seeking both a right to manage and a preferential share of the living resources that are found off its coasts and over its continental margin so as to ensure the maximum utilization as well as the preservation and maintenance of stocks."[21] It favoured continuation of exclusive coastal state rights to sedentary species as awarded in the 1958 Continental Shelf Convention, and said that:

> . . .Coastal states should have the exclusive right to manage and conserve coastal species, i.e. those species which are free-swimming and generally found over the continental shelf or in similar nutrient-rich areas, and should acquire preferential rights over their harvest, to the limit of their

21 Ibid., p. 32.

> capacity. Coastal states should have exclusive rights for the management and harvesting of anadromous species, such as salmon, throughout their migratory range, recognizing only the right of other states to fish for these species when such fish are found in their own waters, subject to agreement with the state or origin.[22]

This latter provision would mean a complete ban on foreign high seas fishing for these species, a major incursion on traditional freedoms in that area.

Canada wanted international arrangements to cover wide-ranging species like tuna and whales, but did not find the "over-all exclusive sovereign rights approach advocated by the developing coastal states" incompatible with its species approach.[23] Canada felt that in practice, coastal state rights of this type "would not preclude continued foreign fishing, under Canadian management authority, in the areas within Canada's jurisdiction." This position was a modification of, rather than a replacement for, the position taken a few months previously in the Seabed Committee, which had involved exclusive sovereign management and harvest rights for all living resources within 200 miles and preferential rights in areas adjacent to the zone.[24] Canada's stand on fisheries was thus a complete defence of all its many coastal interests at possibly some cost to its very minor distant water interests.

9. Marine Environment and Navigation Rights in the Coastal Zone

Canada's interest in the marine environment is conditioned not only by the possession of vast coastal areas, but also by the fact that many of those areas are particularly susceptible to damage from marine pollution. The Arctic is vulnerable because of the slowness with which its low temperature environment can repair pollution damage, and because of the possibility of severe pollution causing major changes in climate. Many of the non-Arctic areas are vulnerable because of their importance to fishermen. Shore-generated marine pollution is largely a national responsibility, and is not, except in the most general way, a feature of the Law of the Sea Conference agenda. The Conference is concerned with pollution from vessels of all kinds. Canada has four concerns here. Adequate protection is sought from pollutior from vessels engaged in activities such as fishing, oil exploration and exploitation, seabed mining and scientific research, and from pollution from vessels exercising the general right of navigation whether to Canadian ports or in transit to foreign ports. The specific problem of the American Tanker route carrying Alaskan oil to refineries in Washington very close to the Canadian border and the specific problem of getting special standards accepted for ice-prone areas (the Gulf of St. Lawrence and the Arctic) must also be resolved.

Canada has exhibited a very active concern in this area, unilaterally by passing the Arctic Waters Pollution Prevention Act in 1970, and globally by making the subject the main target of Canadian activity in the Seabed Committee, and by its participation in the Stockholm Conference on the Human Environment, the London Ocean Dumping Conference, and several IMCO Conferences. Mr. Alan Beesley, Canada's representative on the Seabed Committee, commented that Canada had "from the outset considered the questions placed before sub-committee three (viz. protection of the marine environment and scientific research) as the most important of all those with which the Committee had to deal."[25] Six of the thirteen documents sponsored by Canada in the Seabed Committee concerned prevention of marine pollution and protection of the marine environment, and their general orientation was towards stronger rights and a larger role for the coastal state in this area.[26]

In its pre-Conference statement Canada stressed, as it did with regard to the straits question, its own interest in the continuation of unimpeded commercial shipping. But its main argument was that because of especially delicate environmental conditions in the Arctic, and because of the vulnerability of fishing grounds:

> The Conference should. . .allow coastal states to adopt, over and above universally applicable standards, special protection measures such as those which Canada took in 1970 through the Arctic Waters Pollution Prevention Act and the Canada Shipping Act.[27]
>
> Canada does. . .subscribe to the idea that competent international organizations should establish appropriate, stringent standards of universal application against marine pollution. Canada also agrees that in areas beyond the jurisdiction of coastal states, the state of the ship's registry should have the primary responsibility for enforcing these standards.
>
> But Canada, with its long coastline and its very special ecological conditions and physical hazards, considers that coastal states should be empowered to prescribe and enforce their own anti-pollution standards, to the extent necessary, over and above the internationally agreed rules, not only in their territorial waters, but also within their areas of jurisdiction beyond.[28]

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[23] Ibid., p. 37.
[24] A/AC.138/SC.II/L.38.
[25] A/AC.138/SC.III/SR.3 p. 12 (28 July 1971).
[26] A/AC.138/SC.III/L.5 and Add. 1, L.25, L.26, L.28, L.37, L.56.
[27] Minutes, Op. cit., p. 31.
[28] Ibid., p. 44.

This position was a full defence of the Arctic Waters Act, and if accepted, would give Canada a free hand to protect all of its marine environment interests.

While the Law of the Sea Conference is not dealing directly with military matters, a state's enforcement capabilities have considerable significance for its ability to implement new law of the sea policies. This is particularly true of Canada, with its extensive maritime attributes and its strong stand in favour of coastal state jurisdiction. A state's ability to enforce may in the long run be a major determinant of its choices of both what it can demand, and how it can best obtain what it demands (i.e. the choice among unilateral, bilateral, regional and global levels of action).

Canada has a considerable capability, both civilian and military, for surveillance and enforcement relating to its existing and potential maritime jurisdiction. Its Maritime Command operates 13 destroyers, 11 destroyer escorts, four submarines and a variety of other ships in addition to five squadrons of Argus and Tracker aircraft, and two squadrons of helicopters. While this force was created primarily as an anti-submarine warfare component of NATO, it has a substantial record of pollution control surveillance and fisheries patrol. For example, air patrols of Maritime Command reported more than forty oil pollution violations in 1973, and were responsible for detecting a number of fishing violations. By 1975, twelve of the destroyers were listed as ICNAF enforcement vessels. This kind of activity comes under the "assistance to the civil authorities" mandate of the Canadian military, and because it seems likely to assume larger proportions, the government is concerned that "Canada's martime forces must be reoriented with the long-term objective of providing a more versatile general purpose capability."[29]

Civil forces are on a much smaller scale than those of the military, and are divided up among several government departments. The Conservation and Protection Branch of the Department of the Environment's Fisheries Service operates more than 80 vessels, six with ocean-going capability, on fisheries patrol. These are used to supplement the small speed boats used by the same department's Environment Protection Service. The Coast Guard Service of the Ministry of Transport operates 27 icebreakers of all types, and ten search and rescue patrol vessels; and the RCMP, coming under the Department of the Solicitor-General, operates 23 small patrol vessels. The Resource Management and Conservation Branch of the Department of Energy, Mines and Resources, and the Northern Economic Development Branch of the Department of Indian and Northern Affairs both have jurisdiction in maritime areas, but they do not rely on hardware type enforcement capabilities.[30]

It is clear from the above that Canada's pre-Conference position represents a full defence of virtually all the interests arising from its visible ocean attributes. Where contradiction has made sacrifice necessary, then the smaller and usually more distant interest has been compromised, as in the case of distant water fishing and distant water scientific research. Where an issue is of low general, but high specific interest to Canada, as with straits and archipelagos, then the specific problem is covered in detail, but little is contributed to the general debate. Coastal state control over resources and activities in the adjacent maritime area is the mainstay of the government's position, and much of this is to be won from the traditional freedoms of the sea. The only 'interest' not strongly represented in Canada's position is the abstract one of sovereignty itself. While the government has neatly defended all Canada's geographical, resource and functional interests, it has done so very specifically on an item by item basis, and has been careful to avoid the blanket sovereignty approach favoured by the Latin American and many other developing countries. This is an important characteristic of the Canadian position and moderates the otherwise very strong coastal state demands.

Although Canada's goals, as we have seen, are not incompatible among themselves, they may become so in the context of an international bargaining situation. Is it possible to establish some kind of priority ranking in the government's perceptions of the nine goals? It is, of course, difficult to do this with any certainty (especially since the interests cannot all be measured in similar, e.g. economic, terms), but there are a number of indicators which can serve to establish a rough ranking. A simple content analysis of the document from which Canada's pre-Conference positions have been taken for this study produces (on the basis of the number of lines devoted to each subject) the following ranking:

| | | |
|---|---|---|
| 1. | Marine Environment and Navigation Rights in the Coastal Zone | 197 lines |
| 2. | Fishing (living resources) | 112 " |
| 3. | Continental Shelf (resources) | 92 " |
| 4. | International Seabed Area: regime and machinery | 81 " |
| 5. | Straits Used for International Navigation | 49 " |
| 6. | Territorial Sea | 38 " |
| 7. | Marine Scientific Research | 32 " |
| 8. | Archipelagos | 23 " |
| 9. | Offshore Islands and Delimitation Problems | 0 " |

This ordering is supported by the pattern of Canada's sponsoring of proposals in the Seabed Committee. Of the ten documents sponsored by Canada that are relevant to these subjects, six concerned Marine Environment and Navigation Rights in the Coastal Zone, two concerned living resources, one concerned the International Seabed Area, and one concerned Marine Scientific Research. The ranking is somewhat biased by its orientation towards an international conference (especially against item 9), but with the possible exception of fishing, which might be given more weight, it generally conforms to the subjective impressions of the authors acquired at Caracas and Geneva.

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[29] Defence in the 70's, White Paper on Defence, DND, Information Canada, August 1971, p. 28.
[30] See Gray, op. cit.

The reason why these priorities existed cannot be found simply by looking at objective conditions. This is particularly true in the case of the marine environment. While an examination of Canadian priorities has not yet been undertaken, it has not been attempted here since such an analysis would deal with the period prior to 1973.[31]

## II. Canadian Policies and the Choice of Methods

Four levels of action, aside from doing nothing, are open to Canada as methods of achieving its objectives - unilateral, bilateral, regional and global. This section will be devoted to a consideration of Canada's policies in the light of these options.

On questions of the marine environment and navigation in the coastal zone, Canada has already taken, and successfully maintained, unilateral action in the form of its 1970 legislation. Despite the fact that the legislation has not been violated, however, it has not won international acceptance and is under protest, particularly in the United States. Canada's pre-Conference position envisages some extension of coastal state rights on this matter beyond what it claimed in 1970, but this extension does not appear to be the major concern. Canada's need is to find wider support to make its unilateral initiative more stable. Bilateral negotiation is not of much use because of the very limited number of states with similar special-case interests. Negotiations with the United States have not changed the situation.

There are some regional possibilities. Agreement among Arctic states on pollution and navigation matters has often been proposed. So far, Soviet disinterest has prevented this from being more than a possibility. The partners in such an agreement would be the United States, the Soviet Union, Norway, Denmark and Canada. It is likely that maritime interests would predominate in such an arrangement. As far as Canadian interest in increasing coastal state control over vessel source pollution generally is concerned, the Intergovernmental Maritime Consultative Organization (IMCO) has been the traditional forum for such questions. Like most special-purpose organizations, IMCO is dominated by its major clients, which are in this instance maritime states.

Action on the global level is thus Canada's best option for advancing its interest in this area, though only by way of improving an already successful unilateral action. Canada's position is not under sufficient threat to make its maintenance depend on success at the global level.

The question of living resources is the most complicated with regard to options for levels of action. Canada's background includes efforts on all four levels to improve its control over fishing and share of resources: unilaterally in the various extensions of jurisdiction which culminated with the 1970 closing lines; bilaterally with the states affected by unilateral action and with the United States over reciprocal fishing arrangements and salmon fisheries; regionally in the fishery commissions; and globally in earlier law of the sea conferences. Canada's 1973 position is important partly as an attempt to gain support for its unilateral action, but more as a new claim stretching well beyond present jurisdiction.

The new claim could be enacted in the same way as previous ones, that is, unilateral action preceded or followed by regional or bilateral negotiation. But such action would inevitably create disputes with nations fishing in the affected waters - particularly the United States and Soviet Union. The problem of enforcement would loom large in any decision to implement this position unilaterally, especially in the east coast groundfish fishery and the west coast salmon fishery. While the American coastal fishery on Canadian salmon stocks might be forced out, the problem of surveillance and enforcement to prevent newcomers entering the high seas salmon fishery would remain.

Regional action has been used alongside unilateral and global methods, but clearly as a supplementary forum. The salmon and groundfish fisheries have been at the centre of these efforts. The INPFC Convention has been supported (under which Japan abstains from high seas salmon fishing), but pressure has been put on the United States to force it out of the Fraser River, where the International Pacific Salmon Commission divides pink and sockeye stocks on a 50-50 basis.

Canadian efforts on the salmon issue have been directed at reducing traditional fishing on the high seas and at excluding newcomers. So far, regional action has allowed these goals to be partly met. The utility of regional action would be less in the event of worldwide 200 mile economic zones.

With respect to groundfish, the position of the two coastal states in ICNAF has improved somewhat since 1971, due to intense pressure from Canadians and Americans. The protection of Atlantic salmon stocks has also been promoted with some success through ICNAF. From the Canadian standpoint, the obvious shortcoming of ICNAF is that distant-water states are overwhelmingly preponderant in voting power.

Canada interprets its continental shelf claim as being legitimate in the light of existing international law, and has taken substantial unilateral action in the form of leasing to bolster the claim. While a purely unilateral claim would very probably continue to be maintained, wider recognition of it would reduce the possibility of conflict over disputes. From this point of view, action on all levels is desirable. Bilateral action is necessary to settle delimitation problems with neighbours; regional (or more accurately in this con-

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[31] It should be noted that there are dissenting opinions within Canada about how Canada's interests in the law of the sea should be interpreted. Criticism of the strong coastal state control position taken by the government has come from the shipping industry, natural scientists, international lawyers and economists. Such opposition, however, is poorly organized and diffuse, and tends to be cancelled out by other domestic elements, particularly sectors of the fishing industry, urging a stronger coastal state line than the government. See also footnote 1.

text, sub-global) action would be useful in forging links with forty-odd states that also have large margin interests; and global action is necessary to get wide international recognition of the Canadian position. Global agreement is also vital for agreement in Committee I, and the international seabed area is a high priority resource area for Canada. Again, however, the possible problem arises of making a choice between a full unilateral claim on the one hand, and a compromised claim with international recognition, on the other.

On the matter of the international seabed area Canada has few options. Without an international regulatory agency the likelihood would be great of uncontrolled seabed exploitation by the few states with the technology to do so and the incentive of their own import demands for the metals concerned. The only chance for an orderly regime with the powers to protect Canadian economic interests lies in achieving an acceptable compromise between the highly polarized positions of the developed and the developing countries. Such a compromise was the object of Canada's policy both in the Seabed Committee and during the third Law of the Sea Conference. This compromise is sought to prevent the breakdown of the entire Conference, as much as for seabed goals themselves.

Canada's dual interest in straits creates a somewhat complex situation with regard to choices of action. Control over the North West Passage can clearly be maintained by unilateral action, but such a course raises problems of non-cooperation by, and disputes with other states. Since very few states are interested in the Passage there is some possibility for bilateral action. On the global level Canada's interest would be protected by clarification of the criterion of previous use in the international law definition of straits. Canada's interest as a user of straits can only be protected at the global level, and this raises the problem that the country's coastal and maritime interests are likely to appear contradictory in the global negotiating context. Resolution of this dilemma may involve a choice among priorities attached to goals.

The question of the territorial sea is another in which Canada is seeking wider international recognition for a unilateral action already taken. Canada's position is, however, already very widely accepted (the US being a notable exception), and the issue here is not so much the twelve mile territorial sea itself, but the links between it and straits and economic zones. The territorial sea is thus only an important issue on the global level, where it is part of an overall attempt to achieve a package deal on law of the sea issues.

Since Canada's position on marine scientific research comes down so clearly in favour of coastal state interests, the question of choice of action is fairly simple. Canada's desire for increased coastal state control over this activity could be implemented unilaterally, but with the usual cost of meeting some international disapproval and objection, particularly from the United States. Global agreement would avoid dispute, but might require some compromise in the position.

The question of archipelagos would be obviated by fulfillment of Canada's objectives on the areas described above, and, therefore, like them, is amenable to solution on either unilateral or global levels.

Canada made no position statement on the question of offshore islands and delimitation problems, but its approach to this issue has been almost exclusively on the bilateral level. There are clear possibilities here for global action, by way of setting norms for bilateral action, but it appears likely that under any circumstances bilateral action will remain the dominant level on this issue.

It is evident from this discussion that for most of its goals Canada has a choice between the unilateral and global levels of action as methods. All of Canada's stated goals except those relating to the international seabed area, salmon, foreign straits, and offshore island and delimitation problems, are amenable to unilateral solutions (albeit involving some bilateral and regional action in making the consequent adjustments), and all its goals except those on offshore island and delimitation problems are also amenable to global-level solutions. The fact that Canada has this choice is largely a result of the fact that most of its interests are coastal in nature. This is in contrast to such countries as the United States, where there is a much stronger internal clash between coastal and maritime interests on many law of the sea issues.

While regional action is feasible on a number of issues, it tends not to be politically advantageous for Canada. As Nye observes,[32] states shop in the international marketplace for the arena (or level of action) most likely to give them the outcome they desire. It is evident that regional or functional international organizations such as ICNAF and IMCO do not fully promote Canadian goals.

There are arguments for and against both levels of action. They should not be carried too far, since the manner in which an action is taken and its substance may be as important as the level of action itself. Keeping this in mind, some general observations can be made about unilateral versus global action in the period preceding the Caracas and Geneva sessions. Unilateral action would have the advantage of avoiding both the necessity to compromise, and the problem of incompatibility among Canadian goals, that might arise in international negotiations. It would relate clearly to the many unilateral actions Canada has already taken, and might provide a swift and unambiguous fulfillment of the country's objectives. On the other hand, unilateral action would greatly weaken Canda's bargaining position on those issues, particularly the international seabed, salmon and foreign straits, that can only be settled on the higher levels. It would open up the prospect of continued non-acceptance of, and disputes over, Canada's position, and would mean that Canada had abandoned most of its hopes for negotiating wider acceptance of high priority items like environmental protection and fish conservation.

Furthermore, since the law of the sea had already been raised on the global level, there was considerable pressure to let the United Nations have its chance. Any choice to avoid the global level of action would have

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[32] J.S. Nye, "Ocean Rule-Making from a World Perspective," Perspectives on Ocean Policy, Johns Hopkins University, Washington, 1974, p. 238.

to have been made before 1970, and the evidence indicates that at that time Canada was very active on the side of convening an international law of the sea conference.[33] Canada's early commitment to the global level raises interesting questions about the extent to which the formulation of Canadian policy up to November 1973 was influenced by international developments and consequently by anticipations of likely alignments and packages at the projected Conference. For example, did evolving international norms encourage Canada to claim more than would have been the case if policy resulted purely from domestic considerations? Likewise, can the inclusion of a strong position on coastal state control over sicentific research in Canada's policy be explained more by anticipation of likely alliances (with the developing countries) than by domestic factors?

In 1973, the global level clearly offered Canada the best opportunity to achieve its objectives on all issues, but it did so only at the risk that compromises in individual positions might have to be made, and that the achievement of agreement, if possible at all, would be at best a lengthy and arduous process resulting in often ambiguous solutions. Moreover, it tended to freeze activity at the bilateral and regional level. If action on this level were successful, it would have the advantage of a wide level of support for whatever was agreed upon, and in this context Canada had much to gain if it got recognition of unilateral actions already taken. In particular, the problems of enforcement would be greatly reduced.

In terms of strategy, then, Canada could only gain by continuing to pursue global action as its first choice. If successful, such action might make further unilateral action unnecessary. If unsuccessful, or only partly successful, it would smooth the path for unilateral action both by conditioning other states to the policies involved, and by making the unilateral approach itself more legitimate. This might prove particularly useful for Canada in relation to the United States, which has a long record of opposition to Canadian unilateral actions on the law of the sea. Canadian international manouvering on the law of the sea partly reflected its concern to strengthen its position vis a vis the United States, on the several maritime issues on which the two states disagreed.

On the whole, the Canadian position was well tailored to the global level. At the beginning of the Conference, Canada's position qualified as a possible package deal for the negotiation as a whole. (This was especially true with respect to its low key policy on sovereignty, but not with respect to its demand for the geographical margin.) If such a solution were possible, then Canada would achieve the best of both worlds. The Canadian position would get the wide recognition and coverage of global action, and the specific attention to uniquely Canadian problems that unilateral actions allowed.

The question of time somewhat disrupted this happy scenario. Certain of Canada's goals were considered urgent - particularly those related to fishing - and since action on the global level was very slow, pressure rose after each session to take unilateral action. By 1975, relations between levels of action had become more complex, as are discussed in the final section of this paper.

## III. Policy and Process in Canadian Ocean Politics

It is a truism that political goals and political process[34] are interrelated, each acting on the other. The problem is to define where the relationships lie. Does policy (in the sense of national political goals) predetermine the outcome of multilateral political negotiations on the law of the sea? Or instead, do the game (ocean politics) and its rules (multilateral bargaining on a wide range of issues) create their own requirements and lead the players into goals they never intended? The key question about Canadian ocean policy is this: have Canadian policy-makers been able to set down goals arising out of the country's direct interests, then go into the Seabed Committee and eventually the Law of the Sea Conference and maintain a position which mirrored these goals? To try to answer this, the shifts, in Canada's position which occured during the Caracas and Geneva sessions have been traced, and related to the nature of Canada's role and alignments in the negotiating process.

Since neither the Caracas nor the Geneva sessions voted on any of the substantive matters before them, it is necessary to use participation in informal negotiating groups, and cosponsorship of proposals as the primary indicators of Canada's alignments. Participation in such a group frequently correlated with cosponsorship, but this was not always the case.

Given the stage of the negotiating process at both sessions, the informal negotiating groups were to a great extent the focus of activity. The groups fell into two categories: those that existed outside the context of the law of the sea negotiations, mostly regional/political in nature, and including the Latin American, African, Arab and Soviet groups, the EEC countries, and the Group of 77 (comprising more than 100 developing countries); and those that existed wholly within the context of the law of the sea negotiations. Among the latter were geographical groups reflecting coastal versus landlocked interests, and functional groups reflecting interest in activities like shipping and deep sea mining or in policies like the territorialist claim to a broad territorial sea. Membership in issue-specific groups like the coastal state group and the landlocked and geographically disadvantaged state group frequently crossed the boundaries of more traditional divisions

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[33] J.A. Beesley, "The Law of the Sea Conference: factors behind Canada's stance," International Perspectives, July/August, 1972, p. 28.

[34] In our use of the terms policy and process, we are braodly subscribing to a systems analysis approach, focusing on the relation between Canadian policy and the international political process. Systems analysis views a political system as characterized by inputs and outputs, the conversion from inputs to outputs occurring in the political process. In our case, the Canadian goals outlined in the previous section have been taken as the "demands" being fed into the system. The Law of the Sea Conference is the forum in which conversion occurs. See the discussion of inputs and outputs in G.A. Almond and G.B. Powell, Jr., Comparative Politics: a Developmental Approach. Boston, Little, Brown and Col, 1966, and D. Easton, "An Approach to the Analysis of Political Systems," World Politics, April, 1957, pp. 383-408.

like those among regional/political groups, and those between developed and developing countries. It is also important to note that membership in a group such as the coastal states' implied a common perception of the significance of the attribute - no one of these groups actually contained all the states conforming to its geographical criteria. There were also informal groups concerned with problems of the conference as a whole, whose main objective was to work out compromise drafts.

The informal negotiating groups were not uniformly distributed among the Conference's three main working Committees. Nearly all of them were active in Committee II, because of the very large number of items on that Committee's agenda, but only a few functioned visibly in Committees I and III. In Committee I, which was dealing with international seabed problems, the Group of 77 was by far the most important group. The EEC group and the landlocked and geographically disadvantaged group made minor contributions, and there were signs of a group among the developed states interested in deep sea mining. In Committee III, which was dealing with the marine environment and scientific research, the Group of 77, the EEC group, the landlocked and geographically disadvantaged group, and possibly the coastal state group were all active, but no one group emerged as clearly dominant as happened in Committee I.

Canada did not belong to any of the important regional/political groups (with the minor exception of the OECD), and neither did it belong to any functional groups. It was one of the most important members of the coastal state group, and this group provided the central focus for Canada's alignment at Caracas. It did not belong to any other geographical group, but did participate in many of the smaller, more issue-specific groups (such as that formed by some of the large margin states), that followed the decline of the coastal state group after the Caracas session. Canada also played an important part in some of the conference drafting groups, particularly the Evensen group, which concentrated on working out compromise positions on key issues in Committees II and III.

Canadian participation in coalitions varied from committee to committee. In Committee II, where many coastal issues were at stake, Canada worked either alone, as on the issue of salmon at Caracas, with the coastal state group on general issues, and with smaller issue specific groups on matters such as continental shelf limits, territorial sea limits, coastal fisheries jurisdiction, and archipelagos. In Committee I, Canada did not align itself with either the Group of 77 or the loose group of developed states in what became a highly polarized confrontation. Instead, it took an independent line, and almost alone tried to encourage a compromise between the two sides. In Committee III, the picture was somewhat confused. The subject before the Committee was of the highest importance to Canada, and had been the focus of many Canadian proposals, alone and with others, in the Seabed Committee. On the question of scientific research, Canada's position was similar to that of the Group of 77, while on questions of the marine environment Canada worked either alone, or with a group of coastal states many of which were not normally members of the coastal state group. Canada was thus an active participant in all three working Committees, and either found or created alignments in support of its policies, or else advocated them alone. In line with the country's enormous geographical interest in ocean matters, Canada made alliances more along geographical than along functional or regional/political lines.

With which countries have Canadian diplomats found sufficient common ground to enable them to cosponsor proposals? Canada negotiators themselves have suggested that Canada is allied with developing countries against its traditional allies, the West European states and the United States. They have also suggested that in ocean affairs Canada itself is a developing country, making this an appropriate alliance.[35] Is this a correct perception, and if it is, does it impose requirements on Canadian policy other than those the domestic situation required? Of 17 formal proposals sponsored by Canada between 1971 and 1975 (including Caracas and Geneva),[36] Canada made eight alone, and cosponsored nine. No trend over time was evident, but the high multilateralism score indicates an effort to find allies wherever possible. Canada allied itself with 29 other countries in cosponsoring proposals in the Seabed Committee and at Caracas. With most of these countries the coalition was only on one proposal, but with a small group of countries Canada allied itself two, three and four times:

| Number of Times Country Cosponsored with Canada | Country | Country Total |
|---|---|---|
| 1 | Malagasy Rep., Senegal, Mauritius, Tanzania, Chile, Colombia, Jamaica, Trinidad & Tobago, UAR, Sri Lanka, Sweden, Greece, Netherlands, Bulgaria, USSR | 15 |
| 2 | Kenya, Ghana, Guyana, Mexico, Iran, Fiji, Indonesia, Philippines, Spain | 9 |
| 3 | India, Australia, New Zealand | 3 |

(cont.)

[35] J.A. Beesley, "The Law of the Sea Conference: factors behind Canada's stance," International Perspectives, July/August, 1972, p. 29.

[36] Canada did not formally sponsor any proposals at Geneva. It was active on the informal level and made two proposals (alone, on scientific research, and participated in a group proposal on the margin, as well as in several other less visible proposals. These do not rank with formal proposals in terms of policy indication, and are not included in this listing.

| | | |
|---|---|---|
| 4 | Norway, Iceland | 2 |

Table I. Canadian Alliance Partners in Ocean Politics 1971-1974*

*When corrected for 138/SCIII/L.22, 1972. This resolution on Pacific nuclear testing was judged not to be basically an ocean issue. Canada has 34 alliance partners if it is included; 29 if it is not. It was not included here. Countries underlined were members of the coastal state group.

Table I is interesting in that it confirms the significance of the coastal state group for Canada. The five countries cosponsoring with Canada three and four times were all members of this group. Moreover, only one of the countries cosponsoring three or four times was a developing state. These totals put into question the notion that Canada has a strong and permanent alliance with developing states on the oceans question. Rather, it would seem that Canada works most closely with other developed coastal states, and less closely with developing coastal states. Special note should be made of the pattern of association with Norway, which has strong coastal and maritime interests. The Table also confirms that with the exception of one document cosponsored with the Soviet Union, Canadian relations with the Great Powers have never been close enough to produce cosponsored proposals. To this extent, one delegate was correct in maintaining that Canada confined itself to working mainly with "middle powers."

Canada, then, worked with a mixed group of developed and developing "non-Great Powers" both in the Seabed Committee and at the Conference. Canadian diplomacy was flexible and issue-oriented, as has been pointed out. Until now, we have emphasized the similarity in Canadian behaviour at the two sessions, and the relative flexibility of this behaviour. There were, however, significant differences in Canadian diplomacy at Caracas and at Geneva. To bring these out, we have discussed the Caracas and Geneva sessions separately in terms of the requirements imposed by Conference diplomacy.

## The Caracas Session

The stress which the Canadian government placed on a multilateral solution to ocean problems was evident in the planning for the Caracas session and the session itself. In the preliminary New York session in late 1973, Canada fought hard to win the chairmanship of the Conference's drafting committee. When the Caracas session opened, the Canadian delegation was the third largest present - nearly double the size of many of those sent by major Western European maritime powers, and larger than that of the Soviet Union.

Canadian diplomacy was clearly oriented towards building alliances in support of declared policies, and the centrepiece of this strategy was the coastal state group. The shifts in Canadian policy at the Caracas session can virtually all be explained as attempts to strengthen the group and to broaden its appeal to other coastal states, which in practice meant developing coastal states, because most other geographical coastal states were developed states with policies dominated by maritime interests. Table II indicates the costs, in terms of policy shifts, that Canada's alignment strategy at Caracas entailed.

The shift on the continental shelf, and the three shifts on fishing, were all in the direction of bringing Canada more into line with the major position favoured by a majority of the developing coastal states (both within and outside the coastal state group), namely a 200 mile exclusive economic zone or patrimonial sea.[37] The shift on archipelagos aided the inclusion of two archipelagic states in the coastal state group, and the shift on scientific research was in line with the strong position taken on that subject by the majority of developing coastal states. None of the shifts involved really major changes in the Canadian position (in the sense of abandoning a goal) and in addition to helping maintain the coastal state group, they also improved the Canadian position as a possible option for a package deal at the Conference.

Canadian delegates viewed the coastal state group as vital to the Canadian role at the Caracas session. Why? The importance of the group may not be measurable by its cohesiveness, which was probably less than that of the landlocked group. Other characteristics were more significant. As coastal, but non-maritime states, its members were all potential unilateral actors. They shared a wide range of concerns, and saw themselves as non-global "middle powers" defending themselves from both the "have" maritime states and the "have-not" landlocked and shelf-locked states. The group's mixed membership - three-quarters developing countries including African, Asian and Latin American states, and one-quarter developed states, both European and "white" Commonwealth - must have provided it with informal linkages to other negotiating groups, particularly the regional/political groups and the United States, that were useful in pursuing a 'package' consensus. In addition, Canadian delegates invested a great deal of time, energy and personal commitment in building and maintaining the group, which had met during the last two years of the Seabed Committee. Person contact was an important factor within the group, and the fact that the group had been an ongoing institution for several years had created considerable momentum.

The evidence of the Caracas session indicated that Canada gained more than it lost by working with the coastal state group, even though there were still many problems remaining for Canada's position within the

37 It should be noted here that Canada's version of the economic zone was a composite of specifically allocated rights, powers and responsibilities of the coastal state. It was specifically not a zone of residual rights in favour of the coastal state (A/CONF.62/C.2/SR.29, p. 5). By contrast, many of the developing countries looked upon the zone as a national area in which residual rights accrued to the coastal state, and in which the remaining rights of the international community required definition.

| | SHIFT | NO SHIFT |
|---|---|---|
| continental shelf | strong move toward accepting 200 mile limit in conjunction with margin (raised) 62/L.4; 62/SR.27 | |
| seabed beyond national jurisdiction | | continuation of active middle role between developed and developing C.1/SR.2 |
| territorial sea | | 62/L.4 |
| straits | | "use" concept in definition made more explicit C.2/L.83; C.2/SR. 13, SR.37 |
| archipelagos | explicit acceptance of archipelagic concept and of coastal archipelagos as subject to the concept (raised) 62/SR.27; 62/L.4 | |
| marine scientific research | addition of registration procedure for research in international seabed areas (raised) C.3/SR.0 | |
| FISHING cont. shelf | | 62/SR.27 |
| FISHING coastal | apparent move towards accepting 200 mile zone instead of biological zone (lowered) 62/SR.27; 62/L.4 | |
| FISHING | apparent move towards exclusive rights for coastal state - refusal to accept compulsory full utilization (raised) 62/L.4; C.2/SR.29, SR.31 | |
| FISHING anadromous | watered-down demand for state of origin control (lowered) C.2/L.81 | |
| FISHING wide-ranging | | 62/SR.27 |
| marine environment & navigation in zone | | more detailed development of idea, and closer link to zone concept 62/SR.7; C.3/L.6; C.3/SR.4 |
| sovereignty | | no retreat from functional approach |

Table II. Shifts from the November 1973 Statement in Canadian Positions at the Caracas Session of LOSC III.

(raised) = demand expanded from Nov. 1973 position; (lowered) = demand contracted
All document references are to the A/CONF.62/_____series.

group. Fishing was probably the main issue on which the group found firm common ground, and on which it had widespread outside support among the developing countries, but even here, the group showed little inclination to support Canada on salmon. Canada made some headway within the group on winning acceptance for its geographical position on the continental margin, but the group was not unanimous on this, and the developing coastal states were also split. Canada did not receive much support on the marine environment issue from the group,[38] and it was notable that Canada made no alteration on its position on this subject at Caracas. In addition, the shift towards accepting the coastal archipelago theory raised the spectre of huge areas being claimed by states with all kinds of offshore islands, many small and lying far out to sea. Canada's position on scientific research, important in the context of its allies, aroused hostility among most other developed states.

Canada's pattern of cosponsorship at Caracas indicated that working with the developing countries was not equivalent to agreeing with them. More generally, though, the danger was and always had been that the fragile alliance within the coastal state group between the 200 mile territorialists and the economic zone supporters would break, and the former carry other developing states with them.[39] Canada's shift on rights within the zone (to exclusive fishing rights for the coastal state) may have been an attempt to lessen this danger.

Despite these difficulties, the coastal state group still appeared, by the end of the Caracas session, to offer Canada the best alignment available at the Law of the Sea Conference. It was the only vehicle likely to result in a compromise favourable to Canada's position, and appeared to offer one of the few possibilities to serve "Conference interests" in the sense of finding a universally acceptable compromise on the law of the sea. It gave Canada's moderate coastal state position a degree of strength and credibility that Canada could not have achieved by acting alone. Canadian participation in the group did not require the abandonment of any of the country's goals, with the exception of the less strident position on salmon, and the possible acceptance of a 200 mile rather than a biological coastal fishing zone. For Canada to ally with its traditional friends among the developed maritime states would necessitate severe withdrawals on several high priority policies, particularly fishing and environmental control for the coastal state. For it to ally with the Latin American and African territorialists would be tantamount to reverting to unilateralism, and therefore abandoning the advantages of the global-level attempt to implement its policies. For it to have acted alone, or in concert with ad hoc groups on single issues, would have weakened the influence of the moderate coastal state position at the Conference.

For the duration of the Caracas session, national policy and the international political process were not in conflict. The global forum had allowed Canadian goals to be promoted without major modification.

## The Intersession Period

During the six months between the two sessions Canada had to work out both its response to the developments at Caracas, and also continue to participate in the bilateral and group meetings that were ongoing, informal extensions of the Conference. Canada's response to policy developments at Caracas can be assessed from the speeches and writings of key government ministers and officials in the intersession period.[40] In general, the message coming from these sources was that progress at Caracas had been sufficient to justify Canada continuing to give priority to international negotiation as a means of settling its law of the sea problems. In particular, there was satisfaction with the widespread support for a 200 mile economic zone expressed at Caracas. Salmon, the continental margin and coastal state control over ship-generated pollution were frequently identified as difficult areas for Canada in the negotiations. Heavy stress was laid on the continuing Canadian commitment to a package deal solution on the law of the sea as a whole.

Despite this commitment, however, there were clear hints in the speech by the Secretary of State for External Affairs that the government was not prepared to wait interminably for action on coastal fisheries: ". . .unless we have reason to be confident in an early successful conclusion. . .we will reassess all options and decide how best we can cope with our most urgent problems - and the fisheries question is obviously high on the list."[41] This remark assumes greater significance when taken in the light of the fact that all those officials who commented on the Caracas session took pains to downgrade the chance for a rapid conclusion to the Conference. None of them thought that general agreement would be reached at the Geneva session, and therefore they must have assumed a negotiating process stretching well into 1976 at a minimum. Given the enthusiastic Canadian reaction to progress on the 200 mile economic zone at Caracas, this evidence indicates that by early 1975 the government was thinking about unilateral action on fisheries within the context of the Conference.

Why did this change in the time-frame occur? One explanation is that Canadian negotiators, like those from other countries, had come to realize that the Conference was too unwieldy to accomplish what it was supposed

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[38] Only five out of ten sponsors of A/CONF.62/C.3/L.6 were members of the group.

[39] At Caracas some 19 states indicated a preference for a territorial sea solution to the problem of coastal state jurisdiction, 13 of them opting for a 200 mile territorial sea.

[40] In particular, J.A. Beesley, "Protection of Coastal State Interests vs. Preservation of International Interests." Paper presented at Airlie, Virginia, Oct. 21-24, 1974; P.A. Lapointe, "Law of the Sea Advanced But Much Remains to be Done," International Perspectives, Nov./Dec. 1974, pp. 19-24; D.S. Macdonald, "The Status of the Law of the Sea after Caracas." Address to the American Society of International Law, Feb. 1, 1975; and A.J. MacEachen, "Law of the Sea." Address to the Halifax Board of Trade, Feb. 25, 1975.

[41] MacEachen, ibid., p. 5.

to in the allotted time.[42] Another explanation lies in the declining fortunes of the coastal state group after the Caracas session. As has been shown, this had been a useful vehicle for Canada between 1972 and 1974, and its demise could only reduce Canadian influence in future sessions.

Why did the coastal states group collapse? There are a number of possible explanations. It may have fallen apart because of the "L4 fiasco," because of its own internal contradictions, or because its function was no longer necessary so it merged into the Evensen group. There is some evidence to support all three possibilities. Many delegates tended to view the introduction of A/CONF.62/L.4 as a turning point in the fortunes of the coastal state group, and saw the procedural difficulties which surrounded its introduction as reason enough for the decline of the group. (It was introduced at a plenary session following a speech by the President of the Conference urging rapid action on a law of the sea treaty. This led to speculation that it was a move to force a draft treaty on the Conference.)

There is also evidence that internal contradictions broke the group up. The emergence of a strong territorialist faction at the end of the Geneva session suggests that this is what happened.[43] The third possibility, one raised by Canadian delegates, is that the coastal state group was not incompatible with the Evensen group, and that many of the coastal state group provisions are reflected in the Evensen articles which were produced in Geneva. While there is some truth in this argument, it is equally true that the collapse of the group sharply reduced Canadian influence after the Caracas session, and forced a change in negotiating strategy at the Geneva session.

A suggestion of such rethinking in the intersession period came in a speech by the Minister of Energy, Mines and Resources. Without making any commitment, he stated that the government was "actively and urgently" studying the question of revenue sharing from the continental margin beyond 200 miles.[44] If adopted, a sharing policy would also indicate a change in strategy from that which appeared to govern Canadian behaviour at Caracas. It would constitute a shift designed to accommodate opponents, and not allies, and could therefore be taken as indicative of a new phase in Canada's approach to the negotiations.

## The Geneva Session

Otherwise, the Canadian position did not change between the Caracas and Geneva sessions. A slightly larger delegation was sent to Geneva, the same number of cabinet ministers made visits, and the delegation generally continued to emphasize the importance of a global solution.

Nevertheless, the Canadian role was markedly different at Geneva than at Caracas, and substantial shifts were made in the Canadian position. These shifts have been described in the following pages, and have then been analyzed in terms of the negotiating patterns which characterized the Geneva session. First, however, it is necessary to summarize the outcome of the session, in particular the status of the three single texts that the Committee chairmen produced during the last three weeks.

Contrary to expectation, the session neither collapsed completely nor produced a draft treaty on the oceans. Instead, the chairmen of the three committees were instructed by the Conference to prepare single texts which consisted of each chairman's view of what the dominant political sentiments were on the issues entrusted to his committee.

This arrangement is both unusual and politically tentative. The extreme fragility of the political accord which allowed this method of work is best expressed by the Note by the President of the Conference which precedes each of the informal single negotiating texts. It reads:

> At its 55th plenary meeting on Friday, April 18, 1975, the Conference decided to request the Chairman of its three Main Committees each to prepare a single negotiating text covering the subjects entrusted to this Committee. In his concluding statement, before the Conference made this request, the President stressed that the single text should take account of all the formal and informal discussion held so far, would be informal in character and would not prejudice the position of any delegation nor would it represent any negotiated text or accepted compromise. It should, therefore, be quite clear that the single negotiating text will serve as a procedural device and only provide a basis for negotiation. It must not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.[45]

In spite of all these qualifications, the texts are official documents and another session of the Conference has been scheduled for the spring of 1976. There does not appear to be a widespread international perception that the Conference has failed.

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[42] For an account of structural problems of the Caracas Conference, see E. Miles, "An Interpretation of the Proceedings at Caracas," in F.T. Christy et al. eds., Law of the Sea: Caracas and Beyond, Ballinger, Cambridge, 1975, pp. 37-94, 355-56.

[43] See Ecuador's Draft Articles on the Territorial Sea (A/CONF.62/C.2/L.88) and the accompanying debate in Committee II. (A/CONF.62/C.2/SR.48).

[44] Macdonald, op.cit., p. 11.

[45] A/CONF.62/W.P.8. Parts I to III. See Note preceding each text.

At Geneva, Canadian diplomacy clearly reflected the changes that occurred both before and during the session. Without the coastal state group there was no question of continuing the strategy of building a general alliance in support of Canada's declared policies. Instead, the Canadian delegation adopted a mixed approach of working alone where necessary, working in ad hoc groups on specific issues where possible, and concentrating a major effort in the Evensen group, which was the informal Conference drafting group dealing with the key coastal zone issues.

The emphasis on the Evensen group reflected the major shift in Canadian strategy. Instead of trying to build a coastal state alliance as one of the power blocs in the negotiations, the Canadian delegation tried at Geneva to encourage the reconciliation of competing positions, and the emergence of more broadly based compromise positions that might serve as a basis for Conference-wide agreement. This strategy was both rooted in, and made possible by, the wide acceptance of the coastal zone concept at Caracas. Since this concept was the foundation of Canada's policy, the objective of the Canadian delegation at Geneva was to adjust and refine the concept so as to make it more acceptable to its major opponents, the non-coastal and the maritime states. As at Caracas, the delegation's diplomatic strategy involved costs in terms of shifts and adjustments in Canadian policy.

Table III shows changes in the Canada position between the end of the Caracas session and the end of the Geneva session. The position reached at Caracas has been described in Table II (page 13). The position reached at Geneva has been determined from a variety of sources including: Canadian proposals and interventions made during the session; Canadian press conference statements during the session; Hansard, Canadian House of Commons; records of the Standing Committee on External Affairs and National Defence; records of the Standing Committee on Fisheries and Forestry; and interview data and unofficial documents from the session.

The biggest and most predictable policy shift came on one of the most contentious items in Canada's position, the continental shelf. Following up on the February speech by the Minister of Energy, Mines and Resources, both the Minister of National Revenue and the Secretary of State for External Affairs made public Canada's acceptance of the principle of revenue sharing from the continental margin beyond 200 miles.[46] This acceptance was conditional on recognition of Canada's "established sovereign rights out to the edge of the margin," and on allocation of the revenues "primarily to the developing countries." The shift was aimed at the African and landlocked states which had been the most vigorous opponents of Canada's claim to the margin, and it went a long way towards opening up the most fruitful ground for compromise on this issue. While a significant concession, the statement on revenue-sharing was very vague and general. No suggestions were made as to how revenues should be shared, and how much might be shared. In this respect, it did not seem to differ greatly from the early Canadian offer to revenue-share, made in March of 1971 at the Seabed Committee.

In a further attempt to meet objections to Canada's margin claim, the delegation devoted considerable effort to formulating a precise definition for the edge of the margin. This was done in the context of an informal ad hoc group of margin states, and the intention was to stem criticism that lack of a precise boundary on the seabed would endanger the integrity of the international seabed area. A draft was circulated containing the triple criterion of 200 miles, a geological definition based on the nature of the rocks and sediments, and an alternative choice of 60 nautical miles from the foot of the continental slope. The draft also required coastal states to make a fixed delineation of their margin claims on the basis of these criteria. This draft was not a formal proposal by either the group or any of its members, and although it was very influential in the Evensen group discussions on the continental shelf, none of its detailed provisions on delineating the boundary were included in the single text.

Canada worked with two of its closest coastal allies, Norway and Chile, to oppose a British-led proposal on straits, but this did not lead to any public alterations in, or clarification of, Canada's position on this highly contentious item. The single negotiating texts do not shed any light on the subject either, since the articles on straits are most confusing. In particular, the distinction between transit and innocent passage is ambiguous, since in neither case is passage allowed to be suspended. The Canadian requirement that international usage be a criterion for defining a strait to be an international one does not appear in the single text. This can only be seen as a setback for the Canadian position. However, the Secretary of State implied that no shift had been made:

> The single text has adopted the basic concept of transit passage advocated by the major maritime powers as the regime applicable to navigation through international straits. Canada would prefer passage through such straits subject to stricter control by the coastal state involved. However, the provisions define the straits as only those which as used for international navigation and excluded straits lying within the internal waters of a state. As Canada's Northwest Passage is not used for international navigation, and since Arctic waters are considered by Canada as being internal waters, the regime of transit does not apply to the Arctic. We are therefore able to enact and enforce pollution control regulations in that area.[47]

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[46] Geneva Press Conferences 30 April and 8 May 1975.

[47] Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence. House of Commons. Issue No. 24, 22 May 1975, 24:6. The use of the term "internal waters" here may reflect an upgrading of Canadian claims in this area.

| ISSUE | | SHIFT | NO SHIFT |
|---|---|---|---|
| Continental | | accept revenue sharing beyond 200 miles (lowered) | |
| Seabed Beyond National Jurisdiction | | | X |
| Territorial Sea | | | X |
| Straits | | | X? |
| Archipelagos | | | X |
| Marine Scientific Research | | | X |
| FISHING | Cont. Shelf | | X |
| | Coastal | apparent further renunciation of preferential rights beyond 200 miles (lowered) | |
| | Anadromous | | X |
| | Wide-Ranging | | X |
| Marine Environment and Navigation in Coastal Zone | | | X |
| Sovereignty | | | X |

Table III. Shifts in the Canadian Position from the End of the Caracas Session to August, 1975.

In fact, the accuracy of the last sentence depends not on the provisions for straits, but, if anywhere, on the text on the marine environment and scientific research. Here Article 20 (points 3 and 4) might be used to provide legitimacy for Canadian pollution regulations in the North West Passage, but the position here is unclear (see page 21 and footnote 54).

Another important change in Canadian policy at Geneva was an addition to, rather than a shift in, the existing position. The addition concerned the issue of the transfer of technology, a subject that had received no attention in the November, 1973, document, and little at the Caracas session. Canadian policy on the transfer of technology was not elaborated in detail, although qualified support was given to the Group of 77's proposal on the subject.[48] At Geneva, the Canadian delegation made clear its enthusiasm for the concept, and linked it with the Canadian position on scientific research, protection of the marine environment, and coastal zone fisheries management.

Transfer of technology from developed to developing countries (or more correctly from countries more advanced in marine technology to those less advanced) was presented as an important new part of the Canadian coastal state management package. It was seen as a means of solving several of the difficulties raised for the coastal state position by the obvious inability of many developing coastal states to handle the responsibilities that would fall to them. Transfer of technology was grafted on to the question of scientific research in such a way that coastal state participation in scientific research would be interpreted as a major avenue for transfer of technology. This involved no change in Canada's position on scientific research, and seemed a likely way of making participation more palatable to the research states by linking it to fulfillment of a principle heavily favoured by the developing countries.

More important to Canada, transfer of technology was also grafted on to the issues of coastal state jurisdiction over fisheries management and environmental control. Such a transfer, the Canadian delegation argued, was necessary to enable developing coastal states to fulfill their responsibilities in these crucial areas. Effective upgrading of marine science and technology in the developing countries would remove problems like the developing countries' demand for a double standard on pollution control. It would also lessen the widespread fear among the developing countries of being exploited and cheated by the technologically advanced powers because of their inability to understand the implications of advanced techniques. Once again, this addition involved no change in the Canadian position on these questions, and Canada indicated its own willingness to "be in the forefront amongst those developed countries seeking to cooperate with developing countries. . .in the transfer of technology."[49]

On fisheries, there was a further move at Geneva towards accepting 200 miles as the outermost limit for coastal state fisheries jurisdiction. However, the government did not unequivocably renounce its aspiration to control beyond 200 miles. In response to questioning on this matter in the Standing Committee on Fisheries and Forestry, Mr. Legault replied:

> What happened in Geneva was that there was not an opportunity in the informal negotiations to have a full discussion of this problem. There will be that opportunity at the next session. We are hopeful that we will get an appropriate handle on those stocks beyond 200 miles. However, I think one should point out at the same time that we should look at the worst and assume that what we have is in what is now found in the single negotiating text (i.e. 200 miles only).[50]

On the question of salmon, the Canadian delegation devoted much time and energy at Geneva to negotiating specific terms for the shift made at Caracas to a more moderate form of state-of-origin control. This work took place almost entirely in the context of the Evensen group, and was incorporated in the group's text on the economic zone, which was in turn very largely incorporated into the single negotiating texts. From the Canadian point of view, the most controversial provision is that which grants special consideration to states which have contributed by expenditures to maintain salmon stocks. There seems to be no a priori reason why this would not apply to American participation in the Fraser River fishery, but this was not felt to be the case by Mr. Legault:

> No, I do not believe this article can be read to apply to the situation between Canada and the United States in respect of the Fraser River treaty. That provision in the article was inserted as a result of an arrangement between the USSR and Japan under which Japan was to have invested in enhancement facilities in certain Siberian rivers. Our information is that no such investment has yet been made, but that the USSR continues to want this particular provision in the salmon article that would emerge from the Law of the Sea Conference.

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[48] A/CONF.62/C.3/L.12 rev. 1.

[49] Secretary of State for External Affairs, op. cit., (May 8, 1975). On the Canadian position on transfer of technology generally, see also: A/CONF.62/C.3/SR.20, pp. 17-18; SR.21, pp. 2-4; SR.22, pp. 9-10; and SR.23, pp. 8-10.

[50] Minutes of Proceedings and Evidence of the Standing Committee on Fisheries and Forestry. House of Commons. Issue No. 31, 26 May 1975, 31:18.

> You may recall, Mr. Leggatt, that the origins of this provision are in a Soviet proposal, a proposal by certain Eastern European countries actaully was formally tabled at the Law of the Sea Conference session in Caracas. It was at the insistence of Japan that this particular provision is found in this article, which went through the Evensen group in Geneva, and is now reflected in the unified text. Again, however, I do not believe that it applies to the situation between Canada and the United States.[51]

This suggests that there is a legal reason why the clause would not apply to the Fraser River fishery, or that there is a tacit understanding between American and Canadian delegates that it does not apply, or that "special consideration" does not confer strong rights to any set portion of the catch. All three arguments may well hold; none have as yet been conclusively made.

In summary, then, the emphasis of Canadian policy shifts at Geneva was towards moderating Canadian demands. Sometimes this was done by taking a less strong position, as in the case of coastal and anadramous fishing, and sometimes by adding new elements into a position, as in the case of the transfer of technology and revenue-sharing from the margin beyond 200 miles. As at Caracas, the substance of these shifts amounted to modification, not abandonment, of stated policy preferences.

Why did these shifts occur, moderating Canadian demands? Were they related to changes in international negotiating patterns, or to changing domestic constraints? Although some new domestic factors were involved, changes in conference diplomacy generally provide an explanation. Three factors are outstanding:

i) the collapse of the coastal state group

ii) the dominant role played by the Evensen group during the Geneva session

iii) the fact that actual bargaining on several issues finally began at Geneva, so that as a natural outcome of this compromises in phrasing and in more substantive matters occurred.

i) The collapse of the coastal state group. Since Canada had been chairman of this group, its demise could not help but reduce Canada's influence and its involvement in the drafting of articles. Nevertheless, the removal of the group as an active player in the negotiations forced Canada to focus its activity in the wider forum of the Evensen group, where pressures to compromise were much greater than they had been in the "clubbier" atmosphere of the coastal state group. This was true regardless of why the coastal state group declined. In this context, there is some evidence that the transition from the coastal state group to the Evensen group was a smooth one for Canada, and not a process forced by the disruption of earlier plans. The fact that many Evensen texts reflect coastal state group views, particularly the coastal state group fisheries provisions which were produced informally at the end of the Caracas session, supports this view. The argument made by some Canadian delegates that the coastal state group might be seen as a special interest group useful when proposals were being developed, but dysfunctional when compromises were being sought, thus had some force. It did not, however, completely cover the blow to Canadian strategy caused by the weakening of the group, and evidenced by the need for Canada to adopt a more conciliatory line at Geneva.

ii) The dominant role played by the Evensen group. Like the Caracas session, the Geneva session was marked by intense group activity, the groups being much the same as those described for the former session. The territorialist and landlocked and geographically disadvantaged groups were both particularly active, and the Arab group was more evident than at Caracas. A number of "functional" sub-groups were formally set up to try to initiate bargaining on specific issues, but they had little success. Among the broader political groupings, the Group of 77 continued to be mired down in the search for a common position.

Partly because of the proliferation of small groups, and the inactivity in the Second Committee, the initiative passed rather easily to the Evensen group. This group, which had emerged in 1972, had met in the summer of 1974 in Caracas, and in New York in February of 1975. Thus by the time the Geneva session began the group had a strong identity and momentum. Originally composed of about two dozen delegates, the group expanded to represent 30 countries in February of 1975, rose to 35 midway through the session at Geneva, and reached 40 by the end of the session. That it sought to maintain a representative character is evident by the breakdown of its membership:

| | |
|---|---|
| old coastal state group | 14 |
| territorialist group | 2 |
| landlocked and geographically disadvantaged state group | 5 |
| straits states | 3 |
| maritime states group | 5 |
| unaffiliated states* | 8 |
| archipelagic states | 1 |
| TOTAL | 38** |

*three of these belonged to the East European group, and five were littoral states not belonging to any issue-specific group

**thirty-five states were used in this listing, but one is listed twice (LLGDS and straits) and one three times (coastal, archipelagic, straits).

[51] Ibid., 31:13.

The most notable failure in this effort to achieve balanced membership was in the severe under-representation of landlocked and geographically disadvantaged states. Because of this, many delegates saw the Evensen group as being dominated by coastal and maritime states, and in extreme cases, saw it as a replacement for the coastal state group as the main opponent of the landlocked and geographically disadvantaged group. There was a consistent tendency within the Evensen group to dismiss the landlocked and disadvantaged group as a minor actor at the Conference, and to view its existence as a problem for the Group of 77 to work out internally. This was an important factor in enabling Canada to shift the focus of its activity into the Evensen group.

In terms of broad political dimensions, the Evensen group also maintained a representative character. Of the 35 countries, 17 were developed, 17 developing (i.e. Group of 77). On the East-West dimension, 12 were OECD countries, and four COMECON countries. Regionally, only the Arab region was not represented at all, though South Asia maintained the under-representation characteristic of that region at the LOS Conference. In terms of global politics, the group took in all the major powers except China, which attended the February session, but not the one in Geneva.

Who provided political leadership in this kind of setting? The group chairman, Jens Evensen of Norway, was felt by many delegates to play the dominant role, although this leadership was apparently low-key, oriented to mediation and consensus building. In addition, about half a dozen other delegates were named as being consistently influential. However, while this leadership was low-key, the chairman, and many of the delegates attending the group, saw the function of the group as drafting a single treaty for the oceans covering the mandates of Committees II and III. (Midway through the session the chairman formally addressed the Group of 77 on the work of the group.)

While the Evensen group was originally defined as bringing together legal experts, (Evensen himself having been an influential expert in the 1958 Conference), it is hard to see this as the outstanding characteristics of the group, since the Conference is dominated by lawyers already. In fact, it served as a device to bring together the chief figures in the major delegations to initiate bargaining. As such, the commitment of states to it varied from quite high, in the case of Canada, which had nowhere else to go, to quite low, in the case of some developing countries under pressure from the Group of 77.

iii) Bargaining at the Geneva Session. The most striking feature of the Geneva session was the effort to initiate, and to limit, bargaining, to the "most concerned" states. The need to limit those involved in negotiation to those most immediately concerned has been frequently noted in international relations.[52] Both the recruitment to the Evensen group, and the method of work in that group represent efforts to promote an agreement among those most concerned.

It is clear that who is "most concerned" with the oceans is a highly subjective question. For instance, the tendency to exclude the landlocked and disadvantaged group, presumably on the grounds that they are less concerned, raises some questions about the general legitimacy which the Evensen group's work will be awarded. Nevertheless, it is true that in most respects key actors were included in the Evensen group.

Delegates who attended the meetings reported that when there was a tendency in the group to disagree, the usual procedure was for the chairman to meet at some other point with the actors most concerned with that particular point. Thus, the principle of involving those most directly involved was carried into the group's method of work. (As noted, however, there was a consistent small group of delegates who tended to be involved on more than one issue. This group was not just the most powerful, although it included them.)

In the Canadian case, the emergence of an article on salmon was the most significant result of this method of work. The fact that concerned states were established users of the salmon resource led to a virtual recognition of the rights of traditional users but a ban on new entrants. Another example might be the maintenance in the single text of the long-held Canadian position that in icing areas a coastal state could set its own standards, higher than international ones. The related Canadian requirement that the North West Passage not be treated as an international strait was not included in the text, leading to speculation that bilateral bargaining on these two issues resulted in trade-offs satisfactory to both the United States and Canada. It must be stressed that if such bargaining does occur, it is not likely to involve explicit trade-offs, but rather a mutual perception that each side is giving a little and taking a little. Bargaining of this sort is likely to be a feature of subsequent sessions of the Conference.

The main shifts in Canada's position can thus be explained by its participation in the Evensen group, not only because Canada supported the group (both from necessity and conviction), but also because the whole purpose and method of the group were oriented towards compromise.

A detailed assessment of the success or failure of Canadian strategy at the Law of the Sea Conference is beyond the scope of this paper, and would, in any event, be premature, since the Conference itself seems likely to last through several more sessions. The subjective impression of the authors is that Canada was less influential at Geneva than it was at Caracas, in good part because most of its actions were taken alone rather than in the context of a negotiating group alliance. The Evensen group was not in any sense an alliance of like-minded states, and the relatively moderate coastal state position espoused by Canada appeared to lose ground to a three way confrontation among maritime states, territorialist coastal states, and landlocked and geographically disadvantaged states.

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[52] See J. Sawyer and H. Guetzkow, "Bargaining and Negotiation in International Relations," in H. Kelman, ed., International Behavior, New York, Holt, Rinehart & Winston, 1967, p. 493.

To return, then, to the questions with which we started this section, it seems clear that the imperatives of global ocean politics, particularly the demands of alignment building, do have a significant impact on the goals of states. Even in the relatively early stages of negotiation represented by the Caracas and Geneva sessions, the Canadian position underwent substantive changes in response to these imperatives. Against this, however, is the fact that the initial Canadian position remains more or less intact despite the shifts and additions. No goal was wholly abandoned, and no major alteration in priorities occurred. The changes can be seen as adjustments within the "window" of the initial objectives. The interpretation we have placed on this record of limited shifts is that policy and process reinforced each other during the course of the Caracas and Geneva sessions. The global level of action which LOS III represented must, therefore, have been the correct forum in which to promote Canadian policy goals. (Presumably if policy and process are in conflict, the actor has either chosen the wrong level of action, or been dragged into the wrong forum.)

Whether or not this same symbiotic relationship between policy and process can be extended beyond these first two sessions is less certain. By mid-1975, Canada appeared to be actively considering sacrificing its process priority (international negotiation) to one of its policy priorities (preventing further depletion of coastal fishing stocks). This makes it necessary to re-examine the relationship between unilateral extension to 200 miles and the ongoing law of the sea negotiations.

## IV. Canada and the Ongoing Law of the Sea Negotiations

The Caracas and Geneva sessions made it clear that if a 12 mile territorial sea and a 200 mile economic zone were to be the basis of a package deal, an enormous range of special cases and interests would have to be satisfied. Canada is no exception to this rule, and indeed, on many aspects of ocean politics Canada's policy has been to claim the maximum extension of coastal state authority short of a territorial sea. Canadian negotiators, like others, have to weigh their priorities in order to consider what sacrifices would be acceptable in pursuit of a global package settlement, and what sacrifices would be so great that unilateral action outside the global negotiation would be preferable. What are the limits beyond which Canada will no longer adjust its policies at future sessions, whether by raising or lowering demands, in order to foster the chances of a global-level solution to the law of the sea problem? It has already made significant shifts towards a 200 mile zone even though such a policy is not as efficient for Canada as its original proposal. (It must be said that neither is it particularly inefficient in regard to Canadian interests.) In addition, on low priority items like scientific research it has been prepared to take strong positions that are particularly obnoxious to its traditional friends. The evidence demonstrates a fairly strong Canadian commitment to a solution on the global level, and a willingness to modify, but not to abandon, positions in support of that effort.

Given this general attitude, how do the single negotiating texts from the Geneva session affect Canada's position at the Conference? It is not yet clear how the texts will be used in subsequent sessions, but if, as seems likely, they are used as a basis for negotiations, then their contents would have a substantial impact on Canada's role. In general, the contents of the texts are favourable to the Canadian position, so it is reasonable to assume that Canada will lend its weight to making them the central focus of the negotiations.

On most of the issues to which Canada attached a high priority, the texts contain a position largely in line with that taken by Canada. This is true for the international seabed regime and machinery, where the texts followed a middle-ground, compromise approach; for the continental shelf, where the only problem is the non-inclusion of precise criteria for delineating the outer margin boundary; and for most fisheries issues, assuming that Canada's shift to accepting a 200 mile limit is maintained, and also that the text's provisions on highly migratory species are acceptable. (This seems likely since they differ more in form than in substance from Canada's policy, and have not been raised in the government's post-Geneva discussions.) It is also true for lower priority items like the territorial sea.

On high priority items, the major difficulty in the texts for Canada lies in the articles on the marine environment. While these tend to lean in the direction favoured by Canada, especially in the matter of coastal state rights in icing areas, they are much weaker than Canada's in general terms of the powers given to coastal states beyond the territorial sea, and also contain a weaker position than Canada's on the question of responsibility for pollution arising from a scientific research.[53] The main question here is whether Canada will fight for its existing stand on this issue, or re-order its priorities, and make sacrifices on environmental issues in return for gains on resource issues. On lower priority items, there are difficulties for the Canadian position on three issues. On straits, the single negotiating texts contain a position weaker in coastal state rights than Canada has advocated. In particular, the criterion of 'use' in the definition of a strait is given in the present rather than in the past tense, and therefore offers no protection for the North West Passage. (The powers offered to the coastal state elsewhere in the texts over arctic waters specifically do not apply to straits used for international navigation.)[54] On archipelagos, no provision is made for coastal archipelagos such as the one in Canada's arctic.[55] And on marine scientific research, the texts retain a distinction opposed by Canada between pure and economic research, and also do not give the coastal state the direct power of consent over all research that Canada advocates.[56] On this subject, however, there is a conflict

[53] A/CONF.62/W.P.8/Part III, p. 8 para 4.
[54] Ibid., Part II, article 37; Part III, p. 12, article 39.
[55] Ibid., Part II, article 131.
[56] A/CONF.62/C.3/SR.20, pp. 17-18; and ibid., Part III, p. 18, articles 18-21.

between the texts from Committee II and those from Committee III, the former being more favourable to Canada's position.[57] The House of Commons discussed the texts and the session on May 9 and May 12, and the debate was continued towards the end of May in the Standing Committee on External Affairs and National Defence, and Fisheries and Forestry. The questioning in the House dealt with the government's reaction to the Geneva session and with the possibility of taking unilateral action. The response of the Secretary of State on May 9 was as follows:

> I have to be cautious. I have just returned, I should emphasize. Although I am satisfied with the general progress that has been made at the conference, and the progress made in reaching Canadian objectives, I point out today the conference will receive the so-called unified negotiating text, from which we will see more clearly what the results have been of the chairmen of the three committees. I should like to consider the possibility of making a statement after we have had the results of the tabling of the documents. . .even though progress has been made and even if the unified text is agreeable to Canada, it is still not law. It is still only a basis for further negotiations. At present we are and will be discussing the results of the conference and will be determining as a government what future course of action should be taken. It has been made clear already that unilateral action is one of the policy options open to the government, and it certainly is a lively option at present and will be considered in the light of all factors.[58]

The impression given is one of qualified support for the texts by the Canadian government.

Canada's major response to the Geneva session was a substantial upgrading in the likelihood of a resort to unilateral action on fisheries jurisdiction. When the question of Canadian extension was raised again on May 12, the Secretary of State expanded slightly on the May 9 statement:

> . . .there was delivered at the conference on Friday the single negotiating text which is now under study. In many aspects, it seems to meet the objectives of the Canadian government. However, it is still a negotiating text. It has to be negotiated at the next meeting. If it were possible to implement these provisions with respect to the fisheries immediately, one would be much more relaxed, but that is not possible. In the meantime, the government will appraise the situation and will consider among the possible options the prospect of unilateral action. However, that prospect has not yet been considered by the government as a whole.[59]

The government took the same cautious and non-committal attitude in the following weeks, and sought to emphasize that its reaction to the texts was conditional on the outcome of the annual ICNAF meeting in June. It is significant that the government only appears to have felt pressure from the fishing sector.

The failure of the June ICNAF meeting to achieve the 40% reduction in foreign fishing effort requested by Canada placed the government in a position where it was forced to meet head-on a debate on unilateral extension.

While this debate centred on the issue of immediate Canadian extension to 200 miles, there were in fact at least seven options, involving various combinations of <u>timing</u> and <u>level of action</u>:

i) immediate unilateral extension to 200 miles at least
ii) no action until after the next session(s) of LOS III
iii) immediate coordinated extension with some other coastal states
iv) bilateral action with the United States
v) unilateral action after United States extension
vi) regional action through ICNAF
vii) bilateral negotiations with fishing states

Each of these options has been discussed below, in terms of how it was debated in Ottawa, and in terms of the implications of each option for the law of the sea negotiations.

i) <u>immediate unilateral extension</u>

The strongest variant of unilateral extension would be extension taken without prior warning to other states, and without prior negotiation to either test and/or increase the likelihood that other states would

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57 <u>Ibid.</u>, Part II, article 49 versus Part III, p. 18, articles 18-21.
58 Canada. <u>House of Commons. Debates</u>. May 9, 1975, p. 5635.
59 <u>Ibid.</u>, May 12, 1975, p. 5674.

comply with the legislation. This option was rejected, on the grounds that it would not succeed. In a major debate on fisheries in the House of Commons on June 19 the Minister of Fisheries argued that:

> Any action we take to protect Canadian fisheries must be effective action. Even unilateral action does not mean acting against the views of the majority of states and attempting to impose the views of one country upon all countries. Unilateral action of this kind has never been successful.[60]

This option, like the six following, has been criticized in terms of the problems of compliance and enforcement they pose, and in terms of their impact on the law of the sea negotiations. As suggested, the first option maximizes the likelihood of non-compliance, unless one assumes that the surprise factor in a sudden declaration would increase the likelihood of compliance.

The implications of such a declaration on LOS III are difficult to assess. Would it speed up the glacial progress of the Conference, help break it up, or have no impact at all?

The argument that unilateral extension by Canada and/or other countries would serve as a catalyst at LOS III is based on the notion that other states objectively need a multilateral settlement on the oceans more than do major coastal states. Groups such as the landlocked and disadvantaged states will thus ultimately compromise if they see that otherwise the coastal states will go it alone. There is some force to this arument, but some flaws as well which have been discussed under option (iii). The opposite argument - that unilateral extension would destroy the Conference - is based on the assumption that it would set off a chain reaction among other states, and also discussed under option (iii). The third possibility - that extension would not affect LOS III outcomes - seems to be the one accepted by the government, since none of the aruments raised by cabinet ministers against extension deal seriously with the impact of unilateralism.

ii) no action until after the next session(s) of LOS III

The lack of enthusiasm for this option stemmed from the increasingly heavy political pressure from the East Coast in favour of extension, and from concern about the time-frame, rather than trend, of LOS III. In criticizing an opposition motion to assert Canadian control over the resource of and over the continental shelf, the Secretary of State for External Affairs said:

> . . .I think we have every reason to register satisfaction with the degree of progress made in the fisheries situation itself. If we could translate these objectives immediately into international law, this subject certainly would not be debated today.[61]

The first option is the highest risk option; the second is the lowest risk choice, However, there are two problems associated with it. The first concerns the time-frame. If extension is delayed until ratification of an ocean treaty by the required number of states takes place, such extension might not be possible until 1980 or possibly longer (assuming two years until a final treaty is signed and giving three more years for ratification). The second problem concerns the overall level of agreement likely to emerge from LOS III negotiations. The prospect of a comprehensive legal settlement, ratified by all major actors, is at this moment no more than a possibility. However, there are other possibilities for multilateral action, such as making unilateral extensions following a draft treaty, reducing the scope of the issues under discussion, or settling for something less than a full-scale treaty (executive agreements or even informal agreements are possibilities). The existence of these other ways of "terminating" LOS III make it even more difficult to evaluate the impact of Canada remaining indefinitely within the negotiations.

iii) immediate coordinated unilateral action with some other coastal states

Having played down both immediate unilateral extension, and also the possibility of doing nothing until the next session of LOS III, the government appeared to be floundering among a variety of options. In the period immediately following the Geneva session, the possibility of unilateral action in concert with other countries was tied to the outcome of the June ICNAF meeting:

> . . .obviously, one of the possibilities is action in concert with a number of other countries. At the Law of the Sea Conference, there was comment that other countries might be considering action. However, no decisions have been taken. We will obviously be in touch with any countries which are interested. It is one of the possibilities which will be considered. I believe my colleague, the Minister of State (Fisheries) has already stated that the upcoming ICNAF meeting will deal with the Canadian proposal calling for a considerable reduction in the annual take in that

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60 Ibid., June 19, 1975, p. 6932.

61 Ibid., June 19, 1975, p. 6925 (Vol. 119, no. 157). The vote on the motion to declare Canadian jurisdiction to 200 miles or to the edge of the continental slope was defeated 85 to 55.

> area. It would seem to be premature to consider any action of any kind until the results of that meeting are clear. However, Canada will be putting forward a proposal there for considerable reductions.[62]

The government also stated that talks would be held with other "impatient actors" such as Australia and Mexico. While such talks were reported to have been held, their outcomes have not been public. At least they did not produce any immediate coordinated action. While a joint declaration with a developing country (such as Mexico) would no doubt increase the legitimacy of extension at LOS III, the likelihood of major powers not complying with extension would remain.

The possibility of coordinated action among Evensen group members has also been discussed, although probably not in the group itself. Following the Geneva session a number of bilateral meetings were scheduled between the Norwegian representative and law of the sea officials in the United Kingdom, Soviet Union, Canada and the United States. The outcome of the June 18 meeting in Ottawa was not announced.

If the inner core of the Evensen group do come to an accord, they will probably limit their coordinated unilateral action to the sphere of fisheries. These extensions would probably conform to the provisions in the single negotiating text. There would be two advantages to this type of coordinated action:

i) it would allow the Conference process to continue in the sense that all countries acting on their own would be conforming to the probable legal terms of a future Convention.

ii) it would ease the enforcement problem enormously for Canada in that the United States would be playing an active role in surveillance and enforcement on the East Coast, and the Soviet Union would be much more inclined to comply with the act of extension.

It also has disadvantages in terms of its impact on LOS negotiations:

i) it might destroy the Conference, because the Group of 77 might interpret it as an attempt by developed countries to impose a solution on them.

ii) it might destroy the Conference by destroying the basis of a package. Many coastal state delegates and observers argued that the Conference and unilateral and/or sub-global levels of action could now proceed simultaneously.[63] From the Canadian standpoint, fisheries were one of a number of vital questions, and it seemed that the marine environment issue, which had a weak unilateral option, might suffer, along with negotiations on anadramous species.

iv) bilateral actions with the United States

As far as handling practical problems of fisheries surveillance and enforcement and reciprocal fishing agreements on the East Coast are concerned, this was the obvious step. There is no evidence that such a move has been considered. The Law of the Sea relations between the two countries made this a politically unlikely step to take. Moreover, a joint declaration with the United States would probably damage the Canadian position at LOS III.

v) unilateral action after United States extension

This was another low risk option, in that compliance objectives would be attained, and the position at LOS III not be damaged. It was, of course, an option that could only be carried out if and when the United States cooperated and adopted a 200 mile zone.

vi) regional action through ICNAF

At the ICNAF meeting which followed the Geneva session, Canada tried to get the principle of 100% preference for the coastal state recognized, as well as a 40% reduction in foreign fishing effort. It did not succeed

[62] Ibid., May 12, 1975, p. 5674.

[63] Because of the collapse of the 1975 deadline, and the consequent change of the Conference from a specified short-term, to an unspecified long-term event, the influence of the Conference as a restraint on unilateral action on fisheries claims was seen by these delegates and observers as much diminished. Acceptance of a long-term Conference by the great majority of delegates was seen as implying increased tolerance for unilateral claims by states with pressing fishery problems, so long as such claims were within the emerging consensus on the economic zone. This seemed more likely to be the case than after Caracas, but the possible impact of unilateral claims on the Conference remained a very uncertain factor.

in either objective, although the overall quotas on some depleted species were reduced. Another meeting was scheduled for fall, since the ICNAF Convention allowed Canada to request a special meeting with three months' notice.

While the government was thus promoting this option, there were a number of problems with it. On the positive side, agreement in the ICNAF forum would increase compliance and reduce enforcement difficulties. However, such agreement seemed unlikely. The ICNAF forum was rigidly defined to handle a limited range of problems, appeared to be constitutionally unsuited to doing what Canada requested, and was dominated by maritime states.

vii) bilateral negotiations with fishing states

A final possibility was to negotiate bilaterally with states most concerned with the East Coast fisheries situation. However, the strong maritime interest of the Soviet Union, in particular, weighed against its making concessions in the fisheries sphere alone, since such concessions would undoubtedly be used against it in future sessions of LOS III.

In late 1975, all these options presented problems. Time, however, might solve some of them. If the United States declared a 200 mile zone in the fall of 1975, Canada would be able to cruise easily in her wake. Another ICNAF meeting might produce enough progress on reduction of foreign fishing to defer action until after the next LOS III session.[64] There also appeared to be combinations of options that were not tried. For example, it is hard to see why Canada did not work jointly with the United States in the June ICNAF meeting, unless she was deliberately out to demonstrate that only unilateral action would work. (This seemed unlikely since the government's enthusiasm for unilateral action had obvious limits.)

At any rate, by August of 1975, it was no longer adequate to see the international process as fully shaping Canadian policy. It was equally true, however, that Canadian policy priorities were themselves being reordered, with fisheries assuming a dominant position. This reordering had come about partly because of the serious economic situation on the East Coast (which is only partly related to foreign fishing fleets), and partly because of the enormous expectations built up in coastal regions by the Law of the Sea Conference.

Conclusion

It may now be appropriate to summarize some major points. First, we have tried to give an overview of some of Canada's general interests in ocean matters. Simply put, Canada is a coastal rather than a maritime state and Canadian policy is a logical extension of this fact. The priorities among Canadian goals do not entirely follow from objective conditions, but they have been treated as a fait accompli rather than as a subject for inquiry, since Canadian policy was set by 1973.

In examining the levels of action available to Canadian policy-makers, we have concluded that policy-makers made the right choice in promoting a global settlement of ocean problems. Multilateral conference diplomacy on law of the sea has been a process in which Canadian negotiators have been able to promote Canadian policies without seriously compromising Canadian goals.

While such a conclusion can reasonably be supported for the duration of the Caracas and Geneva sessions, it is not clear that it can be extended into the indefinite future. This is because Canadian policy priorities are themselves being reordered, as domestic pressures increase, and because the relationship between various levels of action (or political forums) is becoming more complex. While it is no longer a question of unilateral action versus global action, the two levels of action are related in ways which no one yet fully comprehends, as section IV has suggested. Moreover, it has also become evident that the different degrees of compliance associated with variants of unilateral extension are critically important.

It is evident that the first two sessions of the Law of the Sea Conference have done much to facilitate and to legitimize unilateral extension of coastal state control. However, they have far from fully sanctioned such extension, and it would be premature to suppose that extension would be a cost-free option at present. Whether the Conference's intended function of producing a comprehensive law of the sea settlement (or even something less ambitious) can be achieved remains uncertain. Nevertheless, Canadian interests are best furthered by continuing to promote the maximum global level of agreement possible. This is because only global action can provide results on a wide range of goals, and at the same time induce the compliance of major powers with a new ocean regime.

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[64] This seems to have happened at the September meeting, at which Canada did surprisingly well in obtaining agreement on cutbacks in foreign fishing effort. An intensive series of bilateral negotiations, especially with the Soviet Union, appear to have been instrumental in bringing about this reversal.
We do not, as yet, have sufficient information to make a full assessment of this development, but its most likely effect will be to reduce domestic pressure on the government over fisheries issues, and thereby enable Canada to retain a high level of commitment to the international negotiations. The unexpected success of Canada's initiative on these levels can perhaps be taken as indicative of the extent to which major trends at the Law of the Sea Conference have acted to moderate the positions of the maritime states.