

true that the old concept of innocent passage is also not enough but must be modernized to bring it into line with present day conditions. Surely if there are limitations on the use a state can make of its own territory, there must be more stringent limitations on the use it can make of another state's territory. It must be made indisputably clear that coastal states have the right and responsibility to prohibit any ship that does not conform to required safety standards from crossing their territorial seas and from reaching their ports. . . . In addition, however, the modernized concept of innocent passage must replace unfettered freedom of navigation in the coastal state anti-pollution zones so that here too commercial passage at least may be prohibited if it is not innocent in environmental terms. We might add that we are gratified that other committee members such as Australia and New Zealand have supported this idea of giving coastal states broad powers of anti-pollution control over shipping in zones adjacent to the territorial sea.

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. . . At the same time, however, it may be that some enforcement or supervisory role for a more limited type of international machinery will be required. Certainly the proposed international seabed machinery will have a definite regulatory and enforcement role with regard to the threat of pollution from seabed resources activities, and perhaps also with regard to the dumping or deposit of harmful materials on the international area of the seabed and ocean floor. Even here, however, the coastal state should have a degree of special rights to intervene when activities on the international area of the seabed threaten its environmental interests.

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. . . In our view, what would be required would be to incorporate the rule, without limiting it to oil, in the proposed comprehensive convention on marine pollution. Thus, the convention would provide that any state facing grave and imminent danger to its coastline or related interests from pollution or threat of pollution of the sea, following upon an accident on the high seas, or acts related to such an accident, which may be expected to result in major consequences, may take such measures as may be necessary to prevent, mitigate or eliminate such danger. This, of course, is the rule exactly as enunciated by the Institute of International Law at its Edinburgh Meeting in September 1969.

#### *Law of the Sea of the Future*

The following extracts are taken from a statement made by Mr. J. A. Beesley, Representative of Canada to the United Nations Preparatory Committee for the Third Law of the Sea Conference, Plenary Session, Geneva, on August 5, 1971:

I would like to suggest some tentative ideas . . . as to the possible general shape of the law of the sea of the future. Firstly, while the interests of

the landlocked states must be taken care of adequately, the primary interests of the coastal state in all activities in the marine environment, particularly those adjacent to its shores, must be reflected in the law. Secondly, Mr. Chairman, with the single exception of the seabed, we strongly doubt the possibility of the member states of the UN agreeing to some kind of super-agency which would have powers surpassing those combining the Security Council, IMCO, ICAO, WHO, WMO, the ITU, GATT and the IAEA. Thirdly, and this conclusion follows from the second, much of the administration of the law of the future must be delegated to the coastal states and must be based on resource management concepts. This is clearly the trend of the law of the future, and, I would suggest, is already present in the existing law of the sea albeit in an inchoate and inconsistent manner. What must be brought to the concept of delegation of powers, and indeed to the exercise of those powers already enjoyed by the coastal states be it with regard to the territorial sea, fishing zones or the continental shelf, is the concomitant notions of responsibilities and duties, and the idea that coastal states must act not only in their own interests but as custodians of the vital interests of the international community.

It is these concepts of resource management and of delegation of powers on the basis of custodianship that I had in mind when I spoke of old concepts which, given an imaginative adaptation and application, could form the essential basis for an accommodation of interests. For instance, the concept of delegation of powers to all states concerned already applies on the high seas with regard to the suppression of the slave trade and piracy. Why can we not develop an effective resource management system for the management of "free-swimming" fish in areas beyond exclusive national jurisdiction? Why can we not marry the concepts of resource management and delegation of responsibility or powers? Why should the concept of delegation of powers to, and assumption of responsibility by, a particular class of states with a particular concern in a given matter — more specifically, the coastal states — not be applied for instance to the protection of fisheries and the prevention of marine pollution? If the law of the sea is not sufficiently instructive, why can't we learn from the air lawyers who have had no difficulty in establishing a system of delegation of powers through ICAO to its member states. . . . Perhaps we can learn a good deal from the air lawyers. It shocks no one, for example, that Canada exercises, under ICAO arrangements, air traffic control authority in a Flight Information Regime comprising the whole of the Arctic sector north of Canada between the 141st and 60th meridians and the North Pole. To sea lawyers, however, the mere idea that any state other than the flag state can exert any form of control over a vessel of that flag state is anathema. It may be, however, that tempering the idea of delegated powers with the idea of responsibility would have a moderating effect on this doctrinaire insistence on exclusive flag-state jurisdiction. It may be too that tempering the doctrine of exclusive flag-state jurisdiction with an equally forceful doctrine of flag-state responsibility would have still other beneficial effects.

How in more precise terms can the concepts of delegation of powers and resource management be applied to the outstanding issues of the law of the sea? One of the most important areas of the law where they can be applied is that of fisheries. It should be possible to develop an effective resource management system, based on the delegation of powers to coastal states, under which the coastal state would assume the responsibility, as custodian for the international community, for the conservation and management of free-swimming fishery resources far beyond the limits of exclusive national jurisdiction. We can foresee the development of a system which would grant coastal states the right, and indeed the duty, to manage such free-swimming stocks, for conservation purposes, under internationally agreed rules and guidelines. That right to manage would not include the exclusive right to exploit these species, although provision would be made, again under internationally agreed guidelines, for preferential rights on the part of coastal states, in recognition of their admitted special interests. We will be saying more on this subject when we speak in Sub-Committee III later this week.

Mr. Chairman, there are basically two alternatives open to us in approaching the future development of the law of the sea. We can, if we must, follow the precedent of the law of outer space, which was developed essentially by unilateral action by certain powers, later sanctioned in multilateral forums although still implemented unilaterally. Canada is prepared to follow such a course, albeit reluctantly, if it is the one which imposes itself. The other alternative is to achieve through the multilateral forum which will be provided by the 1973 Law of the Sea Conference, a comprehensive and lasting accommodation on all the new and outstanding problems of the law of the sea. This is the course which we prefer, together, I am sure, with the other countries represented here. To achieve such an accommodation, in our view, will require the abandonment of out-moded concepts and the adaptation of legal doctrine to a multidisciplinary and interdisciplinary approach to the problems associated with the uses of the sea.

#### RIGHTS AND DUTIES OF STATES

##### *Espousal of Claims. General Procedure. Registration of Claims. Doctrine of Continuous Nationality*

In a response to an enquiry concerning claims against a foreign state, the Department of External Affairs replied in a letter dated December 10, 1971, as follows:

For your background information we might explain that over the past few years the Canadian Government has signed claims agreements with several Eastern European countries. When the country concerned