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The Law of the Sea conference: factors behind Canada's stance

By J. Alan Beesley

The United Nations on December 17, 1970, took a decision of considerable importance to Canada. The world body decided that a third UN Conference on the Law of the Sea would be held in 1973 if necessary preparations could be made by then. The first two such conferences were held in 1958 and 1960.

In Resolution 2750 adopted at the UN General Assembly's twenty-fifth session in 1970, it was agreed that among the subjects to be included on the agenda of a third conference were "the establishment of an equitable international regime — including an international machinery — for the area and the resources of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, *inter alia*, the prevention of pollution) and scientific research".

The decision was arrived at after many weeks of negotiation, with some countries arguing that all that was needed was a conference limited to three issues: breadth of the territorial sea, passage through straits, and coastal fishing rights. Others, including, in particular, Canada, argued that any approach to redeveloping the Law of the Sea must be comprehensive and must deal with the whole range of issues left unresolved or resolved imperfectly at the first conferences. The Canadian delegation played an active part in the negotiations and in fact chaired the final rounds of negotiations that reached agreement. As a consequence, it was the Canadian delegation that introduced the "compromise" resolution into the UN and read into the record a number of "understandings" relating to the decision.

Canadians may wonder why Canada has taken and is continuing to take such an active interest in resolving the various contentious issues of the Law of the Sea and of the environment. The answer can be deduced in part simply by looking at a map of Canada. Canada is obviously a coastal state. It is said to have either the longest or the second-longest coastline in the world, and that is the first fact of life in determining Canada's approach to any attempt to resolve Law of the Sea issues. A second major fact of life, which is not quite so evident, is that Canada is not a major maritime power with an extensive shipping fleet, and this affects the Canadian position considerably, compared, for example, to that of many other Western states. A third important fact of life is that Canada is a coastal fishing nation interested in preserving the living resources in the waters adjacent to its coasts rather than a distant-water fishing nation.

These three facts, or factors, tend to group Canada with other coastal states, including, in particular, those of Latin America, but the matter is more complex than that. Canada is also one of the major trading nations of the world, and, as such, interested as much as any state in maintaining freedom of commercial navigation. Given the lack of a Canadian mercantile fleet, the Canadian approach to certain questions such as flag-state jurisdiction, especially flags of convenience, is understandably different from that of major flag states, however close Canada's relations with such states may be. An obvious example is the relevance to the world of today of present international law concerning flag-state jurisdiction to the problem of pollution by oil-tankers.

Continental shelf

Yet another factor influencing the Canadian position on the Law of the Sea is that, unlike many other coastal states (including most of the Latin American states), Canada has a huge continental shelf comprising an area amounting to almost 40 per cent of its land-mass. It is considered

to be the second-largest continental shelf in the world, exceeded only by that of the U.S.S.R., and is said to comprise approximately two million square miles. Moreover Canada's continental shelf, like that of Argentina, is deeply glaciated, with the consequence that it extends to great depths at considerable distances off Canada's coast in the north and off its east coast, so that simple distance or depth formulas for defining the outer limits of the continental shelf have little relevance to the Canadian situation. Thus, not surprisingly, Canada continues to support the "exploitability test" laid down in the 1958 Geneva Convention, defining the outer edge of the continental shelf in terms of the limits of exploitability and the recent decision of the International Court of Justice in the North Sea continental shelf case. This decision affirmed that the continental shelf was not some artificial, highly theoretical or abstract concept but the actual physical extention seaward of the submerged landmass.

Another factor of some importance is that Canada is not a major power. Although Canada is an ally of some of the world's major Western powers and therefore to some extent shares their preoccupations concerning global Western naval strategy, at the same time it has much in common with other coastal states concerned about their own security interests, particularly those involved in naval passage through straits, close to their shores. Another significant factor is that Canada is a non-nuclear power and is deeply committed to disarmament, and this has affected Canada's approach to such questions as the Arms Control Treaty and the denuclearization of the seabed. Not surprisingly, there has been a distinctly Canadian approach on that issue (as on most others in the related field of disarmament and environmental protection in international law in general).

Yet another factor, or rather a range of considerations, influencing Canada's approach to the Law of the Sea issues is that Canada is at one and the same time both a developed and a developing country. This dichotomy of perspective has particular application to the offshore, that is to say the continental shelf. Canada has the technology developing countries desire, gained the hard way by learning through doing, and in this respect Canadians probably rank amongst the foremost in the world. Canadian experts can be found involved in drilling operations and offshore exploration operations in widely-scattered parts of the globe. But, at the same time, Canada lacks the vast amount of risk capital required to develop its offshore resources (or considers that it does, which may have the same consequence in policy terms).

Huge investments

Exploration and exploitation of the petroleum resources of the seabed involve huge investments. On this issue, Canada's point of view is more analogous to that of developing countries concerned about controlling such investments in their interests than to that of many developed countries which are primarily concerned to protect their own investments in offshore exploration and exploitation operations near other countries' coasts from being nationalized. Canada tends to be more interested in guarding and protecting its own resources on its own continental shelf.

It is not surprising, perhaps, that it was a Canadian delegation that first proposed, in a UN forum, in September 1971 in the Sixth (Legal) Committee, that it was time for the world organization, to consider developing a code of ethics leading ultimately to a multilateral treaty to regulate the activities of multinational corporations. The Canadian proposal was based on the argument that, if states had long been the subjects of international law, and individuals were now the objects of international law, as in the Human Rights Conventions for example, why not attempt to develop international law applicable to the large multinational or transnational entities, many of them with budgets bigger than those of most Western governments, which were regulated on a hit-and-miss basis by unharmonized national legislation. The application of such an initiative to the question of pollution havens suggests the need for the development not only of trade law on these questions but of international law.

Time to consider a code of ethics for governing multinational firms

Connected with this aspect of the problem is one that is becoming increasingly important in Canada at present, and that is the whole issue of foreign ownership and control of multinational corporations. Merely to consider in a superficial manner the range of problems raised by the possibilities brought about by new technology to exploit the non-living resources of the continental shelf and the seabed beyond national jurisdiction is to be aware of the complexities of the problem. In the exercise of "sovereign rights" over the continental-shelf mineral resources, pursuant to the 1958 Continental Shelf Convention to which Canada is a party, the problem is perceived through the perspective of a country which requires a very clear-cut, authoritative interface for dealing with companies drilling off its shores —

particularly with respect to pollution control, but also on many other commercial and economic issues. (This explains why Canadian legislation administered by the Department of Energy, Mines and Resources and by the Department of Indian Affairs and Northern Development is as tough as any in the world, both on pollution control and on such matters as the terms for exploration and exploitation of offshore mineral resources. However, Canada's laws on these questions are development-oriented and deliberately designed to encourage exploration and exploitation of resources. It is that element that makes Canadian legislation rather interesting to developing countries and this is why Canada's delegation has spent much time in the UN Seabed Committee explaining the approach embodied in Canada's legislation.)

Canadian laws geared to faster exploration and exploitation of resources

Innocent passage

Another factor in the Canadian position is that, although Canada supports the general conception of the widest possible freedom of commercial navigation consistent with environmental protection and coastal state security, Canadians are understandably sensitive about the need to redevelop and "modernize" the conception of "innocent passage" through such straits as Canada's Northwest Passage. Under what conditions can loaded oil-tankers be capable of innocent passage of such straits? An additional and related factor is that Canada has already established the 12-mile territorial sea, which has long been claimed by the U.S.S.R. but is not accepted by Canada's major ally, the United States, except as a part of a comprehensive settlement of outstanding Law of the Sea issues. (As a result of Canada's 12-mile territorial sea, Canada has control of the eastern (Barrow Strait) as well as the western (Prince of Wales Straits) "gateways" to the Northwest Passage, whether or not other states accept Canada's long-standing claim that the waters of the Arctic archipelago are Canadian.)

Another factor in determining Canada's approach to the third Law of the Sea Conference relates to the question of freedom of scientific research. While, like other technologically-developed states, Canada has a high degree of expertise, enabling it to carry out its own scientific research in coastal waters and the subjacent seabed, Canada shares some of the concern of developing countries about the difficulty in differentiating between "pure" scientific research and commercial research by other states and about protecting Canada's "sovereign rights" over the continental shelf researches, not only on economic grounds but for well-founded reasons of national security. Although it shares some of the preoccupations of the developing country coastal states, Canada is at the same time interested in fostering and furthering, as are other developed countries, the freest possible basis for scientific research in coastal waters. Merely to consider the question is to perceive very clearly that the problem is not simply one of "free access to coastal waters" in return for "free access to scientific information" gained from research in such waters. One of the underlying problems is the lack of the technology on the part of many developing countries to make adequate use of the results of such research.

Marine environment

The final preoccupation of Canada — and one of the most important — flows from the first — the length of Canada's coastline. This is the need to protect Canada's own marine environment from degradation. It is sufficient to refer to Canada's Arctic Waters Pollution Prevention Act and the breakthrough it is achieving in developing international environmental law, and the recent amendment to the Canada Shipping Act extending Canadian pollution control to the Gulf of St. Lawrence, the Bay of Fundy — Hecate Strait, Dixon Entrance and Queen Charlotte Sound. Canada cannot be oblivious to any development concerning international environmental law, if only because of the position it has taken in its own national legislation. The importance of the issue to Canadians can be gathered from the fact that the Arctic pollution control legislation was affirmed unanimously in the House of Commons and, more recently, the Canadian stand on the Cherry Point pollution spill, which was also affirmed unanimously in the House of Commons.

In the light of the considerations outlined above, it is easy to see why Canada attached importance to being a member of the original 35-member *ad hoc* UN Committee on the Seabed (established as a result of the initiative of Malta), and the later Standing Committee of 42, now expanded to 96 members at the initiative of Sweden. Since passage of the UN resolution on a third Law of the Sea Conference, the mandate of the Seabed Committee has been extended to include preparatory work for the Conference on all of the issues mentioned in the 1970 Resolution 2750, together with any other issues that warrant consideration at that time.

Turning to how Canada is implementing its own approach to these Law of the

Sea questions, the best way of explaining the Canadian position is to say that Canada has adopted a pluralistic approach — acting unilaterally, bilaterally or multilaterally as appropriate.

Canada has not hesitated to move unilaterally when it was the only way to meet a particular problem. It was by this means that Canada established its Arctic Waters Pollution Prevention Zones, its 12-mile territorial sea, its fishing zones and its pollution-control zone.

In the light of the controversy that has arisen over Canada's "unilateral" legislation, it is appropriate to bear in mind that the Law of the Sea has always been developed by state practice, i.e. unilateral measures gradually acquiesced in and followed by other states.

The three-mile territorial sea, to the extent that it was a rule of law, was established by state practice. The 12-mile territorial sea, which is now virtually a rule of law, has been established in exactly the same way, by state practice, by countries doing just what Canada has done, namely passing their own legislation. Canada does not, however, take the position that every country has an unlimited right to set its own maritime boundaries. It recognizes, as is pointed out in the 1951 decision of the International Court of Justice in the Anglo-Norwegian fisheries case, that any act by a coastal state delimiting its maritime jurisdiction has effects on other states.

For just such reasons Canada has negotiated with other countries affected by its fisheries and pollution-control legislation. This is, of course, a difficult, laborious, time-consuming and delicate process — maintaining Canada's national position while still attempting to seek equitable accommodations with other states that are affected by its measures.

Series of agreements

Thus, it can be seen that, if Canada has been active unilaterally, it has been equally active bilaterally and has negotiated a series of agreements phasing out the fisheries activities, in Canadian territorial sea and fishing zones, of Norway, Britain, Denmark, Portugal and Spain (not yet in force), and has negotiated a completely new agreement with France concerning French fishing rights in the Gulf of St. Lawrence. Canada has also carried out intensive negotiations with Denmark and France concerning the delimitation of the continental shelf between Canada and those countries and has undertaken the process of negotiating continental shelf delimitations with the United States. Canada has also negotiated and recently renewed a reciprocal fishing agreement with the United States whereby the nationals of either country may fish up to three miles from the shoreline of the other.

Canada has also negotiated a fishing agreement with the U.S.S.R. applicable to waters off Canada's west coast and is engaged in negotiating an analogous agreement with the U.S.S.R. covering waters off Canada's east coast. Canada has also carried out a series of intensive negotiations with the United States and the U.S.S.R. and other Arctic countries concerning the possibility (not yet in sight) of developing a multilateral agreement to ensure the prevention of pollution and the safety of navigation in Arctic waters.

What has Canada been doing on the multilateral level? One need only look at the records of IMCO, of the Seabed Committee and of the Stockholm Conference to get some idea of how active Canada has been in attempting to develop international environmental law and a new international Law of the Sea.

Canada is probably as active as any other country on a whole range of Law of the Sea problems, technical rules of the International Maritime Consultative Organization and international environmental law issues. The question arises as to why Canada has consistently advocated a comprehensive co-ordinated and integrated approach to the Law of the Sea rather than an attempt to settle some of the easier issues first *seriatim* and proceed to the more intractable ones. There are three reasons for this approach. First, the Canadian view is that only at a comprehensive Law of the Sea Conference can there be a balancing as between the national interests of individual countries and as between national interests and those of the international community. Secondly, the comprehensive approach represents an attempt to meet the difficulty in reaching agreement as to which issues are the priority questions. States are generally agreed on the high priority of one issue — the seabed beyond national jurisdiction — but are deeply divided on the relative importance to be attached to almost all other issues. Thirdly, almost no single issue left unresolved in this field of contemporary international law can be settled in isolation from other unresolved issues. There is interpenetration and interconnection which can be illustrated by examining any one of them.

States in accord on high priority of seabed zone beyond national jurisdiction

For example, Canada from the beginning has been active in the Seabed Committee on the question of the seabed beyond the limits of national jurisdiction.

This question, raised by the Ambassador of Malta, concerns the limits to be designated for this region, the regime applicable and the machinery for implementation of such a regime.

Canada has accepted from the outset that there is an area of the seabed beyond national jurisdiction. While Canada supports the "exploitability test" laid down in the 1958 Geneva Convention on the Continental Shelf, it does not argue that this give it the right to march out into the very centre of the ocean. So Canada has taken a serious interest in this question, and made a number of proposals and suggestions and participated in all of the deliberations of the Seabed Committee.

Seabed issues

The issues being discussed in the Seabed Committee involve first the regime for the seabed beyond national jurisdiction. What international law will apply in that area? Where do the limits of the area begin? What are the kinds of legal rule states will agree to as governing exploration/exploitation in that area? What kind of international machinery will be required, if any, to implement this regime? There are a whole host of problems raised by this issue, ranging from such matters as serious security questions to basic economic problems for developing countries, the always very delicate issue of boundaries, although they are not national boundaries in the usual sense because no state has sovereignty over the Seabed beyond its own territorial sea. States are naturally zealous to protect their "sovereign rights" over the mineral resources of the continental shelf.

Zeal to protect 'sovereign rights' over resources of continental shelf

In addition to the seabed problems in the context which has been explained, there is a widespread feeling in the UN that the Continental Shelf Convention itself requires some elaboration and clarification. The Continental Shelf Convention, in Canada's view, represents a significant development of international law, and much of that convention will have to be retained in any new approach. The "exploitability test" is an elastic one, and it may be that the international community will have to devise some different legal basis for measuring the extent of national jurisdiction. There is a clear interrelation between the regime and limits of the seabed beyond national jurisdiction and the limits and regime of the continental shelf (which begins at the outer edge of the territorial sea and ends at the edge of the international area which will be preserved "for purely peaceful uses for the benefit of mankind, particularly the developing countries").

To take another example, Canada is very seriously concerned about the problem of over-fishing, and believes the time has come to do something about it. It is somewhat ludicrous, in an age when technology has made fishing quite a different thing from what it once was, to say simply that "freedom of the high seas" applies and that one of the freedoms is the right to fish at will. We think that the fishing problem has to be resolved through recognition by the international community, in the interests of conservation, that there will have to be an agreement on a management conception, with the coastal states playing a very large role in managing the fisheries resources off their coasts. We are not arguing that the coastal states should have exclusive rights to all the fish in such areas but are supporting the inclusive approach, whereby other states would be permitted to fish subject to certain preferential rights to the coastal state. All concerned, however — and this is important — would fish on the basis of strict conservation rules, so that it would no longer be a case of whoever comes first grabbing up all the fish and letting the others go home with empty ships.

The fisheries problem is linked to the problem of the breadth of the territorial sea, because a number of Latin American states claim a 200-mile territorial sea within which they restrict foreign fishing. Closely connected with the breadth of the territorial sea is an issue that has been raised by the United States and the U.S.S.R. — namely, the right of passage in straits that would be affected by the 12-mile territorial sea. What they want is an unrestricted right of passage, not innocent passage. That is a question that raises difficulties for many coastal states as well as Canada (with respect to the Northwest Passage). That is one of the issues that will have to be resolved if we want a complete accommodation and not merely a picking-away at the problem.

Pollution problem

The problem that, in a sense, is the most complex of all is that of pollution, first because the law is so undeveloped. This is why Canada acted unilaterally. It is why Canada reserved its position on the International Court on this issue. There is almost no environmental law on the international plane. What there is, Canada has helped to create. Canada has been consistent. In the Boundary Waters Treaty with the United States, as early as 1909, the two countries agreed to an obligation not to pollute their respective boundary waters.

The Trail Smelter case was an arbitration case involving a dispute between Canada and the United States, which went on for many years, ending in a ruling that a state could not so use its own territory as to damage the territory of another state. A big smelter in Trail, B.C., was sending fumes across the border and damaging trees and agriculture, etc., in the United States. Canada accepted state responsibility for the damage.

Canada had a very strong position on the Partial Test Ban Treaty (an environmental as well as an arms-control measure), on the Non-Proliferation Treaty (another arms-control measure with environmental implications), and on the seabed Arms Control Treaty (which also has environmental aspects).

A second reason why the pollution-control problem is so complex is that coastal states, in attempting to protect their environment, must necessarily pass measures that affect not only commercial vessels or fishing vessels or naval vessels or private yachts but all of these. Thus all normal means of navigation are at one and the same time subjected to controls by coastal states. However minimal the interference with freedom of navigation, these steps raise for major maritime powers basic questions concerning their conception of the freedom of the high seas.

What is the particular policy being pursued by Canada on the many unresolved Law of the Sea issues? The idea basic to a Canadian approach — unilateral, bilateral and multilateral — to all of the issues mentioned is "functionalism". The Canadian approach is not a doctrinaire one based on preconceived notions of traditional international law nor is it a radical or anarchistic approach careless of contributing further to the already chaotic state of the Law of the Sea. The Canadian position has been to analyze the problem and attempt to determine the specific measures needed to resolve the issues. On the multilateral plane, Canada, at both the 1958 and 1960 Law of the Sea Conferences, pioneered the functional approach (which was once embodied in the Law of the Sea) whereby states assert over various kinds of "contiguous zones" only that amount and that kind of jurisdiction necessary to meet the particular problem in question. When Canada has acted unilaterally, it has refrained as much as possible from asserting total sovereignty and instead has asserted just that jurisdiction necessary to fulfil the particular functions required.

Sovereignty comprises a whole bundle of jurisdictions — that is to say, everything from criminal law, customs law, fishing regulations, shipping regulations and anti-pollution control to security measures. A state will exercise its sovereignty, for example, in the territorial sea subject only to a right of innocent passage. States also exercise their sovereignty over their internal waters (subject to no qualifications.)

Canada suggested at the 1958 and 1960 Law of the Sea Conferences that a 12-mile territorial sea may or may not have been required at that time, but what was essential was to accord to coastal states fisheries jurisdiction out to 12 miles. This was the origin of the well-known Canadian "six-plus-six" formula (i.e. a six-mile territorial sea and a further six-mile exclusive fishing zone). The proposal failed by a fraction of a vote to become accepted at the 1960 conference as a rule of international law.

Fraction of vote blocked adoption of 'six-plus-six' coastal formula

Classic example

Canada's Arctic Waters Pollution Prevention Act provides a classic example of the functional approach. Only that degree of jurisdiction was asserted that was essential to meet the real (as distinct from the psychological) needs, as has been made clear by a number of statements by the Prime Minister and the Secretary of State for External Affairs. The same can be said of Canada's amendments to its Territorial Sea and Fishing Zone Act. Where total sovereignty was needed (as in the case of Barrow Strait, for example), it was asserted and, for this as well as other rea sons, Canada established a 12-mile territorial sea, replacing the 1964 Canadian legislation, which had established a 9-mile exclusive fishing zone adjacent to Canada's pre-existing 3-mile territorial sea and laid down the basis for determining it from straight baselines.

In the same 1970 amendments to the Territorial Sea and Fishing Zone Act, Canada laid down the legislative basis for proclaiming exclusive fishing zones "adjacent" to its coast. Subsequently, by Order-in-Council, the special bodies of water on the east and west coasts mentioned earlier were established as Canadian fishing zones. A little later, pursuant to amendments to the Canada Shipping Act, pollution control was established over those zones. (Canada did not legislate to implement its long-standing claims that certain bodies of water, such as, for example, the Bay of Fundy on the east coast and Hecate Strait and Dixon Entrance on the west coast, are Canadian internal waters. Canada simply asserted the kind of jurisdiction necessary to extend fisheries and pollution-control jurisdiction.)

The ways in which Canada has applied

the functional approach to such issues as marine pollution, fisheries control and the seabed beyond national jurisdiction will be discussed in subsequent issues of *International Perspectives*. But it may be useful at this point to explain the relation, in the Canadian view, between the UN Conference on the Human Environment held in Stockholm in June, the IMCO Conference in 1973 and the Law of the Sea Conference, also scheduled for 1973.

Aim at declaration of principles as a framework for environmental law

It has been the Canadian position since the decision of the UN to hold an environmental conference in Stockholm this year that such a conference could provide a unique opportunity to adopt a multi-disciplinary approach to the future development of international environmental law. Such law has been virtually non-existent until now, and it was the Canadian view that it would be a major achievement if the conference could reach agreement on a declaration of principles that would not only provide guidelines to states for their future action but lay down the framework for the future development of international environmental law. What was proposed by Canada to achieve this end was the adoption and endorsement by the Conference of marine pollution control principles and of a declaration on the environment which would embody principles of international environmental law founded on the Trail Smelter case.

Stockholm guidelines

Canada therefore argued strongly that the Stockholm Conference should produce legal principles as well as exhortations to co-operative action. Canada argued that these legal principles should then be referred by Stockholm to the 1970 IMCO Conference for information and guidance and translation into technical rules for the safety of navigation, since only IMCO has the necessary expertise to carry out such a task. Canada has argued further that the Stockholm principles should be referred to the Law of the Sea Conference for action. Only the Law of the Sea Conference provides a forum for the major redevelopment of the Law of the Sea so badly required, particularly that relating to the protection of the marine environment. (IMCO is not by its constitution a law-making forum, and it is the Canadian view that no attempt should be made to redevelop the Law of the Sea under the aegis of IMCO.)

With these considerations in mind, Canada was the first (and only) state to table a declaration of marine pollution control principles in the Inter-Governmental Working Group on Marine Pollution that was preparing for the Stockholm Conference. At the same time, Canada began to work with the United States and other countries to develop a convention to forbid dumping into the sea of certain toxic substances carried from land to sea in ships. Canada was also the first country to table a declaration on the human environment, and the Canadian declaration had a high degree of legal content, analgous to the UN declarations on human rights and on outer space.

The marine principles elaborated in the Working Group on Marine Pollution at Ottawa in November 1971 and the draft Convention on Dumping (first submitted by the United States at that Working Group and later redeveloped at a meeting in Reykjavik) have now been referred onward by the Stockholm Conference for action by the Seabed Committee (the preparation committee for the Law of the Sea Conference) and for the information of the IMCO Conference (in the case of marine-pollution principles), and to a separate conference to be held in London (in the case of the draft articles for a dumping convention).

Three principles endorsed

It is worth noting that not only the 23 marine-pollution principles agreed to at the November 1971 UN Working Group meeting in Ottawa were endorsed by the Stockholm Conference and referred to IMCO and the Seabed Committee but the three controversial Canadian coastal state jurisdiction principles were also referred to the Seabed Committee. It should be noted also that the draft Dumping Convention articles "blessed" by Stockholm are now no longer a "licence to dump" as was the case with the earlier drafts. The articles now provide the basis for an effective draft convention. It is effective for two reasons: first, environmentally, in that it specifies a "black list" of toxic substances that cannot be dumped at all and a "grey list" of other toxic substances that can be dumped only under strict controls, and, second, from a jurisdictional point of view, because it would permit enforcement by all parties to the Convention against ships "under their jurisdiction". (The action proposal actually approved at Stockholm read — "against ships in areas under their jurisdiction".) Thus the draft Convention may represent a real breakthrough in that it may lay down a basis for an accommodation between flag states and coastal states, enabling both to enforce the Convention against offending parties, much as is the case with respect to slave ships and pirate ships.

The draft declaration on the human environment approved by the Stockholm Conference contains a number of legal principles based on those embodied in Canada's original draft declaration, principally the duty of states not to carry out activities within their jurisdiction that degrade the environment of other states or the environment beyond any state's jurisdiction, and the duty to develop further the law of liability and compensation for such damage. Thus the first objective in Canada's three-pronged approach has been achieved. Needless to say, much still remains to be done.

One closing comment may be in order. The impression is sometimes created that Canada is attempting to assert its claims in ways that ignore the interests of other countries. An examination of the action taken by Canada and the statements made by Canadian representatives in a series of UN and other forums (going back to the 1969 Brussels IMCO Conference) indicates the contrary to be the case. Canada has attempted to work out the basis for an accommodation between coastal states and maritime powers, between coastal fishing states and distant-water fishing states. Canada has suggested that these issues be approached conceptually as matters in which maritime — distant-water fishing states — agree that coastal states exercise certain management and conservation and environmental preservation powers on behalf of the international community as a whole, subject to strict treaty rules and subject to third-party arbitration as to the manner in which such authority is applied. The concepts that Canada has been suggesting are "delegation of powers" by the international community to coastal states and the acceptance of the duties of "custodianship" by coastal states in the interests of the international community as a whole. Whether these concepts eventually find general support, it is worth noting that they were reflected in the third Canadian principle just referred by the Stockholm Conference to the Seabed Committee.

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