

NOTES FOR USE BY J. ALAN BEESLEY IN PANEL DISCUSSION  
"INTERNATIONAL LEGAL ASPECTS OF OFFSHORE DEVELOPMENT",  
ATLANTIC PETROLEUM OFFSHORE SEMINAR, HALIFAX, NOVA  
SCOTIA, MAY 29, 1973

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Obviously after that introduction, I should quit while I'm ahead and say nothing. I would like to begin with a very few words to say how pleased I am to be here. It's true I did go to some considerable pains to be here. I had had a pre-existing commitment in Geneva and have an immediately ensuing one in Ottawa. My reason for being here is that we officials of the federal government involved in this problem attach considerable importance to just this kind of open discussion of such issues. For my own part I always go away from these seminars having learned something, and the process often turns out to be a two-way one. Public discussion and public expression of views are invaluable to all of us working in this field. However, quite apart from that I'm simply delighted to be back here in Halifax again. Now I will go right into what I have to say as quickly as I can because I know we don't have much time.

I might mention that the proposals set in motion by the initiative taken by Ambassador Pardo of Malta, relating to the status of the area of the sea-bed beyond national jurisdiction, immediately raised some of the questions being discussed at this conference. Even though back in 1967 the U.N. was only focussing upon the area beyond national jurisdiction the first question which arose in people's minds of course was "Where does that area begin?", and there was a logical tendency to begin with that part of the problem. There was a very wide-spread political

attitude, however, that the limits question should be left aside until a later stage, and that delegates should concentrate first on the kind of régime which should be developed for the area beyond national jurisdiction. There is not a lot of logic in that approach but there was simply too much resistance in too many countries to the idea of beginning with limits. Obviously right there and then we knew that we were faced with a difficult issue on limits, and so, from the beginning, the Canadian position on that question was made clear in the Seabed Committee. We were one of the original members of the Ad Hoc Committee and we made known in a series of statements that insofar as Canada is concerned we consider that our jurisdiction extends to the continental margin, that is to say it encompasses the shelf, the slope and the rise. We haven't withdrawn or retreated from that position one inch since. At the time when we first took that position I think perhaps we were the only country stating it publicly and frankly in that way. Now there are a fair number of countries doing similarly. I'll come back to that in a moment.

It can be seen, however, that the question of continental shelf limits raised rather delicate issues for many countries. For some it was a question of national boundaries because of the way they had legislated on the basis of the 1958 Continental Shelf Convention. We are a party to that convention but we have always interpreted it restrictively as granting sovereign

rights to states for the purpose of exploring the shelf and exploiting its resources, but not sovereignty. However, some countries interpreted it as permitting sovereignty over the shelf, and countries like Mexico and Venezuela, for example, very respectable countries with a high reputation in matters of international law, so legislated, and their interpretation is enshrined in the Mexican constitution. Now when the decision was taken in 1970 to expand the mandate of the Seabed Committee to include other questions it was expanded in another sense, in that the size of the Committee was considerably enlarged, and once again Canada retained its seat. We then found ourselves faced with a specific item on the question of the continental shelf régime and its limits, so that problem is very much on the agenda of the U.N. for the Third Law of the Sea Conference. As our Chairman pointed out, there will be a brief procedural meeting, a two week meeting limited only to procedure, this fall, probably in December, in New York, at the same time that the Assembly is on, but the substantive conference is slated to begin next Spring in April and May in Santiago, Chile. It will go on for eight weeks and if that isn't enough the conference will either continue, or, as seems more likely, be postponed for a further session or sessions, probably in Vienna.

Now I have said what our position is on the shelf but I think it's important to bear in mind that our position on fisheries is also a rather firm one. We have taken the stand that a coastal state must have authority to manage the living resources of the waters superjacent to the shelf, and we have

also put forth a proposal and an explanatory working paper advancing the proposition that the coastal state must have preferential fishing rights, including even the right to take all of certain species of stock. In addition to that, we have put forth proposals on anadromous species which I won't go into, but I think it's important to know that we have a rather tough position on both the shelf and on fisheries, the shelf itself insofar as mineral resources are concerned, and the superjacent waters with respect to fisheries. It's no secret that we have also a rather forward position on pollution control, which puts us in the eye of the storm, so to speak, and we also have a rather difficult position to maintain concerning passage through straits, if other countries consider that they are talking about the North West passage when they suggest that there should be free and unimpeded passage through international straits. So the position we are taking is not exactly a mild or an evasive one - we've been very much in the forefront putting forth proposals on all of these questions.

As things now stand I think one can say that there is a respectable body of opinion which recognizes that states like Canada which have always considered that it has an extensive continental shelf have to be treated in some special way, because these are existing acquired rights, both on the basis of conventional international law, depending, admittedly on how one interprets the Convention on the Continental Shelf, and on the basis of customary international law, insofar as state

practice and the North Sea Continental Shelf decision of the International Court must be taken into account. On the other hand, there are those who hold a completely contrary point of view. There are states in the U.N. whose representatives simply reject all the 1958 Law of the Sea Conventions. They say that as they were not states at that time, the Conference and the consequential Conventions have no influence on them. And these states want to open up every issue, including, especially, the Continental Shelf Convention. Many of these states, and it's very difficult at this stage to say precisely what the numbers are, including particularly some of the land-locked or "shelf-locked" states as they term themselves (meaning that they can't go very far out into the seabed without bumping into the shelf of another state), want a very narrow jurisdiction for coastal states. The proposal they have actually put forth would limit coastal states' continental shelf to 40 miles, which of course would be totally unacceptable to Canada. Others have taken a somewhat more complex approach to the problem. The U.S.A., for example, has put forth the Nixon Proposal. It is an extremely intricate proposal but one can say some things about it: for example, the coastal state would renounce its rights beyond 200 meters insofar as its sovereign rights are concerned, although it would retain a number of forms of control and jurisdiction in the area from 200 meters to the edge of the margin. This would have the effect of truncating the Canadian shelf, although not the U.S.A. or U.S.S.R. shelves. That trusteeship proposal

as put forth by the U.S.A. Government has not received wide favour. One or two developed countries have supported it, but the developing countries have rejected it en masse for a variety of reasons. Nevertheless, the proposal should be borne in mind as one possible approach. Other developed countries have put forth their point of view, usually not in specific proposals, and gradually it is appearing that a number of them share our position. There are a number of developing countries which are adopting similar positions, but many developing countries are, even at this late stage, still, I think, in the process of trying to determine where their essential interests lay. For example, will they really do better for their country if they claim a wide area of jurisdiction, or will they do better if they claim a narrow area, leaving a much broader area beyond national jurisdiction for the international community to divide up, in which case the proceeds will go primarily to the developing countries. Of course this kind of problem raises moral issues for some countries. It's not merely a matter of whether they retain what they conceive they already have, it's what they should claim, possibly at the expense of the international community. Some countries are still labouring over that problem, but there have been some proposals giving indications of trends of thinking.

Kenya has put forth a proposal which is now increasingly an African proposal, which is called the "economic zone". This proposal would recognize for coastal states jurisdiction out to

200 miles for three purposes: first, continental shelf jurisdiction, ownership really, almost sovereignty, certainly sovereign rights, including whatever rights exist under the Continental Shelf Convention; secondly, fisheries jurisdiction; and thirdly, pollution control, and probably scientific research. Side by side with this Kenyan proposal, which is gathering a good deal of support, is a proposal by the Latin-American group put forth not by the whole group, but by Mexico, Venezuela and Colombia which is termed the "patrimonial sea" concept. It is very analogous to the African Kenyan proposal, and a country would acquire or maintain the same jurisdictions as with the economic zone <sup>except that</sup> with respect to the shelf beyond 200 miles, where there is a geological shelf extending beyond, the country would retain its pre-existing rights over that shelf, bearing in mind of course that not all countries agree that there are pre-existing rights.

It can be seen that there are a number of different points of view on how to settle the question of the limits of the continental shelf. It's quite evident that our position is, in the eyes of some countries, an extreme one. I don't so characterize it myself. The fact is that we have always considered this area to be the Canadian shelf, and we have never attached the legal or political importance to the depth of the water that some countries have. For example, we have made known repeatedly that if we are going to start carving up the Canadian shelf well let's start with the shallow shelves where the real riches are, such as the North Sea. Why should any area be

sacrosanct simply because the water above it is shallow? Perhaps just the contrary approach should be taken. The shallower the water the more accessible to the international community. We have often said we would like to devise an equitable regime, that is to say one which would make it possible for all countries to contribute, as well as to receive benefits, particularly those states which have been so much in the forefront in demanding a large area for the international community. We think it unfair to such countries to develop a regime which would not <sup>enable</sup> them to contribute. So, we are putting forth these ideas to stimulate thinking. We even put forth a proposal, to make people open their minds a little, that we should start measuring limits from the centres of every ocean area and not from shores, and we made clear we meant every ocean area, not just the areas off our shore. In other words, we said that because our shelf happens to be deeply glaciated that doesn't mean that it isn't ours. Nevertheless, I think I'm telling no secrets when I say that there is some considerable pressure, and it's not only from states, from governments - there are a lot of organizations which have grown up over the last few years, almost mushroomed, which all seem to be devoted to the idea of restricting coastal state jurisdiction. They hold seminars, and I think this is not such a seminar - I think this is one with a more neutral approach - but they hold seminars, they have meetings and they mount pressure and it amounts to a campaign in favour of narrow continental shelves. One of the points made most often, for example, is that there is nothing beyond the rise except



manganese nodules. I have reason to doubt that particular claim, at least with respect to some areas, depending on the continental shelf drift and where it occurs, and there may or may not be petroleum resources as well as nodules beyond the rise. In any event, I think it's important to bear in mind that what this group meeting here today might decide for Canada might not be exactly what the international community might see as being Canadian limits.

The foregoing leads me to one concluding comment, namely, that in spite of the fact that we have a Convention which can be justifiably interpreted the way we have interpreted it, an international treaty coupled with considerable state practice, including, in this case, not merely legislation but the issuance of permits, there is nevertheless strong pressure for narrower limits. It leads me to suggest, and I'm speaking now purely personally, without specific instructions, that the sooner that the federal and provincial authorities can settle their internal difficulties, the stronger will be our position in facing other countries who could conceivably capitalize upon our divisions. I can illustrate this problem by referring back to a proposition which may not any longer have validity, as it's one we made two years ago suggesting that if the Law of the Sea Conference is going to take so long to come to grips with this problem, perhaps we should at least do something about the area that no one claims. We suggested that this area could be very readily defined, as

it's the area beyond the margin or beyond 200 miles, whichever is the greater, and we suggested firstly that this area should be set aside permanently for such peaceful purposes for the benefit of mankind, and secondly that some funds be put into the pot to enable an effective regime to be developed quickly. We suggested the establishment of skeletal international machinery so as to actually create a working regime. The results could be, for example, that hard mineral exploration could go on almost immediately with respect to manganese nodules. We even stated the express willingness of the Canadian Government to contribute a percentage of revenue extending even to internal waters insofar as the Canadian Government is concerned, making clear, of course, that such revenue would have to come from federal funds, if any. That kind of proposal could conceivably be put forth by a number of wide-shelf countries with respect to the area between 200 miles and the margin. It hasn't yet been put forth, and I'm not suggesting this as a serious possibility at the moment, but I am suggesting that for us to even consider such a possibility at some stage in the conference would presumably mean we'd have to have some pretty clear idea of the Canadian position, as distinct from the federal position or the provincial position.

It obviously behooves us all, whether in industry, private practice, or government, whether connected with the provincial governments or the federal government, to do what we can to resolve our internal difficulties before we have to face other countries who may be looking at our shelf rather hungrily. Thank you very much.