

THE CANADIAN PERSPECTIVE

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on the Law of the Sea

The United States has never simply walked away from an issue at the Conference. The United States has never simply adopted a stonewall approach, which other great powers have done. Some nations have been dragged kicking and screaming to the compromises we hammered out. The United States, however, has been willing to accept compromises which have not been perfect from the U.S. point of view but which did satisfy the fundamental range of U.S. interests.

The first comment I wish to make is that it is understandable to the Conference committees that governments come and go in any democratic country and even in some not-so-democratic countries. But the national interests of such countries do not change radically over a period of weeks or months or even years. However, perceptions of the national interest change and I think that's part of the problem the Conference now faces. Within the Reagan Administration there is a new perception of the U.S. interest and this new perception is very difficult for the allies and friends of the United States to accept. I include the term "friends" because you would be surprised at how many friends the United States has in this Conference. Well over 150 nations very much want the U.S. to be party to this Convention. I know of no state that is indifferent or that would want the United States out of the Conference.

Although we are all collaborating with the United States delegation, we've constantly been reminded of the Congressional imperative: that is, the threat that the U.S. Senate will not give its advice and consent to the Law of the Sea Treaty. The reference by the Reagan Administration to the need for the advice and consent of the Senate is not the first time we have heard of this possible threat to the Convention. Leigh Ratiner himself has spoken very persuasively and honestly on this subject today and has given us his own personal impression of Congressional relations in early 1977. Yet, maybe even he wasn't aware of the effort to keep Congress informed. I refer to one example.

On June 29, 1977, Congressman Fraser hosted a luncheon of House and Senate members at which both Ambassador Engo and I made speeches at least as lengthy as the ones we are making today. Following this, Congressman McCloskey introduced into the Congressional Record on July 14, 1977, Ambassador Engo's statement, on his own behalf and on behalf of Ben Gilman. My statement was introduced into the Congressional Record in the House of Representatives on July 20, 1977, and at a later date in the Senate. Mr. Fraser's introduction to my own statement furthermore points out that Ambassador Richardson would be reporting to the International Relations Committee on July 25, 1977. This is only my perspective, of course, but it illustrates that there was an intent and an effort to insure that influential members of Congress and staffers were kept informed. The fact that a new U.S. administration has adopted a different position from the preceding administration is, of course, a separate issue.

But, in any event, 1980 is not so very long ago. The U.S. position was formalized then to some extent by the passage of the Deep Seabed Hard Minerals Resources Act and, despite some changes in Congress, I note that the Act itself specifically acknowledges the commitment of the United States to the 1970 Declaration of Principles referred to by several speakers. Sections 2a, 3, and 4 of the 1980 Act state that, on September 17, 1970, the United States supported by affirmative vote the United Nations General Assembly resolution declaring inter alia the principle that the natural resources of the deep seabed are the common heritage of mankind.

My comments are not intended as a reply to what Leigh Ratiner has stated. On the contrary, they are an attempt to show the dilemma in which Canada finds itself at this stage. The Canadian government is sympathetic to the aspirations of the developing countries yet very responsive to the needs of the United States. It is not an easy situation to face. It is one that could easily lead to a very gloomy view of what we might expect out of this Conference. I hope we will not find such a gloomy view, but it would be foolish to suggest that renegotiation of the Convention is going to be an easy road — it simply is not.

Former U.S. Secretary of State Henry Kissinger helped create the confusion in which we now find ourselves. In September of 1976 Mr. Kissinger stated to a reception for the heads of the delegations to the Conference that the United States would be prepared to agree to rules of financing the Enterprise in such a manner so that the Enterprise could begin its model operation either concurrently with the mining states or private enterprises or within an agreed time span that was practically concurrent. This would include agreed provisions for the transfer of technology so that the existing advantage of certain industrial states could be equalized over a period of time.

Life goes on, and situations change. Perhaps Mr. Kissinger doesn't have quite the influence that he once had, although it seems to be reemerging. But be that as it may, delegates negotiating from 150 states operated on the assumption that this was the U.S. national interest which should be taken into account.

Again, in a later address in 1979, Henry Kissinger stated that "the United States is prepared to accept a temporary limitation for a time period fixed in the treaty on production of seabed minerals tied to the projected growth and the world nickel market." Thus this troublesome and controversial issue of the nickel production didn't emanate from Canada or other land-based producers, but rather from a highly placed source within the United States.

With regard to Conference preparation and negotiation, I would also like to make a few points. It is incorrect to think that the Conference has only diplomats and that the diplomats have been left to their political devices to the detriment of the countries they represent and the technical issues they

address. The Canadian delegation is packed with technical experts. A multidisciplinary approach is reflected in this Conference in many delegations, especially those from developing countries. Let me offer Zimbabwe as one example. Following independence, Zimbabwe sent technical delegates who knew exactly what the issues were and who went on to defend Zimbabwe's interests very effectively. They were experts, they were not diplomats. For Zimbabwe, they were mineral experts. In the Canadian case, the rapporteur of our delegation was part of the very first seabed negotiations and is involved today as well. Without him I couldn't understand the other technical people in the delegation quite simply because he has to interpret.

I can't answer all the criticisms made of the treaty in a brief exposition. However, I can attempt to meet the deep seabed criticisms where some very fundamental issues are at stake. The fundamental issues go beyond the metal industry of any country or the immediate foreseeable need for strategic materials because the moral aspects of this scenario include, for example, the fact that in Canada, our major mines are operating at sixty percent capacity because of the overproduction elsewhere of minerals that are apparently about to run out any day now. In visiting a company's mining sites in Thompson, Canada, I went down 7,000 feet and found to my surprise that the deeper we went, the richer the ore became. However, production is so slow that they seem to be barely getting to that level even though the mine has been around for sixty or seventy years. What I found is of even greater significance because that same company has also closed up its mining operations in Guatemala. Is that hurting Canada or is it hurting Guatemala? It really hurts both, obviously. The same company has cut back substantially in its operations in Indonesia and thus we're talking about real national interest here, not pure questions of ideology.