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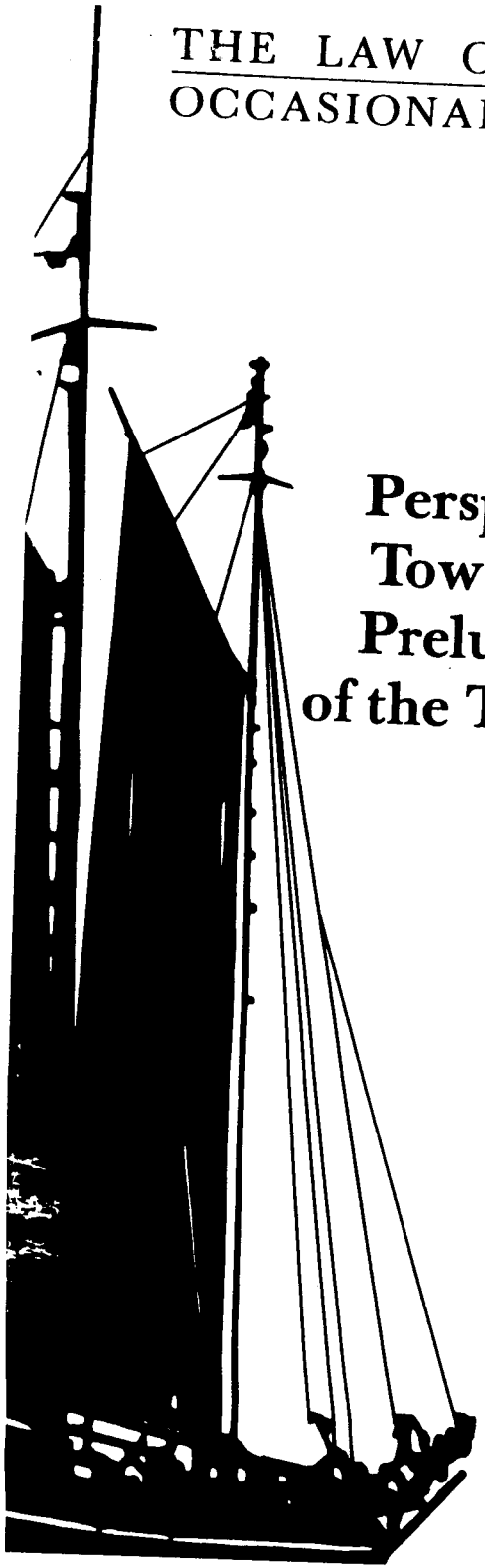

Perspectives on U.S. Policy Toward the Law of the Sea: Prelude to the Final Session of the Third U. N. Conference on the Law of the Sea

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THE CANADIAN PERSPECTIVE

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Representing the Canadian perspective, I quote from the Secretary of State for External Affairs, the Honorable Mark McGuiggan, who made a lengthy reference to the Law of the Sea Conference in his statement to the 36th General Assembly on September 21, 1981:

> I wish to emphasize that the Conference is not merely an attempt to codify technical rules of law. It is a resource conference. It is a food conference. It is an environmental conference. It is an energy conference. It is a conservation conference. It is an economic conference. It is a transportation and freedom of navigation conference. It is a maritime boundary delimitation conference. It is a scientific research and transfer of technology conference. It is a conference which can have tremendous implications for East-West relations. It is fundamentally a conference on peace and security.

In his closing comments, he stated that this Conference compares in importance to the founding conference of the United Nations in San Francisco. So perhaps it is appropriate in this time and place to emphasize that this is the kind of priority and importance the Canadian government attaches, not to the Conference as an end in itself, but to the Convention that it is trying to achieve, and which we have succeeded in achieving.

Some of the factors involved in the Canadian stance are set out in an article I wrote some ten years ago [1]. Anyone who would read it would not be surprised at the policies Canada has pursued in this Conference because we have made them known from the outset. We declared what our objectives were and we sought to achieve those objectives in the negotiations within the Conference. Furthermore, anyone reviewing the history of the negotiations would be unable to draw any conclusion except that this Conference has made tremendous progress. It has settled many issues which, in 1972, seemed virtually insoluble.

Given the chaotic state of the law of the sea when we began, if one could call it law at that time, I often wonder if I have dropped onto the wrong planet when I hear the present uncompromising positions concerning the Convention. The international community has negotiated a treaty consisting of some 500 articles including the annexes, every article of which has been very painstakingly negotiated. Moreover, in passing, I note that the U.S. delegation has consistently adopted a constructive problem-solving approach throughout this Conference. The United States has never simply walked away fr an issue at the Conference. The United States has never simp adopted a stonewall approach, which other great powers ha done. Some nations have been dragged kicking and screaming the compromises we hammered out. The United States, howeve has been willing to accept compromises which have not be perfect from the U.S. point of view but which did satisfy t fundamental range of U.S. interests.

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

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

On June 29, 1977, Congressman Fraser hosted a luncheon c House and Senate members at which both Ambassador Engo and made speeches at least as lengthy as the ones we are makin today. Following this, Congressman McCloskey introduced int the Congressional Record on July 14, 1977, Ambassador Engo' statement, on his own behalf and on behalf of Ben Gilman. M statement was introduced into the Congressional Record in th House of Representatives on July 20, 1977, and at a later dat in the Senate. Mr. Fraser's introduction to my own statemen furthermore points out that Ambassador Richardson would b reporting to the International Relations Committee on July 25 1977. This is only my perspective, of course, but i illustrates that there was an intent and an effort to insur that influential members of Congress and staffers were kep informed. The fact that a new U.S. administration has adopted different position from the preceding administration is, o 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 technic experts. A multidisciplinary approach is reflected in th Conference in many delegations, especially those from developi countries. Let me offer Zimbabwe as one example. Follow Independence, Zimbabwe sent technical delegates who knew exact what the issues were and who went on to defend Zimbabwe interests very effectively. They were experts, they were n diplomats. For Zimbabwe, they were mineral experts. In t Canadian case, the rapporteur of our delegation was part of t very first seabed negotiations and is involved today as wel Without him I couldn't understand the other technical people the delegation quite simply because he has to interpret.

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

If we're talking about a free market economy, how did this group of free marketeers ever produce this cartel called the mini-treaty? I cannot reconcile the concepts that I hear from this new U.S. orthodoxy for this sudden urgent negotiation of a mini-treaty during the very period when everyone is supposed to be in a production holding pattern. The mini-treaty at the time of this writing was evidently ready to be signed by the U.S., Germany, U.K. and France. It has not been signed as far as I know, thank God. In my view, the mini-treaty tends to preempt many of the fundamental purposes of this Convention which has been negotiated for fourteen years. It allocates mine sites for exploratory purposes only, but such mine sites are to be guaranteed in any comprehensive treaty also. It even establishes arbitration procedures. I'd be interested to know if it places the tribunal in Hamburg as the Convention does. I at least urge that potential parties to the mini-treaty should heed the advice of others that any signature should be delayed so as to give the Conference a chance to finish.