Footnotes: Chapter V

1. Department of External Affairs, Third United Nations Conference on the Law of the Sea, (Ottawa: 1973), p. 11.

2. "Newfoundland's Position Re Fisheries - Law of the Sea Conference," 3 May 1974, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Appendix "M", Issue No. 15, p. 27.

3. Ibid, p. 29.

4. Speech by the Minister of Environment, Mr. Davis, to a Liberal association annual meeting in St. Andrews, New Brunswick, 26 May 1973, International Canada, Vol. 4, (1973), p. 150.

5. Environment Canada, The Marine Environment and Renewable Resources, Law of the Sea Discussion Paper, (September 1973), p. 8.

6. Ibid, p. 8.

7. Department of External Affairs, Law of the Sea Conference, p. 14. Previous to 1973, government statements tended to be unclear about Canada's jurisidction over the slope and rise areas. This ambiguity stemmed largely from the existence of two definitions of the continental margin. The geological definition describes the margin as the shelf, slope and the part of the sedimentary rise overlying the base of the slope where as the geomorphological definition includes the shelf, slope and entire rise. The latter more extensive definition had become popular with EMR officials in recent years, and also conformed more appropriately with the position of the Latin American states which claimed jurisdiction to the edge of the rise.

8. "Newfoundland's Position," Appendix "M", pp. 36-7.

9. Imperial Oil was invited to give evidence following the submission of its position on seabed issues to J.A. Beesley, then Director-General of the Bureau of Legal Affairs, Department of External Affairs in June 1973. Imperial Oil, 23 April 1974, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Appendix "F", p. 37.

10. There is no evidence that the Canadian Petroleum Association had made presentations to the government on the continental shelf issue. However, given the coincidence in the positions of Imperial Oil and the government, it is reasonable to suppose that the Association felt it unnecessary to intervene.

11. Statement of the Minister of Energy, Mines and Resources, Mr. D. Macdonald, 12 December 1973, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Appendix "N", Issue No. 27, p. 33.

12. Ambassador J.A. Beesley, 22 November 1973, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No. 24, p. 21. The United States was in fact the first state to propose revenue-sharing.

13. Department of Energy, Mines and Resources, Non-renewable Resources of the Seabed and Ocean Floor, Canadian Attitudes, Law of the Sea discussion paper, 28 August 1973, p. 9.

14. Department of External Affairs, Law of the Sea Conference, p. 16.

15. Ibid, p. 17. Their opposition was based on the grounds that it would entitle states to interfere unilaterally and unduly with maritime navigation and commerce.

16. Ibid, p. 18.

17. Ibid, p. 18.

18. Ibid, p. 18.

19. Canadian Chamber of Shipping, 7 May 1974, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Appendix "O", Issue No. 16, p. 10.

20. Imperial Oil maintained that states should be precluded from "attempting to modify the right of passage by imposing ship operating or other standards varying from those agreed upon internationally." Imperial Oil, 23 April 1974, Appendix "F", p. 43.

21. Newfoundland's Position, 3 May 1974, Appendix "M", pp. 32-33.

22. Ministry of Transport, Third Law of the Sea Conference, Working Paper No. 3, (1973), p. 3.

23. Statement of the Minister of Transport, Mr. Marchand, 4 December 1973, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Appendix "M", Issue No. 26, pp. 43-4.

24. Confidential interview.

25. Department of External Affairs, Law of the Sea Conference, p. 22.

26. Canadian Chamber of Shipping, 7 May 1974, Appendix "O", p. 40.

27. Imperial Oil, 23 April 1974, Appendix "F", p. 48.

28. Department of External Affairs, The Third Law of the Sea Conference - Summary of International Legal and Political Considerations, Working Paper, 10 September 1973, p. 8, and Minister of Transport, 4 December 1973, Appendix "M", pp. 44-5.

29. Department of the Environment, The Marine Environment, p. 5.

30. Department of External Affairs, Law of the Sea Conference, p. 25.

31. Statement of Noranda Miles Ltd., 7 May 1974, Minutes of Proceedings and Evidence of the Standing Committee on External Affaris and National Defence, Appendix "N", Issue No. 16, p. 36.

32. Ibid, pp. 37-8.

33. Department of Energy, Mines and Resources, Non-renewable Resources, p. 10.

34. Ibid, p. 11.

35. Mr. Macdonald, 12 December 1973, Appendix "N", p. 48.

36. Ibid, p. 47.

37. Ibid, p. 49.

38. Department of External Affairs, Law of the Sea Conference, p. 23.

39. Confidential interview.

40. Mr. J.A. Beesley, 22 November 1973, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No. 24, p. 23.

41. Barry Buzan, Seabed Politics, (New York: 1976), p. 217.

42. P.A. Lapointe, "Law of the sea advanced but much remains to be done," International Perspectives, (November-December 1974), p. 19.

43. Buzan, p. 216.

44. Lapointe, p. 20.

45. Ibid, p. 20.

46. Mr. Sharp was later replaced by Mr. A. MacEachen following a federal election.

47. A group of over 100 non-aligned states.

48. On 4 August 1971 thirteen Latin American states had introduced a proposal which included the following article: the Authority shall itself undertake exploration and exploitation activities in the area; it may however avail itself for this purpose of the services of persons, natural or juridical, public or private, national or international, by a system of contracts or by the establishment of joint ventures. A/AC.138/49.

49. Mr. D.G. Crosby, 11 July 1974, First Committee, United Nations Conference on the Law of the Sea, Official Records, Vol. II, pp. 8-9.

50. Ibid, p. 9.

51. Speaking to the working group on 29 July, Mr. Crosby asked the proponents of Alternative A whether they envisaged a method of contractural arrangements other than the licensing method. The Group of 77 was asked how service contracts were to be financed, and how they foresaw the organisation into a comprehensive and workable exploration and exploitation programme. D.G. Crosby, Report on the Law of the Sea Conference, Annex III, 12 September 1974.

52. Buzan, pp. 225-6.

53. Crosby, Report, p. 8.

54. CP/Working Paper No. 4, 26 August 1974, in Crosby, Report, Annex V.

55. For details see Edward Miles, "The structure and effects of the decision process in the Seabed Committee and the Third United Nations Conference on the Law of the Sea," International Organization, Vol. 31, (Spring 1977) p. 227.

56. Buzan, p. 227.

57. Crosby, Report, p. 6.

58. Mr. D.G. Crosby, Statement in Informal Meeting of Committee I, 9 August 1974, in Crosby, Report, Annex V.

59. Miles, p. 194.

60. In his report on the Caracas session, Mr. Crosby explained that the actual effects of deep sea mining on land-based production were unknown, but that the consensus amongst mining personnel was that "there would probably be no really harmful effects on production from the Canadian-type of ore deposit." Crosby, Report, p. 6.

61. Crosby, 11 July 1974, Committee I, Report, p. 9.

62. A/CONF.62/L.4, 26 July 1974.

63. The co-sponsors of L.4 included Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway. Mr. Beesley noted that although they were all coastal states, they were from widely separate geographical regions and their concerns were diverse. Mr. J.A. Beesley, 29 July 1974, Plenary, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 202.

64. Ibid, p. 202.

65. Miles, p. 189.

66. See A/CONF.62/C.II/L.38.

67. Even these states agreed that there should be freedom of navigation and overflight in the 200-mile territorial sea.

68. Canada's Minister of the Environment, Mr. Davis, has acknowledged in his opening remarks at the session that the concepts of the EEZ and common heritage of mankind were the two main pillars on which the regime of the seas should be based. Mr. J. Davis, Minister of the Environment, 3 July 1974, Plenary, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 97.

69. A/CONF.62/L.4, Article 10, p. 4.

70. In its 1973 Declaration on Law of the Sea Issues, the OAU did not acknowledge the right of access by landlocked and geographically disadvantaged states to mineral resources but it did declare that the landlocked and geographically disadvantaged states were entitled to share in the exploitation of the living resources of neighbouring EEZs on an equal basis as the nationals of the coastal state.

71. Speaking to the Committee on this issue, Mr. Legault also argued that coastal states must have the right to ensure the conservation of fisheries resources in accordance with agreed principles, including the full utilisation of those resources. Mr. L.H.J. Legault, 7 August 1974, Committee II, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 231.

72. Miles, p. 187.

73. Lapointe, p. 23.

74. Ibid, p. 23.

75. Ibid, p. 231.

76. As an alternative, the OAU proposed the strengthening of existing FAO Commissions or other fisheries regulatory bodies.

77. J.A. Beesley, 27 August 1974, Committee II, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 298.

78. This portfolio was financed jointly by the Department of the Environment and west coast fishing groups.

79. Working Paper on Salmon, A/CONF.62/C.II/L.81, 23 August 1974, p. 2.

80. Speaking on this matter, Mr. Legault conceded that such a provision should be harmonised with the interests of other coastal states, and indicated that Canada was willing to take into account existing arrangements provided that they respect the special interests of the state of origin. Ibid, p. 231.

81. Ireland, 31 July 1974, Committee II, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 181.

82. United States: draft articles for a chapter on the economic zone and continental shelf, A/CONF.62/C.II/L.47, 8 July 1974, Article 18.

83. Denmark: draft article on anadromous species, A/CONF.62/C.II/L.37, 5 August 1974.

84. Japan: draft article on anadromous species, A/CONF.62/C.II/L.46, 8 July 1974.

85. Article 20 of A/CONF.62/C.II/L.38 of Bulgaria, Byelorussian Soviet Socialist Republic, Germany Democratic Republic, Poland, Ukrainian Soviet Socialist Republic, and Union of Soviet Socialist Republic: draft articles on the economic zone stipulated: coastal states in whose rivers anadromous species of fish spawn shall have sovereign rights over such fish and all other living marine resources within the economic zone and preferential rights outside the zone in the migration area of the anadromous fish. Fishing by foreign fisheries for anadromous species may be carried on by agreement between the coastal state and another interested state establishing regulatory and other conditions governing fishing by foregin nationals. Priority in obtaining the right to fish for anadromous species shall be given to States participating jointly with the coastal state in measures to renew that species of fish, particularly in expenditures for that purpose, and to State which have traditionally fished for anadromous species in the region concerned.

86. A/CONF.62/C.II/L.82.

87. Australia and Argentina both argued that the edge of the shelf was easily determinable.

88. Iceland, India and the United States each introduced proposals which included a provision for revenue-sharing while Iran introduced a proposal that there be no revenue-sharing. D.F. Sherwin, List of States which have expressed support for the concept of coastal state continential shelf jurisdiction beyond 200 nautical miles, 9 September 1974, pp. 1-2.

89. A/Conf.62/L.4, Article 19, p. 5.

90. A special study was conducted by Canadian officials during 1973-74 to determine which states had shelves beyond 200 miles.

91. United Kingdom: draft articles on the territorial sea and straits, A/CONF.62/C.II/L.3, 3 July 1974 and Bulgaria, Czechoslovakia, German Democratic Republic, Poland, Ukrainian Soviet Socialist Republic and Union of Soviet Socialist Republics: draft articles on straits used for international navigation, A/CONF.62/C.II/L.11. Transit passage was defined as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas and another part of the high seas or a State bordering the strait.

92. Canada indicated that although the proposal moved in the right direction, it had reservations because it did not accommodate the interests of all states. Mr. J.A. Beesley, 23 July 1974, Committee II, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 130.

93. Speaking to the Committee on L.3, Mr. Beesley expressed Canada's concern that Article 16 did not take sufficient account of the fact that the coastal state's security could be threatened as much by environmental as military problems. He also argued that the articles should set forth preventative as well as remedial measures against pollution of the environment. Mr. Beesley went on to state that the general provisions of these articles "should take into account special situations, customary uses of straits, the needs and interests of coastal states bordering on straits used for international navigation, and those of the international community as a whole." Finally, reservations were expressed about the provisions for shipowners' liability for damage by the passage of ships. Ibid, p. 131.

94. Canada: draft article on a definition of an international strait, A/CONF.62/C.II/L.83.

95. Oman in A/CONF.62/C.II/L.16 exlcuded straits historically not used for international navigation, and Algeria in A/CONF.62/C.II/L.20 defined international straits as joining two parts of the high seas and traditionally used for international navigation.

96. Chile was concerned about the legal status of the Strait of Magellan, and argued in Committee II that "straits used for international navigation had been defined by international usage by international jurisprudence in the April 1949 judgement of the International Court of Justice on the Corfu Channel Case, and the 1958 Convention on the Territorial Sea and Contiguous Zone." 23 July 1974, Third United Nations Conference on the Law of the Sea, Official Records, Vol. 11, p. 138.

97. A/CONF.62/L.4, Article 5, p. 3.

98. India wanted to apply the concept to its Andaman and Nicobar Islands in the Indian Ocean.

99. See L.4, Article 9, page 4. The application of the archipelagic concept to archipelagoes forming part of a coastal state was endorsed by such states as Ecuador, Argentina, Peru, Portugal and Spain but it was vehemently opposed by the maritime states as well as Tunisia, Burma, Algeria and Turkey.

100. Lapointe, pp. 22-3.

101. Draft articles on the zonal approach to the preservation of the marine environment, A/CONF.62/C.II/L.6.

102. Seven of the sponsors had sponsored the coastal zone proposal on special measures at IMCO in 1973.

103. Article III.3(b) (ii) also stipulated that states which adopted such measures "shall notify the competent international organization without delay, which shall notify all interested states about these measures." A/CONF.62/C.III/L.6, pp. 3-4.

104. A/CONF.62/C.III/L.6, Article III (1), p. 2.

105. M'Gonigle and Zacher, p. 138.

106. A revision was proposed to L.6 to this effect. R.N. Duncan, A General Report with Specific Emphasis on the International Shipping Issues and on Canadian Policy to the Canadian Chamber of Shipping on the Third United Nations Conference on the Law of the Sea, (October 1974), p. 42.

107. The Group of 77 revision also provided that in the event that the organization failed or delayed to adopt such additional or more stringent rules, the coastal state could take the necessary measures internationally agreed upon. Ibid, p. 42.

108. Mr. Legault, 16 July 1974, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 317.

109. M'Gonigle and Zacher.

110. United Nations Doc. A/CONF.62/C.III/SR.21, p. 4 cited in M'Gonigle and Zacher, p. 137.

111. These articles were not formally submitted.

112. Duncan, Appendix A, Evensen Draft, Article 43(1) and (2), p. 2.

113. Ibid, Article 43(3), p. 2.

114. Ibid, Article 43(4), p. 3.

115. Legault, 16 July 1974, Committee III, p. 318.

116. Ibid, p. 318.

117. M'Gonigle and Zacher, p. 138.

118. Lapointe, p. 23.

119. Miles, p. 192.

120. Ibid, p. 192.

121. The paper was introduced anonymously because Ireland was reluctant to formally sponsor a paper because of the opposition of the other members of the EEC to a consent regime while Mexico and Iran felt constrainted because of their membership in the Group of 77.

122. Speaking on this matter, Dr. Needler argued that the coastal state must necessarily have the authority to manage and control the resources of its economic zone so as to protect fully its economic and security interests. The sovereign jurisdiction of the coastal state over research in its internal or

territorial waters and on its continental shelf was already recognised by international law and had to be complemented so that any research within the economic zone not covered by existing law could be undertaken only with the approval of the coastal state. Dr. Needler, 19 July 1974, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 351.

123. Ibid, p. 351.

124. The United States in particular regarded Canada's position with great dismay and disdain.

125. Needler, 19 July 1974, Committee III, p. 351.

126. In his report on the session, the chief Canadian spokesman in Committee I, Mr. Crosby, explained how a new role had devolved upon Canada. "With neither of the extreme positions appearing suitable for Canada's unresolved endorsement, the best fit solution seemingly lying somewhere in between, the Canadian delegation in Committee I had become through objective and balanced interventions looked upon as a likely bridge for accommodation. Crosby, Report, p. 2.

127. In 1974 total landings numbered 1,940,321,000 pounds as compared with 2,548,808,000 in 1971 and 2,929,223,000 in 1968. Statistics Canada, Fisheries Statistics of Canada 1974, (Ottawa: 1976), p. 26; Fisheries Statistics of Canada 1971, (Ottawa: 1973), p. 24; Dominion Bureau of Statistics, Fisheries Statistics of Canada 1968, (Ottawa: 1970) p. 18.

128. Toronto, Globe and Mail, 13 December 1974. As a minister from Newfoundland, Mr. Jamieson's remarks were intended to appease Newfoundland fishermen.

129. Halifax, Mail Star, 14 December 1974.

130. MacEachen, 16 October 1975, p. 455.

131. Buzan and Johnson, pp. 274-75.

132. Two separate sessions of 2 week duration were held.

133. MacEachen, 16 October 1974, p. 455, and Ken Lucas, "Report from Geneva," Fisheries Council of Canada Annual Meeting, 6 May 1975, p. 14.

134. Senegal, 5 August 1974, Committee II, Third United Nations Conference on the Law of the Sea, Official Records, Vol. II, p. 200. In subsequent discussions with Senegal, an agreement was reached whereby the Canadian government was to undertake a project to prepare maps of the Senegalese shelf.

135. Buzan, p. 245.

136. The idea for the texts arose from the methods of work in the informal Working Group of Committee I and other informal bodies such as the Evensen Group. The chairmen of these groups would prepare texts without alternative drafts for each article, thus giving the chairmen the initiative to formulate compromise texts where differences existed within the group. Buzan, pp. 245-6.

137. In a statement by the Secretary of State for External Affairs, Mr. MacEachen, it was indicated that a 200-mile economic zone would exclude

ten to fifteen percent of fish stocks adjacent to Canada's coast. Mr. MacEachen, 11 March 1975, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No. 5, p. 12.

138. In a speech that same month, Mr. Macdonald acknowledged that the government was studying revenue-sharing but gave no indication of what the government's decision would be. D.S. Macdonald, Minister of Energy, Mines and Resources, "The Status of the Law of the Sea After Caracas," Address to the American Society of International Law, 1 February 1975, p. 11.

139. MacEachen, 25 February 1975, p. 4.

140. Ibid, p. 5.

141. Article 9 dealt with the system of exploitation, that is, who shall exploit the area.

142. Mr. C. Pinto, 26 March 1975, Committee I, Third United Nations Conference on the Law of the Sea, Official Records, Vol. IV, p. 53.

143. Miles, p. 205.

144. Robert Auger, "Prelude to a finale provided by single negotiating text?" International Perspectives, (July-August 1975), p. 33.

145. Ibid, p. 33.

146. Ibid, p. 33.

147. During the discussion, two particular types of joint ventures, contractual and equity joint ventures, were dealt with. The contractual variety was favoured by the industrialised states as they permitted the individual' partners to retail their own identity while their interrelationship was governed by contract. The Group of 77 preferred the equity type where two or more parties created a new entity to produce a product or perform a service with the element of control by the Authority being established through equity participation in the venture. A concensus later emerged that the legal problems involved in equity joint ventures might be very difficult.

148. Miles, p. 210.

149. Pinto, 25 April 1975, Committee I, p. 55.

150. In discussing CP./Cab.12, Mr. Pinto expressed the gratitude of the Working group to those delegations which had clarified the legal content of the joint venture system, including Australia, Austria and Nigeria. Mr. Pinto, 25 April 1975, CP./Cab.12, Committee I, Third United Nations Conference on the Law of the Sea, Official Records, Vol. Iv, p. 55.

151. Indeed in Canada's first intervention, Mr. Crosby explained that the developments in the group had been going so well that he hesitated to intervene for fear of complicating matters. The issue of "Arrangements Relating to Activities," however, prompted Canada's comments. "My delegation has a real interest and concern in helping to design a Regime and Machinery to implement that Regime, in a fashion so as to allow the opportunity for participation by Canadian nationals and firms in re-

source developments in the Area." Statement in Informal Meeting of Committee I by Alternate Deputy Representative, D.G. Crosby, 25 March 1971, p. 1 and 3-4.

152. Auger, p. 33.

153. Buzan, pl 251.

154. Peru, 25 April 1975, Committee I, Third United Nations Conference on Law of the Sea, Official Records, Vol. IV, p. 57.

155. Third United Nations Conference on the Law of the Sea, Informal Single Negotiating Text, Part I, A/CONF.62/WP.8/PART I, 7 May 1975, Article 3 and 7, p. 3.

156. A/CONF.62/WP.8/PART I, Article 9(1), p. 4.

157. Ibid, Article 10, p. 4.

158. Ibid, Article 22(1), p. 9.

159. Ibid, Article 22(2), p. 9.

160. Ibid, Article 22(3), (i) (ii), pp. 9-10. In ensuring such ventures, the International Seabed Authority could subsequently decide, on the basis of available data, to reserve certain portions of the mining sites for its own further exploitation. Article 22(4), p. 10.

161. Ibid, Articles 25 and 26, pp. 10-11.

162. A/CONF.62/WP.8/PART I, Article 28, p. 13.

163. Ibid, Article 27(1), p. 12. Of these latter 12 representatives, six would be elected on the basis of substantial investment in or possessing advanced technology which would be used for the exploration and exploitation of the resources of the area or on the basis of being major importers of land-based minerals produced from the resources of the area. The remaining 6 members would be developing states. Of these six, one was to be elected from each of the following categories: exporters of land-based minerals; importers of minerals; states with large populations; landlocked states; geographically-disadvantaged states; and least developed states.

164. Ibid, Article 32, p. 17.

165. A/CONF.62/WP.8/PART I, Annex I, pp. 1-2.

166. These groups were established on the following subjects: (1) baselines; (2) historic bays and waters; (3) contiguous zone; (4) innocent passage; (5) high seas; (6) landlocked and geographically-disadvantaged states; (7) continental shelf; (8) exclusive economic zone; (9) straits; (10) enclosed and semi-enclosed seas; and (11) islands. Miles, p. 199.

167. Buzan, p. 248.

168. Formal objections to the Evensen text were filed by West Germany, Nepal, Singapore and Zambia.

169. Ibid, Article 45, p. 19.

170. Ibid, Article 73, p. 30.

171. Ibid, Article , p.

172. These articles formed part of the Evensen Group's sixth text on the EEZ released on 16 April 1975.

173. These articles were a refinement of L.38 introduced in the Seabed Committee in July 1973. Johnson, p. 84.

174. Ibid, Article 5(2), p. 21.

175. This group was formed at the suggestion of Mr. Evensen. Johnson, p. 86.

176. Ibid, Article 54(1), p. 23.

177. Ibid, Article 54(3) (a), p. 23.

178. Ibid, Article 54(4), p. 24.

179. Ibid, Article 52(2), p. 23.

180. According to an official of Energy, Mines and Resources, the group was created as early as 1972, gradually expanding until it numbered seven at Geneva. This group was also chaired by Canada.

181. Duncan, Report on Geneva, p. 18.

182. Mr. MacEachen, House of Commons, Debates, 2 May 1975, p. 5414.

183. On 2 May 1975, the Secretary of State for External Affairs, Mr. MacEachen, stated in the House of Commons that "at the present time the Canadian delegation has not been authorised to engage in discussions with respect to revenue-sharing. It is a changed position for the Government to agree at this point, in the interest of an over-all settlement, to undertake the exploration of revenue-sharing, which implies in principle that the Canadian government will accept that concept under certain conditions. The Government of Canada has not authorized the details of specific offers. That would have to be considered by the Cabinet in light of further discussions at Geneva. Ibid, p. 5414.

184. The Canadian delegation also realized that such a proposal would be unacceptable to the Soviet Union.

185. A/CONF.62/WP.8/PART II, Article 62, p. 27.

186. Ibid, Article 69, p. 28.

187. For further details regarding the 4 groups, see Edward Miles, "An interpretation of the Geneva Proceedings, Part II," in Ocean Development and International Law, Vol. 3, (1976), pp. 305-06.

188. Buzan and Johnson, p. 278.

189. McConchie and Reid, p. 186. The full title of the text was "Consensus Text of Private Group on Straits - Passage of Straits Used for International Navigation," 18 April 1975.

190. McConchie and Reid, p. 186.

191. Ibid, Article 37, p. 15.

192. Ibid, p. 187.

193. A/CONF.62/WP.8/PART II, Article 16(1), p. 8.

194. Ibid, Article 18(2), p. 10.

195. Article 118 of the SNT stipulated that archipelagic states could draw straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that such baselines enclosed the main islands and an area in which the ratio of the area of the water to the area of the land, including atons, was between 1:1 and 9:1. Ibid, Article 118(1), p. 42.

196. Archipelagic states were given the right to deisgnate seala-es and air routes as well as the right to suspend the passage of foreign ships if it was necessary in order to protect their security.

197. The SNT specified that the archipelagic provisions were "without prejudice to the status of oceanic archipelagoes forming an integral part of the territory of a continental state." Ibid, Article 131, p. 46.

198. Duncan, Report on Geneva, p. 21.

199. The Evensen Group Draft - Preservations of the Marine Environment, Fifth Revision, 15 April 1975, Miles, "An Interpretation," pp. 334-39.

200. A/CONF.62/C.III/L.24, 21 March 1975. The sponsors included Belgium, Bulgaria, Denmark, German Democratic Republic, Federal Republic of Germany, Greece, Netherlands, Poland and United Kingdom.

201.

202. Speaking on L.24, Mr. Legault insisted that the effective enforcement of agreed standards, with the participation of coastal states, port states and flag states, was vital. He also argued that L.24's flag state enforcement articles needed to be expanded and strengthened but described the port state provisions as containing "many new and constructive elements." Mr. Legault, 26 March 1975, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. IV, p. 87.

203. Duncan, Report on Geneva, p. 27.

204. Miles, "An Interpretation," p.

205. A/CONF.62/WP.8/PART III, Article 20(1), p. 7.

206. Ibid, Article 20(3), p. 8.

207. Ibid, Article 20(5), p. 8.

208. Article 20(4) stipulated that where internationally agreed rules and standards were not in existence or were inadequate to meet special circumstances, and where the coastal state had reasonable grounds for believing that a particular area of the economic zone was an area where, for recognized technical reasons related to its oceanographic and environmental conditions, its utilization, and the particular character of its traffic, the adoption of special mandatory measures were required, the coastal state could apply to the competent international organization for the area to be recognized as a "special area." Ibid, Article 20(4), p. 8.

209. A/CONF.62/WP.8/PART III, Article 27(1), p. 10.

210. Ibid, Article 28(1), p. 10.

211. Ibid, Article 28(2), p. 10.

212. Ibid, Article 30(1), p. 11.

213. Auger, p. 33.

214. Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukranian Soviet Socialist Republics and Union of Soviet Socialist Republics, A/CONF.62/C.III/L.26. See also Union of Soviet Socialist Republics, 10 April 1975, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. IV, p. 92.

215. A/CONF.62/C.III/L.13/Rev.2. This proposal was a revised version of their earlier proposal submitted at Caracas.

216. Rumors of an emerging split in the Group were reported as early as 11 April at which time it was believed that Mexico, Colombia and Venezuela were prepared to adopt a moderate stance "by making distinctions between the kinds of research conducted relative to the need for explicit consent." This approach was opposed by most of the Group and precipitated such antagonism that eleven states eventually decided not to sponsor L.29 as they had originally intended. Miles, p. 205.

217. See Mexico, 7 May 1975, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. IV, p. 111.

218. A/CONF.62/C.III/L.29, 6 May 1975, Article 7.

219. Canada also indicated that it did not want to be in the position of having one of its research vessels exercising the right of scientific research off the coast of a country without the state's consent. It also argued that states were inclined to exaggerate the difficulties which might arise from a consent regime. Ibid, pp. 94-5.

220. The delegation, however, welcomed the assurance of the sponsors of L.13/Rev.2 that they did not intend to place unnecessary obstacles in the way of research programmes. Mr. Legault, 2 May 1975, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. IV, p. 110.

221. Speaking on the Conference Room paper, Mr. Legault commented that it was intended "to reconcile the legitimate interests of all States by providing for communication, negotiation and agreement before any research was undertaken in the economic zone." Ibid, p. 110. CRP/Sc.Res/10 and Corr.1, 5 May 1975.

222. The coastal state was permitted to object to the research states' interpretation only if the project infringed upon its rights as defined in the convention over the natural resources of the economic zone or continental shelf. Ibid, Articles 18(1) and 19, p. 18. If any dispute regarding the determination of the nature of the research project could not be settled by negotiation between the parties concerned, the matter would be submitted for dispute settlement in accordance with the provisions of the convention.

223. Ibid, Article 25(2), p. 19.

224. A/CONF.62/WP.8/PART II, Article 49, p. 21.

225. Buzan and Johnson, p. 278.

CHAPTER VI

TITLE

Following the Geneva session, there was a significant change in Canada's diplomatic activity as well as its negotiating style and tactics. On the domestic front, much greater attention was focused on the extension of Canada's fisheries jurisdiction and Canada's full diplomatic weight came to bear on this question. Much lower priority was accorded to the process of bilateral and multilateral negotiation between conference members which to a large extent was an indication of the extent to which Canada's conference objectives were seen already to have been achieved. At the conference, Canada had a much greater interest in the early conclusion of a treaty in order to secure the substantial gains made at Geneva. As a result, in addition to working to consolidate these gains, Canada took a much greater interest in those issues which might jeopardise the success of the conference. Throughout the fourth and fifth sessions, Canada continued to show a willingness to compromise which stemmed from a growing awareness of what could and could not achieved at the conference but in contrast to previous sessions, decided to keep a lower profile on some issues in order to ensure that Canada was not regarded as extremely acquisitive. Finally, Canada attempted to have a moderating influence on some particularly contentious issues by suggesting compromises.

The Extension of Canada's Fisheries Jurisdiction

In the absence of any final agreement at Geneva on the EEZ, the government came under increasing domestic pressure to declare a unilateral extension of Canadian fisheries jurisdiction.[1] This pressure stemmed partly from deteriorating conditions within the fishing industry but was also prompted by the action of other states, particularly the United States where in December 1974, the Senate had prepared (but not yet voted on) legislation for a 200-mile fishing zone.

Statements by government ministers during the Geneva session has suggested that Canada would be forced to "go it alone" if agreement could not be reached at the conference.[2] But, besides their electoral utility, these statements were intended primarily to induce a sense of urgency to the negotiating process, and there was in fact significant disagreement within the government as to the merits of unilateral action. Arguments advanced in favour included the domestic political advantage in light of certainly more intense pressure as stocks continued to decline, the necessity of immediate conservation measures and the embarrassment of being outflanked by the United States. These arguments which were expressed primarily by officials in DOE and were supported by members of the government, were further supplemented by the assertion that there would be a lengthy delay before a law of the sea convention was finally ratified and that action by Canada could prompt agreement. The main arguments against which were advanced by DEA, DND and EMR, concerned the problems of securing compliance and the undermining effect such a declaration would have on the conference. The dangers of a rush to unilateralism with respect to Canada's other policy objectives were readily apparent, and it was argued that Canada's unique role as an industrialised state pressing for increased coastal state jurisdiction made its example particularly influential, for good or ill.[3]

A three-stage strategy emerged from this internal debate within ICLOS and the Cabinet decided to exploit and consolidate the substantial progress achieved at the conference while not prejudicing its further success. The first requirement was to check the depletion of Atlantic fish stocks. The second was to secure a series of bilateral agreements with those states which fished off Canada's coast, which would acknowledge Canada's exclusive right to manage those stocks and allocate quotas between fleets. The third and final stage which

would not be implemented until considered necessary, would involve a formal declaration extending Canadian fisheries jurisdiction out to 200 miles. With respect to these last two stages, care would be taken to ensure that the detailed provisions reflected the existing consensus within the conference.

In pursuing this strategy, Canada was fortunate in having ICNAF as a ready made forum. Since 1970 Canada had adopted an increasingly assertive role and had been successful in bringing about a quota system which recognised the special interest of coastal states. Thus, the present initiative to further check the depletion of stocks was a continuation of this trend. Unlike the earlier period, however, Canada's negotiating position was now greatly strengthened as a result of the consensus which had emerged at UNCLOS in favour of an economic zone.

Canada began to implement the first stage of its strategy at the annual ICNAF meeting in June 1975. While adopting a "reasonable world citizen" approach, Canada made clear-cut demands for a 40% reduction in fishing effort with no limitation on the Canadian effort on groundfish stocks off the Atlantic coast, along with allocations of quotas to Canada corresponding to its capacity within allowable catch limits.[4] These demands had been formulated back in February and had been announced authoritatively by the Minister of State for Fisheries, Mr. LeBlanc, at Geneva. No accommodation was reached at the meetings, and Canada's demands for a 40% reduction in foreign fishing effort and for acceptance of the principle that the coastal state should have preferential shares up to 100% of any given stock, if necessary, were rebuffed. The United States was the only member to support Canada's position. Having anticipated this outcome, the Canadian delegation requested that a special session of ICNAF be convened in September specifically to consider Canada's proposals.

In preparation for the September meeting, Canadian officials set out to soften up the opposition and acquire support through a process of threats. The first measure adopted by Canada was to place pressure on the USSR which was the major foreign fishing state in the Northwest Atlantic as its support was essential to obtaining the compliance of the Eastern European members of ICNAF.[5] Having made over 400 visits to Atlantic ports in 1974 and as the closure of the much less important Pacific ports in 1971 to the Soviet fleet had been successful, the government decided to close Atlantic ports to the fishing fleet of the USSR.[6] This decision which was announced on 23 July 1975, was ostensibly taken in response to Soviet overfishing of ICNAF quotas.[7] According to Mr. LeBlanc, Canada had used every method available to bring the overfishing to the attention of the Soviet authorities including a series of meetings in Ottawa and Moscow, and diplomatic notes and communiques. In order to guarantee the success of this measure the government had ensured that it had the support of Nova Scotia and Newfoundland.[8] A spin-off advantage of this measure was that domestic pressure for unilateral action subsided somewhat.

Following the announcement, negotiations were initiated with the USSR at which time Canada outlined its conditions for the reopening of the ports. These conditions included Soviet support at ICNAF for Canada's proposals as well as recognition of Canada's planned extension of jurisdiction. The Canadian government also initiated negotiations with Spain and Portugal which had been warned that ports might be closed to their fleets as well. In order to prevent this, Spain and Portugal were advised to also support Canada's proposals. Moreover, they were instructed that access to Canada's proposed extended fishing zone would be conditional upon their cooperation prior to its establishment. Meetings with Soviet as well as Spanish and Portugese officials in August and

September resulted in their agreement to negotiate the terms and conditions governing continued fishing by their fleets in waters off Canada's coasts "in the light of anticipated legal and jurisdictional changes, that is, the establishment of an extended Canadian fishing zone."[9] The agreement with the USSR was a major achievement and paved the way for further steps by Canada to obtain support within ICNAF.

At the September meeting of ICNAF, Canada issued a general threat by advising the members that if they cooperated with Canada to reach agreement to halt stock declines, Canada would be prepared to facilitate their access to stocks surplus to Canada's needs. If, however, they did not cooperate Canada would search for solutions outside ICNAF and would make it difficult for members to have access when Canada extended its fisheries jurisdiction.[10] To ensure that each member was aware of Canada's stance and the implications of non-agreement, the Secretary of State for External Affairs, Mr. MacEachen had met with the Ambassadors of all the ICNAF members, and an aide-memoire had been distributed stating Canada's position and requesting their cooperation.[11] While the negotiations were going on within ICNAF, the Canadian government negotiated simultaneously with the USSR, and on 26 September 1975 it agreed to support Canada's proposals and to enter into a bilateral agreement covering fishing in an extended 200-mile Canadian fishing zone.[12] As a result of Canada's assertive stance and its strong bargaining position, agreement was reached on the following three Canadian proposals: a 40% reduction in the fishing effort on major groundfish stocks by foreign fleets; a reduction in the total allowable catches by all states for certain stocks in critical condition; and higher quotas for Canadian fishermen on stocks of particular importance to them.[13]

Having gained acquiescence to its demands and thereby completing the first stage of its strategy for the extension of its fish. jurisdiction, Canada then set out to secure bilateral agreements to its exclusive jurisdiction. In this regard, negotiations with the USSR, Portugal and Spain were continued and were initiated with Norway and Poland on the terms and conditions of their future access to the Canadian fishing zone. These five states were selected as they constituted the bulk of the foreign fishing effort of Canada's Atlantic coast, and their agreement would virtually imply international recognition of Canada's fisheries jurisdiction.

The first agreement which was signed 2 December 1975 was intentionally concluded with Norway. The latter was an important Canadian ally at UNCLOS, and the two states had arranged previously to coordinate and harmonise their action in extending their respective areas of fisheries jurisdiction.[14] The Canadian-Norwegian agreement specified the terms and conditions governing continued fishing by Norwegian vessels in areas to be brought under Canadian jurisdiction beyond the territorial sea and fishing zones off the Atlantic coast and was drafted so as to give effect to the consensus emerging at UNCLOS, as reflected in the SNT.[15] The agreement also provided for the protection of salmon stocks as well as the conservation and management of living resources in the high seas beyond the limits of national fisheries jurisdiction.[16] These two provisions were considered particularly important because they represented an alternative approach to obtaining Canada's fisheries objectives in the event that an international law of the sea convention was not concluded, or if concluded, contained provisions contrary to Canada's position. Government officials may also have believed that this recognition of Canada's interest in fishery resources beyond 200 miles

could be used as a bargaining lever at the fourth session. Finally, Canada and Norway agreed to cooperate in scientific research for conservation and management purposes in the area under Canadian fisheries jurisdiction.

The terms and conditions negotiated with Norway were considered to be particularly important as Canada's negotiators intended to use it as their model when negotiating agreements with the other states concerned. By March 1976, Canada had concluded similar agreements with Spain, Portugal and Poland which, with Norway, were responsible for 30% of the foreign take in the ICNAF area.[17] But while this constituted a useful precedent, the crucial requirement was to achieve a similar agreement with the USSR, whose voluntary compliance was seen as a prerequisite to any unilateral extension of Canada's fishery jurisdiction. Preliminary discussions were held in Ottawa during February and an agreement was finally signed in May 1976 which followed much the same lines as those already concluded.

Despite this success in bilateral negotiations, the Canadian government remained determined to await the outcome of the fourth session of UNCLOS before making a final decision on a unilateral declaration. Renewed domestic pressure for such action had been stimulated in part by declarations by other countries, including Mexico, but the passage of a bill in the United States Senate in January 1976 to extend American fishing limits to 200 miles had the greatest impact. Canadian officials were not, however, unduly concerned by this development since they believed it would not take effect before 1977, and at the annual convention of the United Fishermen and Allied Workers' Union in February 1976, Mr. Leblanc reemphasised that Canada preferred to extend its jurisdiction through a process of multilateral agreement. Hence, the fourth session of UNCLOS was expected to be of critical importance to Canada with re-

gard to its strategy for extending its fisheries jurisdiction. The results of the session would determine to some extent the government's plans for the annual meeting of ICNAF in June 1976 at which time the government would have to give 6 month's notice if it intended to extend its fisheries jurisdiction.[18]

Conference-related Negotiations

The most important conference-related negotiations for Canada occurred within the Evensen Group and dealt with vessel-source pollution as well as other items. Meetings were convened by Mr. Evensen after private and separate discussions with Canada, United Kingdom, United States and the USSR, to examine the SNT in August-September 1975. Further meetings were held in February 1976. With regard to marine pollution, Canada participated actively in the negotiations on the SNT articles. The government was hopeful that the new Evensen text would bring about a more balanced set of articles as the present negotiating text largely reflected the interests of the maritime states. In addition to the Evensen Group negotiations on marine pollution, Canada likely held talks with the United States concerning the Arctic exception article and possibly also the status of the Arctic inter-island waters.

Of less importance to Canada but a major item in the discussions within the Evensen Group was marine scientific research. No proposals or papers were presented by Canada because of the sensitive nature of the issue in regard to Canada's relations with the EEC and other industrialised states. However, in the hope of facilitating a compromise, Canada supported a draft proposal introduced by Peru based on an implied consent regime.[19] No conclusive results were achieved on this issue as a result of the opposition of the European members and the United States to any sort of consent regime, although a text of articles was prepared by Mr. Evensen which was apparently favourable to coastal state interests.[20]

In contrast to the period in between the Caracas and Geneva sessions, Canada did not hold bilateral talks with other states concerning salmon nor did it lobby among the African states regarding the margin issue as the SNT largely met Canada's objectives with regard to both these matters. However, Canada did hold talks with members of the broad shelf state group concerning a formula for defining the outer edge of the margin and revenue-sharing. Bilateral talks were held with Australia but the nature and outcome of these discussions were not made public.[21] Although the SNT was less compatible with Canada's position concerning navigation and international straits, it appears that Canada did not participate in any bilateral or multilateral negotiations on these two issues. Because of the importance of agreement in Committee I to the overall success of the conference, Canada attended meetings led by the Chairman of Committee I, Mr. Engo, in February 1976 to discuss the SNT. Separate negotiations were organised by Brazil in order to work out a compromise on the particularly controversial issues but Canada did not participate. The United States was also negotiating privately with Mr. Engo on a compromise proposal for parallel mining by the ISA and individual states and companies.

Fourth Session, 10 March - 7 May 1976, New York

The law of the sea conference reconvened in New York on 15 March, and it was decided that the first order of business was for each of the Committees to produce a revised version of their part of the SNT which would reflect the results of the informal intersessional negotiations. The SNTs were to be reviewed article by article and to expedite matters, it was agreed that silence would signify approval of the existing text and that delegates would only ask for the floor if they wished to introduce amendments. "Wide support" would be necessary for any amendment to be taken into account, and it was at the discre-

tion of the Chairmen which revisions would be incorporated into the Revised Single Negotiating Text (RSNT), which would once again be informal. The purpose of these procedures was to circumvent a vote on the acceptance of the SNT, to avoid a large number of amendments, and finally to dispel the concern of some states about the "elitism" of small group negotiations and to focus the debate in the committees as a whole.[22]

Canada entered the session with its negotiating position substantially unchanged from Geneva. In terms of its original three objectives, it still hoped to obtain recognition of coastal state jurisdiction over fisheries beyond 200 miles and to improve the SNT article on salmon, if possible.[23] As concerned the continental shelf, high priority was attached to the inclusion of an acceptable definition of the limits of the margin as well as a revenue-sharing formula, and in both cases the delegation was willing to be flexible about the details.[24] In relation to the Arctic, Canada was particularly unhappy about the SNT provision prohibiting coastal state design, construction, manning and equipment standards for the control of vessel pollution in the territorial sea. Given the uncertain status of Canadian Arctic waters and as the Arctic exception regime applied only to the area of the EEZ, Canadian officials were concerned that they might not be able to control shipping through the Northwest Passage. The matter was further complicated as a result of the extensive definition of international straits in the SNT, and it was by no means clear whether or not transit passage would be applicable. However, Canadian officials were careful to avoid giving any indication that the issue of coastal state pollution standards in the territorial sea affected Canadian Arctic interests.[25] Instead, Canadian objections were based on environmental grounds[26] as well as the issue of sovereignty in the broader sense as the SNT represented a significant reduction in traditional coastal state jurisdiction.

Meanwhile, three new objectives had emerged. Canada now had a strong interest in the early conclusion of a comprehensive treaty in order to secure the substantial gains which it had already achieved.[27] Hence, the delegation had an increased interest in the nascent international seabed regime which had become the major make-or-break issue of the conference. Committee I had also become of greater concern in its own right as Canadian officials were dissatisfied with the SNT provisions regarding the system of exploitation and the Council. Finally, extending the scope of coastal state jurisdiction had become an objective in its own right, and hence Canada was newly concerned about access by LLGDs to the EEZ, the legal status of the EEZ, and the settlement of disputes arising from the exercise of coastal state rights in the zone. This stemmed in part from Canada's interest in controlling fisheries, marine scientific research and marine pollution in the EEZ but also reflected a more acquisitive "territorialist" policy which had been generated by ten years of negotiation and was reinforced by the heightened national sensitivity to matters affecting Canadian sovereignty.

COMMITTEE I:

At the conclusion of the Geneva session, a SNT had been distributed which reflected the position of the Group of 77 without taking into account the interests of the most industrialised states. These latter states as well as particular members of the Group of 77 realised that a compromise was necessary and intersessional negotiations had taken place to this end.[28] However, no such compromise had yet been formulated at the opening of the New York session with the result that the United States placed increasing emphasis on its Seabed Mining Bill[29] in order to precipitate an agreement.

At the fourth session, negotiations proceeded at three levels: informal sessions of the committee, the Engo Group and the Brazil Group.[30] At the informal sessions, the Chairman of Committee I circulated first impression drafts of articles on the basis of the discussions within the committee as well as within the Engo and Brazil Groups. These drafts provoked significant controversy, particularly within the Group of 77 (which was having great difficulty keeping a unified position on Committee I issues), but were eventually incorporated in Part I of the RSNT. Some members of the Group of 77 were amenable to accepting the parallel mining system as proposed by the major industrialised states as long as provision was made for production controls, while other members were reluctant to reduce the overriding authority of the ISA. Canada did not participate in either the Engo or Brazil Groups, and for the most part chose to play a minor role in Committee I in order to keep a low profile so as to not jeopardise existing gains. Canada's interests were engaged in three main issues: guaranteed access, production controls and the composition of the Council. In the case of production controls, Canada's interest was recent and stemmed from a new concern about non-competitive factors in the exploitation of manganese nodules which might have an adverse effect on the Canadian nickel industry.

The exploration and exploitation system:

Revisions to the SNT regarding the powers and functions of the ISA were radical and resulted in a text which was much more favourable to the interests of the major industrialised states. The RSNT now stipulated that activities in the Area were to be conducted by the ISA directly and exclusively but also by other entities in association with, or under the direct control of, the Authority. This parallel approach to exploration and exploitation also included the "banking system" which had been proposed by the United States at the previous session.

According to this system, applicants would submit two mine sites of equivalent value, one of which would be reserved for development by the Enterprise,[31] or a qualified developing state, and the second to be mined by the applicant.[32]

No interventions or amendments were introduced by Canada regarding the functions of the Authority although it undoubtedly welcomed the American proposals introduced by Dr. Kissinger on 8 April. These were designed to facilitate the acceptance of the parallel system which would provide for ensured access for states and their nationals.[33] Canada responded favourably to the revisions included in the RSNT as it believed that they provided a more equitable balance between the views of the major industrialised states and the developing states and thereby were more likely to bring about a final agreement.[34]

Production controls:

Up until the spring of 1976, Canada had displayed little interest in the question of production controls, and had given no indication that it was dissatisfied with the SNT. However, following the introduction of a proposed amendment by Engo at the February intersessional negotiations,[35] Canadian government officials gave this matter greater attention. The Engo proposal also came at a time when officials were becoming increasingly concerned about the possibility of subsidisation of deep seabed activities by the major consuming states, in particular the United States which was Canada's main nickel market.[36] Following internal consideration and analysis, it was decided that Canada would support the concept of production limitations as the most appropriate mechanism to minimise the possibility of direct or indirect subsidisation. Hence, Canada reacted favourably to the endorsement of this concept by the United States. On 8 April 1976, Secretary of State Kissinger indicated that the United States was prepared to accept a temporary limitation for a fixed period of time tied to the

projected growth in world nickel demand.[37] The mechanics of a production limitation formula were subsequently included in PBE.9 released on 29th April which contained the operative part of the formula later incorporated in the RSNT.[38] In order to protect land-based producers this stipulated that annual seabed production should not exceed the estimated percentage increase in world demand for that year.[39] The estimate would be derived from the average of the preceding twenty years with the proviso that the increase should not be less than 6% per annum.

This proposal took the Canadians by surprise since they had been expressly excluded from the American-led negotiations which resulted in the drafting of this formula.[40] Following careful analysis, Canada expressed dismay at the potential implications of the formula[41] and was particularly concerned about the provision for the computed rate of increase in world nickel demand since Canadian experts believed that actual growth would in fact be less than 6%. One expert predicted that the 6% figure would make the Canadian nickel industry extinct in twenty five years.[42]

In light of the likely adverse consequences for domestic nickel production, the Canadian delegation decided to attempt to prevent the inclusion of the American formula in the RSNT, and vigorous representations were made to the Chairman of Committee I and the American delegation.[43] Canada's objections were made on two counts: first, the formula did not allow for expansion by land-based producers; and secondly, the estimated increase in world demand for nickel was over-generous and would result in excess supply. Canada also protested that there had not been full and open discussion of the formula, and approached other delegations in an attempt to discredit the formula. Following consultations with other land-based producers, Canada in a last-ditch effort circulated a hastily

prepared counter-proposal in order to demonstrate that there were other and more realistic options.[44] The Canadian formula tied the application of a production ceiling to a portion of the actual annual increase in world nickel demand and proposed that deep seabed production be allocated the entire increase in world nickel demand for a period of time after the commencement of commercial production.[45] Thereafter, there would be an equitable relationship between land-based and deep seabed production in respect of the increase in demand, that is, a 50-50 division. This formula was designed to protect Canada's interests as a major exporter of nickel without undermining the opportunity for Canadian companies to participate in deep sea-bed mining.

Despite Canadian efforts, the American formula was included verbatim in the RSNT. However, in his report, the President of the Conference remarked upon the need for a more careful consideration of the method of computation for the cumulative growth segment and instructed that specific attention be devoted to the projected rate of increase for nickel.[46]

The Organs of The International Seabed Authority

Revisions to the SNT did not change the organs of the Authority although some of their functions were modified. In the Geneva version, the Assembly was the "supreme policy-making organ" whereas the New York text described the Assembly merely as the "supreme organ" and the Council was given a greater role.[47] However, the Council could not by-pass the Assembly on important questions relating to rules, regulations and procedures.

No changes were made to the SNT with regard to the composition of the Council, a matter of particular interest to Canada. Given its double interest as a potential exploiter of manganese nodules and a major exporter of nickel, Canada was not at all satisfied with the SNT as it felt that it would not guaran-

tee Canada a seat. The SNT made provision for only two categories of special interests (major contributors to exploration and exploitation of manganese nodules, i.e. industrialised states, and developing states)[48] and therefore the delegation pressed for a further breakdown which would take into account Canada's unique position as a developed land-based producer. However, as Canada did not wish to antagonise either the industrialised or developing states it refrained from submitting an original proposal. Instead, the delegation proposed an amendment which consisted of two alternative formulations, one previously submitted by an industrialised state (United States) and the other introduced earlier by a developing state (Sri Lanka).[49] The first required that of the 36 members, 9 would be industrialised states closely concerned with the exploitation of deep seabed resources and the latter that 6 should be land-based mineral producers. Either of these would have increased the likelihood of Canada obtaining a seat but the Canadian proposal met with little success.

In regard to the other organs of the Authority, the RSNT retained provisions for an Economic Planning Commission and a Technical Commission. These commissions had been supported by the United States and the USSR while Canada had opposed them on the grounds that it would make the Authority too cumbersome.[50] Since the days of the Seabed Committee, Canada had always been concerned that the Authority not become too large and unwieldy but this was a matter of relatively low priority. The RSNT also included new statutes for a Seabed Tribunal and the Enterprise which were generally acceptable.[51]

In summary, while the RSNT satisfied Canadian objectives with respect to guaranteed commercial access, the production limitation formula was regarded as a serious threat to Canadian interests. This issue was of major concern and tended to be given more attention than the RSNT provisions on the membership of

the Council. In addition, Canada was worried about the effect of the complaint lodged by the Group of 77 that they had not been sufficiently involved in the discussions upon which the test was based. The Group therefore did not accept the RSNT and asserted that the Geneva text was still relevant to the negotiations.[52]

COMMITTEE II

The Second Committee held 52 informal meetings in the course of which there were over 3,700 interventions. However, very few of the proposed amendments were considered by the Chairman to bring the text closer to the delegations' views, and no amendments commanded other than minimal support. In consequence, very few changes were made to the SNT. While Canada made some interventions, it attempted to keep a low profile and directed its efforts to consolidating the gains made at Geneva.

Exclusive economic zone

The major development at New York with regard to this issue was the renewed and unexpected campaign launched by the LLGDS to secure access to the living and non-living resources of the EEZs of neighbouring coastal states. With a membership of 51 states, and under the assertive leadership of Karl Wolf of Austria, the group was able to stimulate a number of concessions although it was unsuccessful in obtaining access to mineral resources, and no sort of accommodation was reached between the group and the coastal states.[53] The RSNT also incorporated a number of significant constraints in order to safeguard the interests of coastal states, including the subjection of the rights of LLGDS to bilateral, subregional and regional agreements.

The Canadian delegation took a greater interest in the access issue as a result of efforts by some members of the LLGDS group to amend the article

which gave developing coastal states which were particularly dependent upon the fishery resources of neighbouring states for their food value or which could not claim their own EEZ the right to exploit the living resources in the EEZs of other states in the subregion or region.[54] These states proposed that this provision be extended to developed geographically disadvantaged states, and Canada was concerned that this initiative was a prelude to demands by the East European members of ICNAF for access to the Canadian zone.[55] In addition, the delegation was troubled by the problem of defining a region or subregion and foresaw the potential for possible claims for access by other states as well.[56] Canada, therefore, took an active but low-key role in the negotiations with respect to these two matters. In addition, Canada rejected the claim of LLGDS to a substantial share of the living resources in the neighbouring EEZs of coastal states as well as the demands of these states for special procedures for the settlement of fishery disputes as it viewed these latter demands as a significant infringement upon coastal state rights.[57] While Canada was pleased with the safeguards put into place by the RSNT, it remained uneasy about the problem of states claiming access to the Canadian EEZ.

Fisheries

With the exception of the rights of LLGDS to living resources, very little discussion occurred at New York with regard to the fisheries articles of the SNT. A minor change was made to the article on anadromous species such that the RSNT provision was now identical to the article originally drafted by the group of salmon-interested states at Geneva.[58] In keeping with its desire to maintain a low profile, Canada relied upon Ireland to express its position on this issue.[59]

Canada was not able to pursue this particular tactic with regard to preferential fishery rights beyond the EEZ as no state was willing to stand in

for Canada on this item. New Zealand and Australia both had stocks beyond 200 miles but neither was particularly interested in pursuing jurisdiction beyond the EEZ.[60] Therefore, Canada introduced an amendment to the SNT recognising the preferential right of the coastal state to fishery resources above the continental shelf beyond the EEZ. This amendment received some support but the Chairman considered it insufficient to warrant any change to the SNT.

Continental Shelf

No changes were made to the SNT concerning the continental margin although considerable negotiation occurred at the session with regard to revenue-sharing and the definition of the outer edge of the margin. In both cases, the negotiations remained centred in the broad-shelf state group with most of the meetings being chaired by Canada and held in the Canadian law of the sea offices.[61] There was now general acceptance within the group of the necessity of revenue-sharing but there was renewed disagreement as to whether a production-sharing or a profit-sharing scheme should be implemented. The Canadian delegation preferred the American formula, recognising that the profit-sharing approach would be unacceptable to the Soviet bloc, but it refrained from expressing explicit approval because of Cabinet sensitivity about the royalty implications of the formula. The delegation was also prevented from introducing its own proposal but it no longer placed specific conditions on its offer to share revenues. As there was only minimal support for profit-sharing within the group, the revenue-sharing formula in the SNT was retained. No figures were yet included for the rate of payment or contribution.[62]

Substantial progress was made in the broad-shelf state group in defining the outer edge of the margin. Ireland introduced a formula, developed in close cooperation with Canada, which was based on the "essential thickness" of

the sediments constituting the ocean floor.[63] This formula (known as the Gardiner principle) would allow states with broad shelves to claim substantially larger areas as "margin" than would the Hedberg formula which was the alternative put forward by the United States at Geneva. More importantly, the formula would allow India to claim the entire Bay of Bengal which meant that India could be relied upon to use its influence among developing states to secure acceptance of jurisdiction by broad shelf states over the margin beyond 200 miles.[64]

The Irish formula was opposed by the United States for defence reasons,[65] but just before the session ended, a tentative compromise was reached which combined elements of both principles (i.e. the thickness of the sediments of the rise and distance from the foot of the slope). The Canadian delegation adopted a pragmatic attitude, and hence although this formula involved some minor "losses" for Canada to the southeast of Newfoundland, it was willing to accept a formula which was likely to receive widespread support. However, as the compromise definition was very technical and had been introduced so late, the Chairman decided not to include it in the RSNT.[66]

Navigation issues

Navigation continued to be a particularly controversial subject and affected negotiations on a number of issues including passage through the territorial sea, international straits and archipelagoes as well as the legal status of the EEZ. Following an article by article appraisal of the SNT, only a few changes were included in the RSNT, and for the most part, the text still reflected the interests of the maritime states.

Of particular importance to Canada was the issue of coastal state rights in the territorial sea. The SNT prohibited the application of coastal state

laws and regulations applying to or affecting design, construction, manning and equipment standards in the territorial sea, and this provision was regarded as a potential threat to Canada's Arctic interests. Moreover, this provision was contrary to Canadian legislation, including the Canada Shipping Act. However, the maritime states[67] and a large number of developing states, including some of Canada's traditional allies, were opposed to any relaxation of this restriction. The developing states were concerned about possible restrictions on their older vessels, and were not persuaded by Canada's argument that the prohibition of coastal state vessel standards represented a serious infringement upon traditional coastal state jurisdiction. Thus, despite the objections of Canada and twenty-two other states,[68] the provision was not changed.[69]

The issue of how innocent passage should be defined also provoked considerable controversy. Canada was dissatisfied with the SNT regarding this issue as coastal state action was limited to "wilful" acts of pollution meaning that measures could only be taken against deliberate discharges. Canada therefore proposed an amendment to replace the term "wilful" with "serious" but despite the support of fifty-eight other delegations, the amendment was not accepted.[70] Instead, the RSNT was revised to read "any act of wilful and serious pollution" thereby restricting coastal state action even further.[71]

In the case of passage through international straits, the negotiations were unproductive as the maritime states remained committed to transit passage and non-suspendable innocent passage while many of the strait states were in favour of a less restrictive regime. While the Canadian position had been in a state of flux up until this session, it was now particularly eager to avoid adopting a substantive position. This stemmed from an understanding reached with the United States whereby the United States agreed to accept an Arctic exception regime if Canada refrained from supporting the position of the strait states.[72]

Hence, in a lengthy statement delivered by Ambassador Beesley, Canada limited itself to seeking clarification on a number of points as well as highlighting various interpretation problems with the text.[73] This statement was made so that it would not appear as if Canada was abandoning its strait state allies.[74] No changes were incorporated in the RSNT.

Of particular relevance to Canada but not a major issue at New York was the definition of international straits. The Canadian delegation continued to advocate but without success that traditional usage be included in the definition of such straits and to assert that the Northwest Passage was not an international strait.[75] As an alternate means of securing its objectives in the Arctic, Canada decided to support a successful Norwegian amendment excluding straits which had previously been considered international waters whether or not enclosed by straight baselines from the regimes of transit passage and non-suspendable innocent passage.[76] This amendment was consistent with Canada's claim that the Arctic waters were internal waters but the United States continued to argue that the Northwest Passage was high seas. The Norwegian amendment was also important with regard to a number of other straits to which Canada has historic claims of internal waters.[77]

In the case of passage through archipelagoes, one minor change was incorporated whereby a separate regime for archipelagoes forming a part of a coastal state was no longer possible.[78] The United States and USSR had raised strenuous objections as they now preferred the application of a single regime to all archipelagoes, and the RSNT allowed only for non-suspendable passage rights along archipelagic sea lanes. Although this removed a potential legal argument in support of Canada's Arctic claims,[79] the delegation did not object to the deletion of this article.[80]

While no changes were made to the SNT provision on the legal status of the EEZ, the conference was far from agreement on this issue. The maritime states and LLGDS argued that the EEZ should be high seas subject to the freedom of navigation and that the rights of coastal states were limited to those specified in the convention. The coastal states on the other hand insisted that the EEZ was neither high seas nor territorial waters and that residual rights should pertain to the coastal state. The Canadian delegation agreed that the EEZ was sui generis but adopted a more moderate position on the matter of coastal state rights in the zone. It introduced a compromise proposal that the high seas provisions should apply to the EEZ "insofar as they were not incompatible with the Committee III text."[81] This proposal failed to satisfy either side, and the United States remained adamant that it would not ratify a convention which stipulated that the waters of the EEZ were subject to national jurisdiction.

COMMITTEE III

Negotiations within Committee III resulted in significant changes to the Geneva text with regard to both marine pollution and marine scientific research. The transfer of technology issue was not discussed.

Marine Pollution

The critical negotiations on marine pollution took place within a working group chaired by Mr. Vallarta of Mexico.[82] A majority of states, including Canada, wanted the negotiations to focus on the key issues covered in the intersessional Evensen Group text in order that it, rather than the SNT, would form the basis for accommodation.[83] Despite opposition from many of the maritime states, Mr. Vallarta accepted this approach, and on 2 April 1976 intro-

duced an "outline of issues concerning vessel-source pollution" which was intended to structure the negotiations and avoid an article by article review of the SNT.[84]

In the debate that followed, two main items dominated the discussions: the right of coastal states to set standards for pollution control, and the right of coastal states to enforce national and international standards. In the case of coastal state standards in the territorial sea, the main point of contention was the right of coastal states to set design, construction, manning and equipment standards which was prohibited in the SNT. This issue was also discussed in Committee II in the context of the right of innocent passage, and as explained in the previous section, there was only a small group of states, including Canada, which favoured amendment of this provision.

With respect to pollution control in the EEZ, attention was focused on revising the two exceptions to the international approach incorporated in the SNT. In the case of the first exception which applied to "special areas", the maritime states were particularly concerned that coastal state powers be limited and the RSNT was amended accordingly.[85] Of particular importance to Canada was the second exception which applied to areas within the EEZ where severe climatic conditions presented a hazard to navigation and where marine pollution could cause major or irreversible disturbance to the marine environment.[86] Following negotiations between Canada and the United States, this article was amended so that it was now applicable only to "ice-covered areas,"[87] and it was generally understood that the provision was included to satisfy Canadian interests and demands.[88] Canada was very pleased with the new article as it would give international recognition to the Arctic Waters Pollution Prevention Act but it had been obliged to adopt a neutral stance with respect to passage through international straits in order to obtain American agreement.

In regard to enforcement in the EEZ, coastal state powers although still limited were expanded over traditional powers as well as over those provided for in the SNT. The revised text gave coastal states the right to enforce national or international discharge standards when a vessel had committed a "flagrant or gross violation" causing damage or threat thereof to the area, its resources or the interests of the coastal state.[89] The coastal state was also given the right to demand particular information from vessels navigating in its EEZ, and in particular circumstances to inspect such vessels. Only minor changes were made to the SNT articles on port and flag state enforcement. While Canada had adopted a strong coastal state enforcement posture at the initial sessions of the conference, it was generally satisfied with the amendments made although it would have preferred a somewhat less restrictive provision for coastal state enforcement of discharge standards. Canada had been one of the first states to propose the concept of port state enforcement, and the delegation was pleased to see this concept incorporated in the text. Canada, however, was concerned that the powers granted to coastal states could be removed by resorting to the settlement of disputes procedure,[90] and that coastal and port state enforcement were subject to flag state preemption of prosecution concerning violations outside the territorial sea.[91] Nevertheless, the revised text was regarded as a major improvement over the SNT.

Marine scientific research

The crucial negotiations in Committee III on marine scientific research took place within a heads of delegation group chaired by Mr. Yankov after a working group chaired by West Germany and a subsequent ad hoc group led by Australia were unable to draft compromise articles.[92] Important changes were made although the RSNT was still more favourable to coastal state than maritime

states interests as it stipulated that the consent of the coastal state was necessary with regard to all research in the EEZ or on the continental shelf.[93] However, coastal states could not withhold consent unless the research project bore upon or involved a number of specified activities.[94] These changes were made by Mr. Yankov and were influenced in part by the Evensen articles prepared during the intersessional period and also by the beginning of a shift in the position of the USSR in favour of a consent regime. The United States had also modified its position having agreed to accept the application of the principle of consent to very precise marine scientific research activities, including projects affecting the exploration and exploitation of resources, but only if the principle was accompanied by the obligation to submit to mandatory dispute settlement.[95] Thus, the RSNT was not regarded favourably by the United States[96] while the reaction of the Group of 77 was mixed as it appeared to be still divided as to whether full or limited consent should apply.

Although the Canadian delegation participated first in the ad hoc group convened by Australia and later in the heads of delegation group,[97] it maintained a low profile as it believed that it would be unwise to oppose the position of either its military or coastal state allies. The delegation had misgivings about the restrictions on coastal state consent in the RSNT but had no major objections as it realised that some sort of concession would have to be made to the maritime states in order to reach agreement. Furthermore, the RSNT represented a significant improvement as it not only enhanced coastal state rights but weakened the distinction between pure and applied research which Canada had long opposed.

DISPUTE SETTLEMENT:

During the intersessional period, the President, Mr. Amerasinghe, had produced a set of articles on the settlement of disputes based on the work of an ad hoc group active at the Caracas and Geneva sessions. However, the subject was not debated in plenary until the New York session, and following that debate, the President's draft was revised and incorporated as Part IV of the RSNT.[98]

The text provided for non-compulsory conciliation, compulsory arbitration by ad hoc tribunals, special proceedings by committees appointed through special agencies and adjudication by the International Court of Justice and a new Law of the Sea Tribunal.

Most states, with the exception of the Soviet bloc, were in favour of compulsory dispute settlement but there was considerable disagreement as to what, if any, exemptions should be made. Many coastal states argued that disputes arising out of the exercise of coastal state authority in the EEZ should be exempted while the maritime states and LLGDS were in favour of a strong system.[99] As this issue was highly relevant to the question of coastal state rights, Canada had participated actively in the negotiations at the previous sessions, and a major policy statement was made by Mr. MacEachen, the Secretary of State for External Affairs, at the New York session. Speaking before the conference on 12 April 1976, the Minister expressed Canada's strong support for the inclusion of a comprehensive system of compulsory dispute settlement and indicated that Canada was willing to accept whatever procedure was likely to command broad support.[100]

With regard to the contentious issue of disputes arising out of the exercise of coastal state rights in the EEZ, Canada adopted a relatively moderate position. Mr. MacEachen emphasised that Canada did not share the view

that no disputes arising in the EEZ should be subject to compulsory dispute settlement but also indicated that Canada did not want undue restriction to be placed on the resource rights and environmental duties of the coastal state in the EEZ.[101] Hence, Canada was somewhat concerned that the provision in the RSNT which exempted the majority of disputes in relation to the exercise of sovereign rights, exclusive rights and exclusive jurisdiction of coastal states, did not appear to extend to marine pollution controls.[102] Canada also had reservations about the necessity of a new Law of the Sea Tribunal and expressed its preference for the retention of traditional procedures, including the International Court of Justice.[103]

OVERVIEW:

Overall, the Canadian delegation had adopted a low profile and played a much less prominent role than at previous sessions. Except in the case of issues of high priority, where Canada did intervene, it attempted to play a moderating role which was in keeping with the delegation's policy of encouraging settlement of the make-or-break issues in order that a comprehensive convention might be finalised.

While there were many issues yet unresolved, the trends reflected in the RSNT were generally favourable to Canadian interests. In the case of fisheries, the salmon article was now entirely satisfactory although the delegation was disappointed that no provision was made for preferential rights beyond the EEZ. While no new provisions were included regarding the continental margin, progress was made within the broad-shelf state group. In regard to Canada's Arctic interests, the delegation was very pleased with the new article for "ice-covered areas" negotiated with the United States.

For the most part the RSNT was regarded as a significant improvement over the SNT although Canada realised that much remained to be done before

negotiations were completed on the parallel system, the composition of the Council, marine scientific research and a number of other issues. As far as Canada was concerned, negotiations were far from complete with respect to the seabed production control formula which was regarded as a threat to Canada's nickel industry.

Intersessional Period

With only a few months until the next session, limited time was available for conference-related negotiations. However, at the domestic level, a number of critical steps were taken towards the extension of Canada's fisheries jurisdiction. On 4 June 1976, two weeks after a bilateral fisheries agreement was signed between Canada and the USSR, the government announced that it would extend Canada's fisheries jurisdiction out to 200 miles on 1 January 1977.[104] Having negotiated agreements with the major fishing states operating off Canada's coast regarding the terms and conditions that Canada would apply when permitting foreign fisheries in respect of resources surplus to Canada's harvesting capacity within a 200-mile zone,[105] and in light of developments at UNCLOS, the government was confident that Canada's jurisdiction could be implemented without difficulty. Also a factor in the government's decision was domestic pressure which was becoming increasingly intense and was expected to increase in view of the plans of the United States as well as Mexico to extend their fisheries jurisdiction. The United States had announced that it would establish a 200-mile fishing zone on 1 March 1977 and the Canadian government felt compelled to act before that date in order to protect Canadian interests.

The timing of the government's announcement was arranged to fall just a few days before ICNAF's annual meeting, and at this meeting Canada was able to extract major concessions. At the outset Canada indicated that it was

willing to consider 1977 a transition year if Canada's jurisdiction was recognised and significant reductions in catch quotas were accepted. Such reductions in quotas for the non-coastal states were agreed to,[106] and Canadian as well as American jurisdiction out to 200 miles acknowledged. Some discussion also took place on ICNAF's future role, as 90% of ICNAF's jurisdiction would come under Canadian and American control in 1977. Canada attached high priority to the continuation of ICNAF as it considered ICNAF an appropriate forum for the management of fish stocks beyond 200 miles as well as the division of surplus stocks. The United States on the other hand showed little interest in the future role of ICNAF. Negotiations on this issue were to be resumed late in the year.

During this period, preliminary discussions were also held between Canada and the United States on joint fisheries arrangements in the extended zones. It was also recognised that steps would have to be taken to resolve outstanding boundary disputes. On 15 June 1976, France announced that it would establish a 200-mile fishing zone around St. Pierre and Miquelon but no formal talks were held between Canada and France on this particular boundary problem.

Fifth Session, 3 August - 17 September 1976, New York

The Law of the Sea Conference reconvened in New York on August 3. A majority of the delegates had spent a desperately busy summer involved in other conferences, including UNCTAD IV, and those from the developing states had been particularly overstretched.[107] Nothing significant had been achieved through informal negotiation in the intersessional period, and amongst the Group of 77 there was widespread resentment against the United States which, in its runup to the Presidential election,[108] had insisted on what was generally seen as a sterile exercise. There was little inclination to reach agreement at this session, particularly on those issues such as the regime for the international seabed, where the USA and the Group of 77 were directly at odds.

Sensing the feeling of the conference, the President shifted the focus of the proceedings from a step-by-step review of the RSNT to a concentrated attack on the major areas of disagreement.[109] These key issues would be determined by the Chairman of each Committee, who would then entrust the detailed negotiations to small informal groups, where it should be easier to reach agreement. Without prejudice to the Committee Chairmen's decisions, the President outlined the 6 issues which he considered to be the most important:

(1) Structure of the proposed ISA; financial arrangements for maintenance of the Authority and its activities; basic conditions governing exploration and exploitation and measures required to prevent or mitigate adverse consequences to the economies of the developing states that might result from seabed mining;

(2) Accommodation of the interests and concerns of countries whose peculiar geographical location might for want of such accommodation deprive them of any real benefits from the establishment of an EEZ or of a fair share in the common heritage of mankind;

(3) Precise legal relationship between the concept of the exclusive zone and the doctrine of the high seas as at present understood;

(4) The regime to be applied to marine scientific research in all areas outside the territorial sea;

(5) A viable mechanism for compulsory settlement of disputes; and

(6) Formulation of final clauses which would preserve the legal unity of the convention.[110]

It was indicative of the progress which had been achieved since Caracas that Canada had much less interest in these central issues than had been the case at earlier sessions. And, for the first time since 1973, Canada found it necessary to make substantial changes to its negotiating position. In part this stemmed from a clearer understanding of other states' interests and disinterests, and of what could and could not be achieved through the conference. More significantly, it reflected the extent to which Canada's original objectives had already been achieved, and a conscious decision not to prejudice those gains either by

the intransigent pursuit of minor objectives or by taking controversial positions on matters of principle or of peripheral concern to Canada. There was also the broader diplomatic requirement to mend fences with Canada's allies among the industrialised states and traditional maritime powers.[111]

In respect of Canada's original three main objectives, the attempt to secure recognition of coastal state fishing rights beyond 200 miles was dropped. Instead, efforts were concentrated on fending off any proposal for access by the LLGDS which might erode Canada's exclusive rights within the EEZ. As concerned the continental shelf, there was no change in Canada's position on revenue-sharing which was regarded as the price for acceptance of the claims of the broad shelf states to the margin beyond 200 miles. The alternative limits in this regard would depend on overall negotiating advantages. As for the Arctic, Canada intended to focus its attention on coastal state standards in the territorial sea having obtained a very favourable provision for "ice-covered areas" within the EEZ at the previous session.

Of the three new objectives which had emerged after Geneva, there was a considerable upgrading in the priority given to Canada's interests as a metal exporter. As a result, Canada intended to give particular attention to securing a favourable production limitation formula which protected Canadian domestic mineral production while at the same time maintaining favourable conditions for deep seabed mining by Canadian companies. In addition, Canada was more interested than ever in obtaining a seat on the Council in order to protect its unique interests as a developed land-based producer. With regard to the scope of coastal state jurisdiction, Canada remained concerned about rights of access in the EEZ and the legal status of the zone as well as the settlement

of disputes arising out of the exercise of coastal state rights. As for Canada's interest in the early conclusion of a comprehensive treaty, this had abated somewhat. The progress represented by the RSNT and the manner in which its underlying trends were already being reflected in state practice; the success in securing acceptance of Canada's fishery claims within ICNAF and through bilateral agreements; and the announced decision to declare a 200-mile fishing zone on 1 January 1977, all these developments meant that a comprehensive treaty was no longer essential to Canada's immediate interests, although for a myriad of reasons, it remained highly desirable.

COMMITTEE I

Reflecting in part dissatisfaction with the Chairman of Committee I, Mr. Engo,[112] Committee I decided to establish a workshop of the whole with two elected chairmen.[113] As at the previous sessions, attention was focused on the exploration and exploitation system, the key issue being how to reconcile the industrialised states' requirement for "guaranteed access" with the Group of 77's insistence on "full and effective control by the ISA."[114] Three main papers were considered within the workshop on the question. The Group of 77 submitted a paper which rejected the parallel system as set out in the RSNT and asserted the preeminence of the ISA in its full and effective control.[115] A second paper introduced by the United States based on the parallel system, placed the conduct of activities by states and private entities on an equal footing with those undertaken by the ISA.[116] The USSR submitted a paper as well, and this also incorporated the parallel system but no provision was made for the conduct of activities by private entities, and the ISA was given the discretion as to which parts of the Area would be available for exploration and exploitation.[117]

To try and overcome the continuing impasse over the method of exploitation, the negotiations were shifted to a more informal working group open to all delegations but with a core membership of 26 representative states.[118] Shortly thereafter the United States offered two concessions previously proposed by Kissinger in an attempt to break the deadlock. First of all, it proposed a financing arrangement to enable the proposed Enterprise to undertake deep seabed mining activities. Secondly, the United States indicated that it was prepared to agree to a review, in perhaps 25 years, of the system of exploitation.[119] This latter proposal greatly appealed to the Group of 77 as it would prevent the permanent imposition of an exploitation system which proved to be unsuitable but their reaction to the first proposal was much less favourable. In addition, the United States indicated that it would be prepared to include provisions in the Convention for the transfer of technology in order that the existing advantage of certain industrialised states could be equalised over a period of time.[120] Despite these concessions and the change in negotiating procedure, no agreement was reached. As a result, progress on the other issues on which discussions were held, including the structure of the ISA and financial arrangements, were stymied.

Canada played only a minor role in the negotiations on the system of exploitation, and instead focused its attention on those issues impinging upon its interests as a landbased producer. The delegation was particularly active in attempting to secure a change to the American production limitation formula. Working largely outside the committee framework, Canada's efforts were specifically directed towards the developing states, and special attention was devoted to the Latin American Nickel Group.[121] In order to convince these states of the detrimental implications of the American formula, tables were drawn up

and circulated showing likely levels and patterns of growth in world nickel production. These tables illustrated that the 6% nickel growth rate figure used in the RSNT could not only totally restrict the development of potential expansion of land-based production but also theoretically depress or eliminate land-based production.[122] Speaking to the Latin American Nickel Group, Canada pointed out that Latin America's projected growth in nickel production was expected to be more than 1½ times that of Canada between 1975 and 2000 if there was no discrimination against land-based production.[123]

In addition, Canada again circulated its own counter-proposal which linked the application of a ceiling to a portion of the actual annual increase in world demand for nickel over a given period and tied the control period to the actual commencement of commercial production in the area. In addition, the formula retained provision for a five-year "build-up" period during which production from the seabed would be allocated the total increase calculated for world nickel demand. Thereafter, there would be a 50-50 division between land-based and seabed production.[124] Canada argued that this formula was more equitable than the RSNT formulation because it would allow those states with potential ore deposits to develop new mines while simultaneously allowing very significant production from the deep seabed.[125]

Judging by the adverse reaction of the United States,[126] Canadian lobbying met with some success. More positively, the developing states appreciated Canadian efforts to share its expertise on market prospects, and the information disseminated by the delegation appeared to have influenced the production ceiling formula prepared by the Group of 77 near the end of the session.[127] However, this formula differed from Canada's in two important respects: first, it did not provide for a "build-up" period, and secondly, it proposed

limiting the production of all minerals, rather than just nickel, from manganese nodules.[128] As the Group of 77 formula went further than Canada's in favour of land-based production, the Canadian formula thereby became a middle solution in between the Group of 77 and RSNT formulas. However, considerable controversy remained at the end of the session with regard to the figures and assumptions used in the formulation of the various formulae.

In a further attempt to safeguard Canada's interests as a land-based producer and potential exporter of deep seabed minerals, the delegation also worked actively to bring about an amendment to the RSNT provision for the composition of the Council. Support was reiterated for the American and Sri Lankan proposals on Council membership, either of which would favour Canadian candidacy. In addition, the delegation placed greater emphasis on the need for a change in the breakdown of categories for election to the Council which was reflective of actual interests. Speaking on this issue, Dr. Crosby protested that the composition in the RSNT was unblanaced, and argued that it should include the principal exporters as well as importers of the relevant minerals.[129] While Canada may have persuaded some states that the RSNT provision required amendment, little progress was made on this issue.

In contrast to this active involvement, Canada played only a minor role in the negotiations on the system of exploitation. Only one statement was made by Canada in the 26-member working group, and it was apparent that while Canada was still anxious to obtain guaranteed access for Canadian mining companies, it was willing to be flexible in order to facilitate agreement. Thus, in its statement, Canada focused on two points: first, that as an originator of the parallel system concept, it would be willing to accept this system but would be equally content with some arrangement for joint ventures with

the Enterprise; and secondly, that mining rights must be related to successful exploration and not passed on to third parties by the ISA.[130] In addition, Canada was careful not to antagonise the developing states, particularly those which were potential allies on issues affecting Canada's interests as a land-based producer. It, therefore, flattered the Group of 77's working paper and avoided any endorsement of the American paper, despite being willing to accept its principles.

COMMITTEE II

The second committee identified five "priority questions" which were issues of interest to a large number of delegations.[131] Five negotiating groups (open to all members) were set up to consider these issues, organised as follows:

(1) The legal status of the EEZ. Rights and duties of coastal states and other states in the EEZ.

(2) Rights of access of landlocked states to and from the sea and freedom of transit.

(3) Payments and contributions in respect of the exploitation of the continental shelf beyond 200 miles, and definition of the outer edge of the continental margin.

(4) Straits used for international navigation.

(5) Delimitation of the territorial sea, EEZ and continental shelf between adjacent or opposite states.[132]

Canada participated in all of these groups, with the exception of the second.

Exclusive economic zone

The separate parts of this issue were handled by two smaller consultative groups.

a. The legal status of the EEZ

At the conclusion of the previous session, the Chairman of Committee II had indicated that the EEZ was a zone *sui generis*, that is, neither high seas nor territorial waters. The United States, however, proposed a number of

amendments to the RSNT which would have the effect of making the EEZ part of the high seas and ensured that rights not specified in the convention would pertain to the international community. The LLGDS supported the American position as they favoured minimal coastal state rights in the EEZ, and the EEC proposed similar amendments. The coastal state group was reactivated to rebuff this assault on prior gains,[133] and under the chairmanship of Mr. Casteneda of Mexico, developed a common position on a range of important issues. The Group agreed that the legal status of the EEZ was sui generis and that residual rights pertained to the coastal state. While Canada had adopted a moderate position on this issue at the previous session, as a member of the coastal state group, it was no longer in a position to suggest further compromise proposals.

Although no formal compromise was reached by the end of the session, the consultative group was close, according to the Chairman of Committee II, to reaching a generally accepted solution which appeared compatible with the definition of the EEZ as sui generis. Doubts remained, however, about the final acceptance of the United States which had threatened not to sign the convention if its position was not accepted.[134]

b. Rights of access to resources in the EEZ

Negotiations on this issue were conducted in a small group of 21 states comprising ten coastal states[135] and ten LLGDS with Mr. Nandan of Fiju acting as chairman.[136] Of main concern to the Group of 21 was the right of LLGDS to participate in the exploitation of the living resources in the EEZ, and a clarification was agreed upon of the rights of landlocked states in the EEZ and certain developing coastal states in a subregion or region.[137] Agreement was also reached on the exclusion of coastal states whose economy was dependent on fisheries, a provision specifically designed to meet Iceland's particular circumstances.

Canada adopted a low profile in the Group of 21 although it had campaigned actively for selection as a member. Instead, the delegation allowed Peru which was chairman of the coastal state section of the Group of 21[138] to act as the main spokesman and worked actively behind the scenes within the coastal state group. Within these private negotiations, Canada continued to express concern about the vagueness of the provision for access by states "in a subregion or region"[115] as it was worried that this article might encourage demands from states from various regions to participate in the exploitation of the living resources off of Canada's coasts. The delegation also discussed this matter with Australia, New Zealand, Norway and the United States but in neither case did Canada attract much interest or support.[140] In addition, Canadian negotiators participated actively in the discussions on the "Icelandic exception" and proposed that provision be made for "parts of states" as well which were economically dependent on fisheries. This "piggyback" was proposed in order that Newfoundland could be exempted from any rights of access by LLGDS but there was little sympathy within the group for this proposal.[141] Although not entirely satisfied with the amended version of the RSNT, it was accepted by Canada as a starting point for negotiations at the next session.[142]

Continental shelf

The two key aspects of this issue were also handled by separate groups.

a. Revenue-sharing:

This issue was first discussed in a consultative group which covered such aspects as the rate of contribution and the possibility of revision in the light of expertise obtained when exploitation actually began; whether all states which had a shelf beyond 200 miles should be expected to make contribu-

tions; which states would benefit from the payments; and finally, what authority would be responsible for collecting and distributing them.[143] The negotiations on the details of the sharing formula took place with the Group of 21 rather than within the broad-shelf state group as had been the case at the previous two sessions. The American production-sharing formula once again commanded the greatest support, and even the LLGDS appeared willing to accept it. In light of widespread support for the formula and for the margin position of the broad shelf states, Canada suppressed whatever concern that remained that the American formula implied that the mineral resources beyond 200 miles were not the outright property of the coastal state.[144]

b. Outer limit of the continental margin:

The detailed negotiations concerning this issue continued to take place under Canadian chairmanship within the broad-shelf state group. Ireland put forward the compromise formula (combining the Hedberg and Gardiner principles) which had been tentatively agreed to in the closing stages of the previous session. Subsequent discussions disclosed that there were practical problems in actually measuring the thickness of the sediments and as a result, majority opinion swung back in favour of the Hedberg formula (60 miles from the base of the slope). No formal agreement on a delimitation formula was reached by the end of the session but there was general agreement that coastal state rights to the margin beyond 200 miles would form part of a package deal in revenue-sharing and the continental shelf. The Arab states were now the only major opponents of the margin position[146] as France's surprise endorsement at this session had paved the way for acceptance by the European Economic Community.[146]

Canada had allowed Ireland to carry the negotiating ball at this session although it wielded influence as chairman of the broad-shelf state group.

Although the Irish Formula gave Canada a slightly smaller area than it had hoped, the delegation was disappointed that the formula was not supported by the group, and that the majority favoured a definition which was unacceptable to Argentina and India. The delegation did not intend to abandon support for the Irish Formula and in the meantime was pleased that majority acceptance of coastal state rights to the shelf beyond 200 miles had been secured.[147]

Navigation:

The negotiating group on international straits met on only three occasions. The compromise achieved at the previous session remained substantially intact,[148] and Canadian participation was slight. On the other hand, Canada was very active in the main committee regarding navigation and vessel-source pollution control in the territorial sea. Canada continued to oppose the RSNT provision which prohibited national DCME standards in the territorial sea even if only to give effect to existing international rules and standards (article 20) and proposed that it be removed from the text.[149] It reiterated its argument that this provision radically altered the balance between coastal state sovereignty and the right of innocent passage in favour of maritime states and deprived coastal states of the ability to respond to possible threats to the marine environment not covered by international rules.[150] The delegation also expressed great concern that the effect of Article 20(2) was to leave the coastal state with equivalent or perhaps fewer powers for marine pollution control in the territorial sea than those conferred on it with respect to the EEZ.[151] The shipping states, including many developing states, remained adamantly opposed to such national standards in the territorial sea, basing their opposition on the "patchwork quilt" argument. The Canadian delegation was equally unsuccessful with regard to its proposed amendment to the defini-

tion of innocent passage. Canada argued that coastal states should be able to suspend passage which involved a "serious" act of pollution and that the additional criterion of "wilful" should be deleted.[152]

Seaboundaries between adjacent and opposite states:

The negotiating group on this issue considered the merits of the median or equidistant line compared with "equitable principles" as the basis for delimiting marine boundaries between states without reaching an agreed conclusion. Despite the implications for Canada's boundary disputes with France and the United States, it chose not to play an active role in the negotiations.

COMMITTEE III

The RSNT was considered an acceptable basis for negotiations, and the committee focused on vessel-source pollution and the consent regime for marine scientific research. There was also some discussion of the transfer of technology.

Marine pollution:

As at the previous session, three main items dominated the discussions: coastal state vessel-source pollution standards in the territorial sea and in the EEZ, and enforcement. After 146 amendments had been proposed, negotiations were moved to an informal group, once again under the chairmanship of Vallarta of Mexico.

a. Coastal state rights in the territorial sea

Although identified as a key issue, only a small number of states were interested in revising the relevant RSNT provisions. As in Committee II Canada argued that the coastal state should be permitted to enact national design, construction, manning and equipment standards in the territorial sea. In addition, the delegation protested that the linkage between the exercise of coastal state sovereignty in the territorial sea in Part III (Article 21) with the right of

innocent passage in Part II (Article 20) unduly restricted the coastal state's powers for the prevention, reduction and control of vessel-source pollution.[153] Canada therefore proposed an amendment to Article 21 whereby coastal states could in the exercise of their sovereignty in the territorial sea, establish national laws and regulations but such laws and regulations would not apply to the design, construction or manning of vessels to the extent that such vessels were "subject to applicable international rules and standards."[154] Despite this modification to Canada's position, Canada was still unable to attract significant support. The shipping states argued that the provisions in Part II of the text were an indispensable safeguard to the right of innocent passage. No consensus was reached on this issue.

b. Coastal state rights in the EEZ

The negotiations on this issue focused upon the article covering those areas where "special circumstances" justified the application of more stringent regulations and standards by coastal states than those which were internationally agreed upon. A revised Article 21(5) was agreed to which clarified the grounds for "special circumstances" as well as the measures which a coastal state would be entitled to take, thereby further restricting the jurisdiction of the coastal state.[155] No proposals were made to amend the article providing for ice-covered areas as a special case, and Canada was not actively involved in these negotiations.

c. Enforcement

A number of amendments to the RSNT were agreed to but none affected the substance of the enforcement regime. One amendment which was not accepted was introduced by Canada regarding coastal state enforcement of discharge standards in the EEZ. The Canadian amendment provided for an extension of coastal state

jurisdiction to violations "likely to result" in substantial discharge[156] but the shipping states were reluctant to accept any extension of either coastal state or port state enforcement. No further amendments were proposed by Canada as it was generally satisfied with the enforcement regime provided for in the RSNT.[157]

Marine scientific research

Negotiations on marine scientific research took place in informal plenary meetings and also among a small group comprising heads of delegations, chosen by the Chairman to represent different interests and regions.[158] The central issue to be resolved, on which all other depended, was the balance between coastal state and research state interests provided by the detailed provisions of the "qualified consent regime" covered by Article 60 of the RSNT. That version was seen to favour the coastal state and was now also supported by the USSR.

At the end of the previous session, the United States had reluctantly accepted the principle of "qualified consent" subject to strict qualifications. It now proposed a major amendment to Article 60 whereby the consent of the coastal state was necessary only if the research bore upon these qualifications.[159] The United States also indicated that it would not accept a convention containing the existing provisions in the RSNT,[160] but its own proposal was strongly rejected by the Group of 77, and the USSR confirmed its support for the RSNT version,[161] Australia introduced a modified version,[162] and Mexico attempted to strike a compromise between the Group of 77 and western maritime states,[163] but to no avail.

Finally, the Chairman introduced his own "text proposal" which tipped the provisions of a qualified consent regime even further in favour of the coastal

state. The circumstances in which consent could be reasonably withheld were not altered but the wording was changed from the prohibitive statement that coastal states "shall not withhold its consent unless" to the permissive statement that the coastal state "may withhold its consent if."[164] (emphasis added) The United States strongly disagreed with this new text and Japan and some of the EEC also expressed disapproval but the majority of states reacted favourably to Yankov's proposal. The test proposal was generally in keeping with Canada's interests although the delegation had some misgivings about the criterion of "resource oriented research."[165] However, the delegation played a low-key role in the negotiations, recognising the unlikelihood that this provision would be altered and reluctant to antagonise either its coastal state allies or the United States on an issue which was not of high priority for Canada.

Transfer of technology

Very little time was devoted to this issue at the session,[166] and interest focused on the ISA's role in the field of transfer of technology. Canada played a peripheral role and was cautious about the implications of the concept. It was particularly reluctant to share its hard-won deep ocean mining techniques free of charge and warned that governments could not compel the transfer of patent rights to developing states.[167] Thus, Canada's stance signified a sharp cutback from the imaginative and expansive paper circulated at Geneva by Canada on an informal basis.[168]

SETTLEMENT OF DISPUTES: RSNT, Part IV

Part IV of the RSNT was subjected to an article-by-article review during informal plenary meetings conducted for the length of the session, in addition to informal negotiations under the guidance of the Conference President. During these discussions, Section 2 dealing with compulsory binding procedures which included the matter of exceptions related to the exercise of

certain rights by coastal states in the EEZ (Article 18) was particularly controversial.[169] The maritime states and LLGDS pressed for compulsory dispute settlement concerning navigation, marine pollution and marine scientific research while the coastal state group sought to resist such compulsion. Canada focused its efforts on Article 18 and pollution control in particular in an attempt to provide some provision for coastal state discretion over compulsory dispute settlement.[170] The amended version of the text which was not released until the intersessional period, made no additions to the category of disputes which states could reserve from compulsory arbitration.

OVERVIEW:

Given the pessimistic mood at the start of the conference, it was perhaps not surprising that little substantive progress was achieved at this session. The delegations had resisted American pressure to reconvene the conference after such a short interval, which left little time for discussions with home governments or for intersessional negotiation. The forecast that it would be a sterile exercise became self-fulfilling, and there was little flexibility when the Group of 77 and the United States' interests were directly opposed. The session did, however, serve a purpose in highlighting the key issues still in need of resolution, and in some of the less controversial issues, useful work was done in clarifying and refining existing articles.

Committee I had been unable to reconcile the requirement for guaranteed access with "full and effective control by the ISA" and it even lacked agreement on the single negotiating text for this issue.[171] Negotiating momentum had been maintained in Committee II on most issues, including the juridical status of the EEZ, and despite the lack of major results, the process had been generally fruitful. In Committee III, there had been renewed confrontation between the Group of 77 and the United States over a consent regime

for scientific research but progress had been made concerning marine pollution.

On all except a few issues, Canada contributed little to the negotiations. This reflected a deliberate policy of adopting a low profile and only taking a controversial position when significant interests were threatened. But in many cases, the trend was already going Canada's way (eg. the legal status of the EEZ, access by LLGDS to the EEZ, coastal state jurisdiction to the edge of the margin, consent regime for marine scientific research) and in others there was no longer any chance of changing the trend (eg. restrictive definition of international straits, preferential fishing rights beyond the EEZ, marine pollution jurisdiction), or that Canada had minimal leverage (eg. access to seabed resources).

Canada had already made substantial gains and officials were afraid that high visibility might precipitate resentment on the part of other states, leading to the reversion of various provisions which were favourable to Canada. There was the added problem that as the negotiations progressed, Canada had found that as an industrialised state, some of its interests ran counter to that of the Group of 77, whose support was still vital on the original issues and some continuing ones. There was also the possibility that a less assertive stance might improve relations with traditional trading partners and military allies.

While Canada was certainly successful in maintaining a low profile at this session, its non-involvement may have disappointed those states which had counted on its active support in pursing common objectives. The more so since the Canadian delegation was its usual assertive self when significant interests were involved as with nickel production control and sovereignty issues in the territorial sea and EEZ.

Overall, Canada had reason to be satisfied with the result of this

session. Little of significance had been forfeited and a start had been made towards revising the production control formula for nickel. Meanwhile, the trend of the conference continued to favour Canada's major interests.

The conference dispersed on 17 September having agreed to reconvene in New York in May 1977. It had also decided that the first two to three weeks of the session would be devoted primarily to consideration of Committee I issues in order to bring its work in line with the progress achieved to date in Committees II and III. Furthermore, these negotiations were to be conducted at the highest level, that is, heads of delegation.

Footnotes: Chapter VI

1. Various fishing groups including the Fisheries Council of Canada and the United Fishermen and Allied Workers Union of British Columbia urged that the Canadian government declare a 200-mile fishing zone without awaiting the results of the fourth conference session. The provincial governments of Nova Scotia and Newfoundland were prompted to make similar demands in order to appease their provincial fishing constituencies. On 12 June 1975 the Nova Scotia government passed a resolution in favour of unilateral action. The premier of Newfoundland presented a petition to the federal government on 22 July 1975 bearing 100,000 signatures calling for a 200-mile fishing zone. Greater attention was also given to the issue in Parliament, and all three opposition parties expressed support for unilateral action. In June 1975 the New Democratic Party and the Social Credit Party supported a motion by a Conservative MP for a unilateral declaration of Canada's fisheries jurisdiction over the continental shelf and slope. See House of Commons, Debates, 19 June 1975.

2. Speaking at Geneva, Mr. LeBlanc, the Minister of State for Fisheries, had explained that although Canada's commitment to multilateral negotiation was deep, its ability to wait was limited by "harsh realities" as a new fishing season approached in which further declines in stocks were expected. See Department of Environment, Notes for a Statement by Hon. R. LeBlanc, Minister of State (Fisheries), 30 April 1975, Geneva, p. 3. The Minister of State for Science and Technology, Mme. Sauve, who also attended the session explained in the Third Committee that many governments, including Canada's, would be compelled to take unilateral action "if the session did not produce at least a single text of draft treaty articles." Mme. J. Sauve, 17 April 1975, Committee III, United Nations Conference on the Law of the Sea, Official Records, Vol. IV, p. 95.

3. For a full explanation of the reasons against unilateral action, see Secretary of State for External Affairs, Mr. MacEachen, House of Commons, Debates, 19 June 1975, pp. 6923-25.

4. These demands were spelled out by Mr. LeBlanc the previous month in the Standing Committee on Fisheries and Forestry. See Mr. R. LeBlanc, 26 May 1975, Minutes of Proceedings and Evidence of the Standing Committee on Fisheries and FOrestry, Issue. No. 31, p. 6.

5. These states were Romania, Bulgaria, Poland and East Germany.

6. Subsequent to the port closure on 28 July 1975, a personal letter was sent by Prime Minister Trudeau to the Soviet premier Alexis Kosygin explaining the reasons for the measure and enlisting his cooperation. Trudeau, House of Commons, Debates, 28 July 1975, p. 7966. The government also believed its measure would be effective because the USSR would be anxious to resume its normal fishing operations and have its international prestige restored.

7. Environment Canada, Atlantic Ports to be Closed to Soviet Fishing Fleet, News Release, 23 July 1975, p. 1.

8. The fisheries ministers of both provinces had met with Mr. MacEachen, Mr. LeBlanc and Mr. Beesley of DEA on the day of the announcement. Representatives of the fishing industry had also been consulted and advised of the government's strategy.

9. Joint Communique on Canada-Spain Discussions of Fisheries Matters of Mutual Concern, 6-7 August 1975; Joint Communique Fisheries Canada/ USSR Record of Understanding, 27 August 1975; Joint Communique on Canada-Portugal Discussions of Fisheries Matters of Mutual COncern, 4-5 September 1975.

10. Environment Canada, Opening Remarks by Minister of State (Fisheries), Romeo LeBlanc, ICNAF Special Meeting, 22-28 September 1975, p. 2.

11. These meetings took place in Ottawa on 2 September 1975.

12. Canada and the USSR also agreed to enter into a bilateral agreement covering the establishment of a joint commission to deal with future fishery problems. This agreement enabled Canada to reopen the Atlantic ports to the Soviet fishing fleet. Toronto, Globe and Mail, 27 September 1975.

13. Statement on Fisheries by the Secretary of State for External Affairs, Mr. A.J. MacEachen, Sydney, Nova Scotia, 9 October 1975, p. 1.

14. Halifax, Chronicle-Herald, 24 October 1975.

15. Department of External Affairs, Communique No. 116, 2 December 1975.

16.

17. Department of External Affairs, Notes on the Law of the Sea for the Hon. A.J. MacEachen, Secretary of State for External Affairs, in Southwestern Nova, 29 March 1976, p. 5. The USSR took approximately sixty per cent of the foreign fish catch.

18. Mr. LeBlanc, Minutes of Proceedings and Evidence of the Standing Committee on Fisheries and Forestry, 30 March 1976, Issue No. 54, p. 11.

19. Canada had intended to keep a very low profile on this issue but decided to intervene because of the poor representation of the Group of 77, and the efforts by the European states present to ignore Peru's proposal.

20.

21. These talks may have also dealt with fisheries as Australia was also considering a unilateral extension of its fisheries jurisdiction. Talks were held with Mexico on this question.

22. Edward Miles, "The structure and effects of the decision process in the Seabed Committee and the Third United Nations Conference on the Law of the Sea," International Organisation, Vol. 31, No. 2, Spring 1977, p. 215.

23. Mr. R. LeBlanc, 30 March 1976, Minutes of Proceedings and Evidence of the Standing Committee on Fisheries and Forestry, Issue No. 54, p. 29. The article, however, was not considered unacceptable.

24. While Cabinet had accepted the Canadian delegation's recommendation to support revenue-sharing, the issue was still a sensitive one. In addition, Department of Finance officials still had major reservations about the financial implications of revenue-sharing for the Canadian economy.

25. Such an indication would be contrary to the Canadian claim that the Arctic archipelago constituted internal waters.

26. Canadian environmental interests were in fact largely protected as it continued to have the right to control standards in internal waters and most coastal shipping enters Canadian ports.

27. At a press conference in New York on 12 March 1976, the Secretary of State for External Affairs, Mr. MacEachen, indicated that Canada wanted and needed a global treaty in 1976 if it was to withstand domestic pressure for a unilateral declaration of a 200-mile fishing zone, and that this was "the crucial year" for Canada. Toronto, Globe and Mail, 13 March 1976.

28. The key states involved in these negotiations were Brazil, Cameroon, Chile, France, Jamaica, Mexico, Norway, Trinidad-Tobago and the United States.

29. The Seabed Mining Bill presently before the United States Congress and Senate provided for an interim regime to regulate seabed mining by American mining companies pending the creation of an international regime.

30. The Engo and Brazil Groups had been formed during the intersessional period. The meetings of these groups tended to be the most important but were private and restricted.

31. The Enterprise was the proposed operative arm of the ISA which would engage in mining activities, either by itself, or if it so chose, by contractors.

32. RSNT, Annex I, paragraph 8(d).

33. Kissinger indicated in his remarks that the United States was prepared to assist the Enterprise in undertaking mining activities simultaneously or virtually simultaneously with other miners, and to support a review of the system of exploitation after about 25 years.

34. Paul Lapointe, "Law of the Sea Conference: report on New York session," International Perspectives, (July - August 1976), p. 23.

35. Engo introduced a redraft of Article 9 which incorporated a three-layer system of complimentary measures in order to protect developing land-based producers from any adverse economic effects. In addition to commodity arrangements and a system of compensation, Engo proposed that a ceiling on production be imposed for an interim period of time. No figures were included in Engo's amendment. See C.1/PBE.2, 3 February 1976.

36. As seabed production would likely be treated as "domestic production" for legal, political and commercial reasons, officials realised that it would be a fairly simple matter for national governments to impose direct or indirect subsidies, or tariff or non-tariff barriers which while enhancing investment prospects for the mining companies, would seriously disrupt market forces to the detriment of the export markets of land-based producers. For example, if there was excess supply, national governments could introduce non-tariff barriers such as quotas which would be applicable to land-based production but not seabed production. L.H. Herman, pp. 9-10.

37. In his statement, Kissinger indicated that "the United States is prepared to accept a temporary limitation, for a period fixed in the treaty on production of the seabed minerals tied to the projected growth in a world nickel market, currently estimated to be about 6 percent a year. This would in effect limit production of other minerals contained in deep seabed nodules, including copper. After this period, seabed production should be governed by overall market conditions." Address by Hon. H.A. Kissinger, Secretary of State before the Foreign Policy Association, United States, Council of the International Chamber of Commerce, and U.N. Association of the U.S.A., 8 April 1976, "The Law of the Sea: A Test of International Cooperation," p. 46.

38. C.I/PBE.9, 23 April 1976.

39. RSNT, Annex I, paragraph 21, p. 49.

40. These negotiations were kept strictly confidential, and the United States apparently insisted that Canada be excluded on the grounds that it had a vested interest as a major land-based producer of minerals whose markets might be adversely affected by deep seabed production.

41. Canadian officials believed that the formula was designed to meet the concerns of developing copper producers.

42. This prediction was made by Charles Elliot, former president of the Canadian Mining Association and adviser to the Canadian delegation at UNCLOS. St. John's, Evening Telegram, 8 May 1976.

43. Canadian reservations were conveyed to Chairman Engo in person as well as by way of letter from Ambassador Beesley. Copies of this letter of 6 May 1976 were circulated among various other delegations.

44. Interview with government official. This proposal was prepared by the Canadian representative in Committee I, Dr. Crosby, and Charles Elliot, former president of the Canadian Mining Association and adviser to the Canadian delegation.

45. Canada proposed that there should be an entire allocation to deep seabed production at least initially in order that there be a sufficient economic target to allow production from the seabed to get underway.

46. Note by the President of the Conference, A/CONF.62/WP.8/Rev.1/Part I, 6 May 1976, pp. 7-8.

47. RSNT, Part I, Article 26(1). There were also a number of new provisions regarding decision-making by the Assembly. See RSNT, Part I, Article 25.

48. RSNT, Part I, Article 27(1). Of the 36 members, 24 were to be elected on the basis of equitable geographic representation and 12 on the basis of special interests.

49. In introducing the Canadian amendment on 20 April 1976 following discussions between the Chairman of Committee I and the Canadian representative, Dr. Crosby, Canada was careful to point out that the two alternatives were each drawn from "a comprehensive and widely circulated proposal made by a party other than the Canadian delegation." See Statement by D.G. Crosby, 20 April 1976.

50. Interview with government official. Australia, India and Nigeria had also disapproved of the commissions.

51. Lapointe, p. 23.

52. Ibid, p. 23.

53. The Evensen Group had attempted to formulate some sort of mutual agreement, and Mr. Evensen produced a Revised Blue Paper which recommended various changes to the SNT. However, as the LLDGS were highly suspicious of the Evensen Group, this paper was not of major consequence.

54. SNT, Part II, Article 58.

55. Confidential interview with government official.

56. Canadian officials believed that it was conceivable that some Asian states might claim access on the basis of falling within the North Pacific region with Canada and similarily that the Caribbean states might claim access on the basis of being part of the West Atlantic region.

57. Barbara Johnson, "Canadian Foreign Policy and Fisheries," in B. Johnson and M.W. Zacher, eds., Canadian Foreign Policy and the Law of the Sea, (Vancouver: 1977), p. 88.

58. Article 55 now read "states in whose rivers anadromous species originate...." rather than limiting the provision to coastal states as in the SNT. Interview with Canadian government official.

59. Interview with Canadian government official.

60. Ibid.

61. Crosby, Minutes of Proceedings and Evidence of the Standing Committee on Fisheries and Forestry, 26 May 1976, p. 25.

62. The American formula provided for a five-year grace period during which no sharing was required, after which sharing would be 1% of the production value, increasing by 1% each year for five years. Thereafter, revenue-sharing would remain constant at 5%.

63. Canada's representative, Mr. Crosby, however, claims credit for the drafting of this formula, but Canada preferred that Ireland table the proposal.

64. Confidential interview with former government official.

65. Miles, p. 217.

66. Introductory Note by Chairman of the Second Committee, Revised Single Negotiating Text, Part II, United Nations Third Conference on the Law of the Sea, A/CONF.62/WP.8/Rev.1/Part II, 6 May 1976.

67. The United Kingdom and USSR were the most vigorous opponents to any change to this provision. The United States, on the other hand, was sympathetic but adopted a very low-key stance because of the contentious nature of the issue within its own delegation. Some of the other opponents were Austrialia, Greece, Norway, Poland and Sweden.

68. Most of these were developing states.

69. RSNT, Part II, Article 20(2).

70. Roger D. McConchie and Robert S. Reid, "Canadian Foreign Policy and International Straits," in Barbara Johnson and Mark W. Zacher, eds., Canadian Foreign Policy and the Law of the Sea, (Vancouver: 1977), p. 190. RSNT, Part II, Article 18(2)(h).

71. RSNT, Part II, Article 18(2)(h).

72. Confidential interview with former government official.

73. Ambassador Beesley prefaced his remarks by indicating that he was "not speaking in support of or in opposition to any of the Articles in Part II, but would like to request clarification on certain strictly legal issues in order to assist us in making a final determination," and concluded by saying that Canada had not wished "to attempt to adopt a substantive position." Department of External Affairs, Statement by J.A. Beesley, "Law of the sea conference," Committee II, New York, 1 April 1976, pages 1 and 6.

74. Confidential interview with government official.

75. In a major policy statement on straits, Ambassador Beesley was highly critical of the ambiguity of the "use" definition embodied in Articles 37 and 44 of the SNT. Statement by J.A. Beesley, 1 April 1976, pp. 4-5.

76. RSNT, Part II, Article 34(a).

77. This amendment affected the status of virtually all Canadian straits.

78. Article 131 of the SNT was deleted.

79. Confidential interview with government official.

80. Buzan and Johnson, p. 297. Speaking on this issue at the annual meeting of the American Society of International Law in April 1977, Mr. Beesley pointed out that although Article 131 had been deleted, there was no suggestion in the RSNT that the pre-existing rules of customary and conventional law permitting the application of straight baselines to fringes of islands had been altered. Address by J.A. Beesley, Assistant Under Secretary of State for External Affairs and Legal Adviser, Annual Meeting of the American Society of International Law, San Francisco, 21-23 April 1977, p. 18.

81. Buzan and Johnson, p. 298.

82. Mr. Vallarta had been Chairman of the Working Group on Marine Pollution formed in July 1972 by the Seabed Committee.

83. Canada had met with Mexico, Nigeria, Norway and the United States on this matter.

84. Rodney Duncan, "Law of the Sea - Spring 1976 Session: Overview Report," 19 April 1976, p. 4. Mr. Duncan attended the conference as an adviser to the Canadian delegation, representing the Canadian Chamber of Shipping.

85. Article 21(5) of the RSNT permitted a coastal state to establish national laws and regulations in special areas where international rules and standards were inadequate to meet special circumstances and where for recognised technical reasons in relation to its oceanographic and ecological conditions and the particular character of its traffic, special mandatory measures were required. However, the coastal state was required to consult first with any other states concerned, and was limited to rules and standards made applicable by the competent international organisation for special areas. RSNT, Part III, Article 21(5).

86. SNT, Part III, Article 20(5), p. 8.

87. See Section IX. Ice-covered Areas, Article 43, Part III of the RSNT. The United States had insisted that this article be made more specific and restrictive.

88. The USSR had been consulted on this matter, and the new article also met its concerns as the USSR was anxious to prevent international interference in its Arctic waters.

89. RSNT, Part III, Article 30(6).

90. Lapointe, pp. 24-5.

91. M'Gonigle and Zacher, pp. 144-45.

92. The group chaired by Australia was believed to represent all the major points of view and was composed initially of Australia, Brazil, Canada, India, Japan, Mexico, Netherlands, New Zealand, Norway, Pakistan, United States and Venezuela and was later expanded to include Egypt, Kenya, Nigeria, Peru and USSR. Miles, p. 219. The Metternich group had been less representative, and Canada had refused to participate in it for this reason.

93. RSNT, Part III, Article 60(1).

94. The coastal state could not withold consent unless it bore substantially on the exploration and exploitation of resources; involved drilling or the use of explosives; interfered with the economic activities of the coastal state; or involved the construction, operation or use of artificial islands, installations or structures. RSNT, Part III, Article 60(2).

95. Source unknown. Neither Miles nor Johnson and Buzan.

96. Why RSNT not regarded favourably by the United States.

97. The delegation had also held discussions with the USSR concerning the possibility of a change in the latter's position. Confidential interview with government official.

98. The revision of these articles was undertaken by a working group under the direction of Ambassador Harry of Australia, Mr. Galindo-Pohl of El Salvador and Dr. Adede of Kenya.

99. Buzan and Johnson, p. 303.

100. Statement by the Secretary of State for External Affairs, Hon. Allan J. MacEachen at the Law of the Sea Conference in New York, 12 April 1976, "Settlement of Disputes in the Law of the Sea Convention," p. 3.

101. Ibid, p. 12. Mr MacEachen went on to indicate that Canada had difficulty envisaging dispute settlement with respect to the exploration and exploitation of resources of the seabed and subsoil of the continental shelf, fisheries management, the prevention of pollution and the regulation of marine scientific research.

102. Lapointe, p. 25. See also RSNT, Part IV, Article 18. In his remarks, Mr. MacEachen proposed two possible solutions to this problem of determining where compulsory dispute settlement would be appropriate: first, to limit dispute settlement with respect to disputes arising in the EEZ or international straits to cases of gross abuse or "abus de pouvoir"; or alternatively, to limit dispute settlement to cases of interference by coastal states in certain specific rights of other states. See MacEachen, 12 April 1976, p. 14.

103. MacEachen, 12 April 1976, p. 9.

104. "The state of our fishery resource and the situation of our fishermen, fishing industry and of coastal communities make this action imperative." Statement in the House of Commons by the Secretary of State for External Affairs, the Hon. A.J. MacEachen, on the Extension of Canadian Fisheries Jurisdiction, June 4, 1976, p. 1.

105. Agreements had been signed with Norway, Poland and the USSR as well as _ad referendum_ agreements with Spain and Portugal. These various agreements, once in place, would cover the major foreign fisheries off Canada's Pacific coast and more than 88% of the foreign catch in that part of the ICNAF area which would be incorporated in Canada's 200-mile fishing zone. Ibid, p. 3.

106. There was a thirty percent decrease in groundfish quotas to be borne by foreign fishermen only. The total Canadian allotment would be 37% of this year's quota or about 353,000 tons and 52% of next year's quota (363,000 tons).

107. Representatives from the developing states had spent a hectic summer preparing not only for UNCLOS and UNCTAD but also for the upcoming meeting of the non-aligned states in August and the reconvening of the General Assembly in September. This was a particular problem for these states because of their tiny delegations as well as the familial and financial constraints.

108. It was generally believed that the American administration hoped to achieve a treaty in 1976 in order to avoid a rash of unilateral initiatives.

109. Mr. Amerasinghe, Plenary Meetings, 71st Meeting, 2 August 1976 Third United Nations Conference on the Law of the Sea, _Official Records_, Vol. VI, p. 3.

110. A/CONF.62/L.12/Rev.1.

111. Some comment needed, including Trudeau's problems in selling the Third Option/contractual relations to the EEC....and the decision to increase defence spending in response to European pressure to be a "good" ally.

112. The Group of 77 was particularly distrustful of Mr. Engo as the RSNT had not reflected their position and included significant concessions to the industrialised states.

113. Mr. Jagota of India and Mr. Sondaal of the Netherlands were elected.

114. The Group of 77 had made it clear that it did not accept the RSNT on this issue and wanted to tackle the matter head on. The EEC had unsuccessfully attempted to circumvent the reopening of the RSNT by proposing that negotiations be limited to the issues not previously discussed.

115. Workshop paper No. 1, 18 August 1976, Final Report by the Co-chairmen on the activities of the workshop, Doc. A/CONF.62/C.1/WR.5, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 166.

116. Workshop paper No. 3, 19 August 1976, Final Report by the Co-chairmen, p. 167.

117. Workshop paper No. 2, 19 August 1976, Final Report by the Co-chairmen, p. 167.

118. This group which was formed on 26 August 1976, was chaired by Mssrs. Jagota and Sondaal and was made up of Australia, Brazil, Canada, Czechoslovakia, Ecuador, France, German Democratic Republic, Federal Republic of Germany, Ghana, Indonesia, Iran, Iraq, Jamaica, Japan, Mexico, Norway, Poland, Portugal, Senegal, Sri Lanka, Tunisia, USSR, United Kingdom, United Republic of Tanzania, United States and Zambia.

119. These offers were made on 1 September 1976 by Dr. Kissinger. Financing of the Enterprise was proposed so that it could initiate its mining activities either concurrently or within an agreed time span that was practically concurrent. See United States, Information Release, Information Service, United States Embassy, Ottawa, Kissinger Remarks at Law of the Sea Reception, and Report by Mr. P.B. Engo, Chairman of the First Committee on the Work of the Committee, Doc. A/CONF.62/L.16, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 132.

120. This concession was offered by the United States in order that the existing advantage of some of the industrialised states would eventually be overcome.

121. The members of the Latin American Nickel Group included

122. Report by D.G. Crosby on New York Session, Statement to the Latin American Nickel Group at Canadian Law of the Sea Offices on 12 August 1976, New York, Annex V, pp. 1-2.

123. Ibid, p. 1. Canada also stated that by the year 2000, Latin America might produce 16% of the world's foreseeable land-based production as compared with the present figure of 9%. Mr. Crosby also pointed out that while Latin America's share of the world's foreseeable land-based nickel production was expected to increase from 9% to 16%, Canada's was expected to decrease from the present figure of 34% to 21% in 2000, and thereby hoped to show that this matter was not a uniquely Canadian problem but one involving all states hoping to initiate or expand their nickel production.

124. Ibid, p. 7 or Herman.

125. Ibid, p. 2.

126. The American delegation complained to Mr. Beesley that Crosby was undermining the American formula.

127. Herman.

128. Herman.

129. Mr. Crosby, 10 September 1976, 35th Meeting, First Committee, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 72.

130. Report by Crosby, Annex I, pp. 1 and 5.

131. Report by Mr. A. Aguilar, Chairman of the Second Committee on the Work of the Committee, 16 September 1976, Doc. A/CONF.62/L.17, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 136.

132. Groups No. 4 and No. 5 were not established until 7 September 1976.

133. The Group now numbered approximately 60 states.

134. The reaction of the United States was in doubt because of known differences within the government on this issue. The Department of Defence regarded high seas status of the EEZ as critical in order that American military manoeuvres not be greatly restricted while the Department of State was willing to compromise on this issue. Miles, pp. 226-27.

135. These ten coastal states included Canada, Chile, Iceland, Iran, Norway, Pakistan, Peru, Senegal, Spain and the United Republic of Tanzania and were selected by the coastal state group.

136. The LLGDS states included Austria, Czechoslovakia, Iraq, Jamaica, Nepal, Paraguay, Poland, Singapore, Switzerland and Uganda.

137. Buzan and Johnson, p. 296.

138. Peru was also chairman of the coastal state working group of the larger coastal state group on LLGDS.

139. RSNT, Part II, Article 59.

140. Interview with government official.

141. Interview with government official.

142. Interview with government official.

143. Report by Mr. Aguilar, p. 138.

144. Apparently, the Cabinet remained sensitive, however, about the sovereignty implications of revenue-sharing. Buzan and Johnson, p. 296.

145. The Arab states had opposed the margin position from the outset of the conference, presumably because such extensive coastal state jurisdiction represented a threat to their oil interests.

146. Although the United Kingdom and Ireland had already accepted the margin position, acceptance by France appeared to ensure that the remaining EEC members would follow suit.

147. However, there was still sufficient number of states to possibly block the acceptance of.

148. Miles, p. 226.

149. Mr. Mawhinney, 15 September 1976, 32nd Meeting of Third Committee, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 109.

150. Ibid, p. 109.

151. Ibid, p. 109.

152.

153.

154. Rodney N. Duncan, Report on the United Nations Conference on the Law of the Sea, Fifth Session, New York, August-September 1976, p. 9. (Mr. Duncan was an adviser to the Canadian delegation as a representative of Canadian Chamber of Shipping). Instead of linking this article to Article 20 of Part II of the text, the Canadian amendment provided that in establishing such laws and regulations, coastal states would not hamper innocent passage in accordance with Article 23 of Part II. Article 23 specified the duties of the coastal state with regard to innocent passage and made no reference to DCME standards.

155. The revised article also gave a special role to the appropriate international organisation in securing general agreement on the designation and regulation of such areas. Report of Mr. A. Yankov, Chairman of the Third Committee on the work of the Committee, Doc. A/CONF.62/1.18, 16 September 1976, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 141.

156. See Duncan, p. 9 and RSNT, Part III, Article 30(5).

157.

158. This heads of delegation group was made up of fifteen members. Report by Mr. Yankov, p. 141.

159. The United States introduced the following version of Article 60: "Marine scientific research activities in the economic zone or superjacent continental shelf requires the consent of the coastal state only if: (a) it can be established to bear significantly upon the exploration and exploitation of living and non-living resources; (b) involves drilling into the continental shelf or use of explosives on the continental shelf which materially affects the seabed and subsoil of the continental shelf." Duncan, p. 10.

160. Dr. Kissinger had made this clear in private talks with delegations. Miles, p. 227.

161. USSR, 14 September 1976, 30th Meeting, Committee III, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 95.

162. Explain key difference in Australian proposal.

163. The Mexican paper only further aggravated the split within the Group of 77 which had emerged at Geneva.

164. Report by Mr. Yankov, p. 142.

165.

166. There were two informal meetings of the Committee and two meetings by a smaller group chaired by Metternich of West Germany.

167. Buzan and Johnson, p. 302.

168. The Geneva paper had been drafted by officials from DOE while the DOF had now assumed responsibility for this issue.

169. Report by the President on the informal plenary meetings on the settlement of disputes, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 22.

170. Buzan and Johnson, p. 304.

171. The Group of 77 rejected the RSNT and adopted the position that the SNT was still operant.

CHAPTER VII

Following the largely unfruitful fifth session, many of the conference participants, including Canada, were eager to resolve outstanding issues and finalise a formal treaty. At this stage of the negotiations, the key outstanding issues had become clearly defined, and it was readily apparent that the major remaining obstacle to achieving a new law of the sea convention was agreement on Committee I issues.

With the realisation that the negotiations were approaching completion, Canada adopted a strategy of playing an active role in the discussion of high priority issues where Canadian interests were not yet accommodated. In the case of other issues where the RSNT was already favourable to Canadian interests, Canada adopted a much lower profile but attempted to play a mediating role. Prior to the sixth session, Canada participated in intersessional negotiations on Committee I issues, while on the domestic front, there was increasing activity related to the extention of Canadian fisheries jurisdiction.

The Extention of Canada's Fisheries Jurisdiction

Canada declared a 200-mile fishing zone on 1 January 1977 after considerable negotiation and much preparation. Declaration of this fishing zone left two key issues outstanding: renegotiation of ICNAF's mandate; and, agreement with the United States on fisheries management problems on both the east and west coasts as well as a number of unresolved boundary questions.

It was clear that the proposed law of the sea convention would not recognise coastal state preferential rights to fish stocks between 200 miles and the edge of the margin. In light of this, Canadian officials were hopeful that ICNAF would play a role in the management of fish stocks on the eastern reaches

of the Grand Banks and the Flemish Cap off Newfoundland. More importantly, Canada hoped that a new convention for the commission would recognise the "special interest" of the coastal state in these fish stocks. At a special meeting of ICNAF in December 1976, Canada had argued that uncontrolled foreign fishing outside the 200-mile zone would disrupt its efforts to rebuild depleted stocks within its jurisdiction. Although the United States had little interest in the continuation of ICNAF, it appeared likely that the commission would assume responsibility for the management of fish stocks beyond 200 miles and for scientific cooperation within the entire area.[1] Lacking sufficient capability to conduct extensive fisheries research in the vast area now under its jurisdiction, Canada regarded scientific cooperation as an important requirement for proper management and maximum exploitation of fish stocks. A preparatory conference on the future of ICNAF was held in Ottawa in March 1977, and it was agreed that a new fisheries commission known as the Northeast Atlantic Fisheries Organisation (NAFO) would replace ICNAF. Agreement on this new commission was not finalised prior to the sixth session.

Prior to the establishment of Canadian jurisdiction, and in anticipation of the extension of American jurisdiction on 1 March 1977, intensive negotiations were held between the two states to determine their future relationship with respect to salmon on the west coast and groundfish stocks on the east coast. In addition, consideration was given to the resolution of boundary disputes, the most contentious of which was that of Georges Bank due to its important fishing grounds and hydrocarbon potential. Although there was interest on both sides in an accommodation on fisheries (including joint-fisheries management),[2] there was little impetus for agreement on mutual boundaries. Meetings were held in January and February 1977, and despite talks at the

highest level between Prime Minister Trudeau and President Carter, the two governments were unable to reach an understanding on boundaries. It was decided, however, that a longstanding reciprocal fisheries agreement would be extended to 200 miles for the balance of the year.[3]

Conference-related Negotiations

Negotiations during the intersessional period focused primarily on Committee I issues, with important negotiations held in Geneva from 28 February to 11 March 1977, under the chairmanship of Jens Evensen. Significant progress was made at these talks as there was considerable willingness to compromise. The Group of 77 began to show greater interest in the parallel system although it was clear that it would not accept this system of exploitation unless it was confident that the Enterprise would be viable. As a result, increasing attention was given to the financing of the Enterprise and the transfer of technology as well as a review mechanism. These particular issues were not resolved but agreement was reached on the elements of a "mini-package" for consideration by Committee I. Two key elements of this package included first, a system of exploitation in which states and state-sponsored enterprises would have a role in addition to the role originally envisaged by the Authority's own Enterprise, and secondly, a system for the settlement of disputes.[4]

During these intersessional talks, consideration was also given by the Evensen Group to the RSNT's nickel production formula as well as the composition of the Council. Canada participated actively in the negotiations on both issues, particularly the former, as it hoped to secure amendments to the RSNT. Little progress was made on either issue as it became increasingly clear that production limitation was a particularly complex and difficult issue because

so little was known about the possible economic implications of seabed mining. An informal report was circulated by Mr. Evensen to all delegations but this report was not made public.

Sixth Session, 23 May - 15 July 1977, New York

The law of the sea conference reconvened on 23 May 1977 in New York for its sixth session. With little accomplished at the preceding session, conference participants were under considerable pressure to reach agreement on outstanding issues. Significant progress was in fact achieved as evidenced by the publication of the informal composite negotiating text (ICNT) shortly after the end of the session.[5] Although the ICNT did not represent a negotiated text, there was considerable optimism that it provided the framework for a formal treaty. This new text which was prepared by the Conference President and chairman of the three main committees (with the assistance of the Rapporteur-General, Mr. Rattray of Jamaica and the Chairman of the Drafting Committee, Mr. Beesley of Canada), differed structurally from the RSNT and took the form of a draft treaty. General aspects of the law of the sea were covered by ten separate parts, with marine pollution, marine scientific research and transfer of technology as additional sections. In addition, two new parts were added, including one on the use of terms and one as yet incomplete part on the set of final clauses.

The preparation of a new text was greatly facilitated by the decision of the conference to give priority to the negotiations in the First Committee. Thus, the conference confirmed an earlier decision taken at the close of the fifth session, to devote the first two to three weeks to Committee I in order to bring the committee in line with the progress already achieved in Committees II and III. As a result, the formal work of these committees was limited to the last five weeks of the session.

No major changes were made to Canada's negotiating position prior to the sixth session, and high priority was attached to achieving favourable resolution of three issues: marine pollution control in the territorial sea, the production limitation formula, and the definition of the outer edge of the continental margin. Canada regarded the current prohibition of national design, construction, manning and equipment standards in territorial waters as a threat to its Arctic interests. Canada now claimed that the inter-island waters of the Arctic archipelago were internal waters but the United States still maintained that the Northwest Passage constituted high seas, leaving the status of these waters somewhat ambiguous. Therefore, Canada hoped changes could be made to the ICNT which would allow it to control shipping through the Arctic regardless of the status of the inter-island waters.

In the case of the production limitation formula (now commonly referred to as the resource policy of the Authority), Canada intended to take all necessary steps to make the conference aware of the potentially damaging implications of this formula for Canada as a major landbased producer. As a potential exploiter and landbased producer, increased importance was given to a position on the Council, and therefore Canada intended to propose changes to the RSNT which would take into account the interest of "developed exporters." However, Canada was reluctant to play too visible a role on this issue as it felt itself to be in a delicate position as an industrialised state and a major producer. Also of high priority was the definition of the outer edge of the margin, and Canada planned to focus its attention on consolidating support for the Irish Formula.

On other issues where Canadian interests were involved but the delegation was not interested in major amendments to the RSNT, it hoped to have a moderating influence in order to advance negotiations. Ratification of a law

of the sea convention was still given high priority although the early conclusion of a treaty was no longer of quite the same importance as a result of the declaration of a 200-mile fishing zone. Therefore, Canada intended to be included in all negotiations (which were becoming increasingly confined to most-interested states) of interest, including access by LLGDS, legal status of the EEZ, financial arrangements and marine scientific research, but it did not plan to adopt a high profile. One issue in which Canada had previously taken little interest was maritime boundaries between adjacent or opposite states. In light of recent negotiations with the United States, it would appear that Canada had decided that the RSNT did not advance Canada's position on this issue and that amendments were required. However, it was not an issue of high priority.

COMMITTEE I

At the fifth session, the negotiations had focused almost exclusively on the system of exploitation but in light of the mini-package arrived at during the intersessional negotiations, the debate was expanded to include financing of the Enterprise and a review process.[6] Financial contractual arrangements, a dispute settlement system, composition and voting procedures of the Council and resource policy were also critical elements in the negotiations.

With the exception of financial arrangements, compromise "packages" were formulated on each of the above issues by a special negotiating group chaired by Mr. Evensen. Evensen was asked to lead these informal negotiations as a result of his efforts during the intersessional period and persistent dissatisfaction with the Chairman of Committee I, Mr. Engo. Progress was further facilitated by the ruling that the negotiations in Committee I take place at the level of the heads of delegations.[7]

System of exploitation

The Evensen negotiating group was able to produce a compromise package which provided for the parallel system and guaranteed access, and although the subject of much controversy, it was in the end not rejected by any group of states. This represented a significant step forward from the fifth session where the Group of 77 had rejected the parallel system completely and was facilitated by agreement on a review conference twenty years after the commencement of seabed mining. This conference would decide if the system had adequately benefitted developing states and make any necessary amendments.[8] This compromise was also helped by agreement on the establishment and financing of the Enterprise, a concession which had first been introduced by the United States along with the idea of a review conference.

The Canadian delegation was a member of the Evensen negotiating group but as at previous sessions, did not play a major role in the negotiations on this particular issue. Only a small number of interventions were made, one of which concerned the articles drafted during the intersessional period for a review conference. At this time, Mr. Beesley acknowledged the need for periodic review but argued that particular provisions should not be subject to amendment, including Article 22 which specified that the organisation, control and conduct of activities in the area should be subject to the purview of the Authority.[9]

Resource policy

The Evensen compromise package on the system of exploitation included a new formulation of the resource policy (Article 9 of the RSNT) which was designed to balance the need of protecting landbased producers from adverse effects with the desire of the major importers to have access to new sources of supply. The Group of 77 had advocated that seabed production of all minerals

be limited to 50% of the growth in world demand but the western developed states had protested that such a limit would inhibit efficient development. These states generally preferred the RSNT formula which gave a 100% allocation to seabed mining. The formulation of a compromise formula by Evensen was completed with the assistance of a small group of experts, including Canada.[10]

The Canadian delegation participated actively in both the formal conference debate and informal consultations. It continued to base its position on its counter-proposal first circulated at the fourth session, and remained committed to an even division of the increase in the world demand for nickel between land and sea-based production.[11] In addition, Canada produced figures to discredit the RSNT formula which illustrated that if the actual growth rate in nickel demand was less than the 6% floor provided for in the text, there would be little or no room left for land-based production by the year 2000.[12] The delegation supported the Group of 77 formulation which would allow for 15 deep seabed mine sites by the year 2000 in comparison with the RSNT which would permit an immediate start-up of 8.8 mine sites and 44.5 sites by the year 2000.[13] However, the Group of 77's formula made no provision for a "build-up" period for sea-based production and hence, in this respect it was regarded as detrimental to Canada's interests as a prospective seabed miner.

In addition to advocating a 50-50 split, the Canadian delegation argued that a rolling average should be used (rather than a fixed, constant rate) in determining the figure for the rate of growth in world demand for nickel.[14] Furthermore, it emphasised the importance of setting an appropriate commencement date for the inception of commerical production from the seabed and submitted that the earlier the commencement date, the more adverse the effects would be on land-based producers. On the basis of this position, Canada re-

jected the production control formula in the Evensen text of 5 June 1977 which provided for a 75-25 split, a fixed rate of world demand using a 20-year averaging period and a commencement date of 1980. Canada argued that the cumulative effect of this set of factors would have very adverse effects upon both present and potential landbased producers of nickel.[15]

The council - composition and voting

The Evensen negotiating group produced a compromise text on this controversial issue which included new provisions on composition as well as voting. Canada played an active but low-key role in these negotiations and made a number of interventions in favour of changing the categories of special interests so as to reflect actual interests more clearly.[16] Hence, Canada was pleased that the proposed Evensen text included representation by four states which were major exporters of the minerals to be derived from the Area, at least two of which had to be developing states. As one of but a few developed exporters,[17] the delegation believed that this new provision gave Canada a reasonable guarantee of a Council seat.

In order to balance control between the majority of developing states and the developed states' minority, Evensen also introduced a three-quarters' voting majority as an alternative to the two-thirds majority provided for in the RSNT. This amendment was intended to satisfy the industrialised states but Evensen hoped to obtain the support of the developing states by allocating more seats to these states.[18] Canada was not a major participant in the debate on this issue but appeared amenable to any voting provision which would be acceptable to both the developing and industrialised states.

Dispute settlement

The third compromise package formulated by the Evensen negotiating group proposed the establishment of a Seabed Dispute Chamber which would constitute

part of the new Law of the Sea Tribunal to replace the separate tribunal originally proposed in the RSNT.[19] The Canadian delegation did not take much interest in this issue.

Financial arrangements

Despite intensive negotiations and the support of a small expert group,[20] the Evensen negotiating group was unable to formulate a compromise package on the nature of the contractual relationship between deep seabed miners and the Authority. One of the most difficult issues was the method of payment to the Authority arising from activities in the contract area. Most states were in favour of a sharing of profits or a tax on profits while a small number of states advocated a system of royalties or a fixed charge on production. The profit-sharing method appealed to many of the industrialised states as it would permit contractors to make payments when they could best afford to do so in contrast to the production charge method which required "front-end payments." Many developing states also preferred this method as the Authority would obtain a share of what they believed would be substantial profits. Some states, however, supported the royalty system because it allowed for a definite payment to the Authority at the outset as well as a specific amount throughout the entire contract period, irrespective of the amount of profits made. This issue as well as a number of other issues, remained outstanding at the end of the session.[21]

Canada participated in the small expert group on this issue and was one of the few states to support the production charge approach. It opposed the profit-sharing method for a number of reasons including the problem of policing and verifying reported profits by multinational corporations, and the incompatibility of the concept of profit with the economies of socialist states.[22]

Despite Canada's attempts to persuade developing states of the unlikelihood of "windfall profits," the profit-sharing method remained the preferred approach.

Formulation of the ICNT

Although the Evensen text was not completely acceptable to all states, it was generally regarded as a useful basis for negotiation. However, a major setback occurred when significant changes were made unilaterally by Mr. Engo in the INCT including a reversion to a unitary system of exploitation in the event of failure by the review conference, and a more restrictive resource policy.[23] With respect to the system of exploitation, Part XI of the ICNT stipulated that all activities in the Area would be carried out on the Authority's behalf by the Enterprise and in association with the Authority by State Parties or Entities[24] through contractual or other arrangements which could take the form of joint ventures, production-sharing or service contracts.[25] Provision was also made for the banking system whereby contract areas had to be sufficently large and of sufficient value to allow the Authority to reserve half of the area for the conduct of activities by the Authority through the Enterprise or in association with developing states.[26] In regard to the review conference, the text stipulated that if the conference to be held twenty years after the entry into force of the convention, failed to amend or to reach agreement within five years on the provisions governing the system of exploitation, activities in the Area would be carried out by the Authority through the Enterprise or through joint ventures.[27] The Chairman argued that this article was intended to be a compromise to allay the opposition of many states to a review clause as a determining element for the acceptance of a temporary system of exploitation, and to deal with the legal vacuum which would result if the review conference failed to reach agreement.[28] With regard to financing of the Enter-

prise, the text included a new element which stipulated that each state party to the convention should advance funds in proportion to its United Nations budget contribution to help secure loans for the Enterprise.[29]

The ICNT deviated substantially from the Evensen text with respect to resource policy as well. During an interim period beginning on 1 January 1980, the Authority would limit the total production of minerals from nodules in the Area to the projected cumulative growth segment of the world nickel demand for the first seven years.[30] After that, total production would not exceed 60% (as opposed to the figure of 75% proposed by Evensen) of the cumulative growth segment of the world nickel demand, as projected from the beginning of the interim period. The rate of increase in world nickel demand for the first five years of the interim period would be based on the annual constant percentage rate of increase in world demand during the twenty year period prior to 1 January 1980, and thereafter would be adjusted every fifth year by averaging back for the latest ten year period for which data were available.[31]

Only minor changes were made to the ICNT in respect of the Council, and provision was retained for a three-quarters voting majority and a more detailed breakdown with regard to the representation of special interests. Of the Council's 36 members, 18 were to be elected on the principle of ensuring an equitable geographical distribution of seats in the Council as a whole. The remaining half would be elected on the basis of four distinct interests, including four members from among states which were major exporters of the minerals to be derived from the Area, including at least two developing states.[32] Finally, the ICNT included provisions for a Special Disputes Chamber of the Law of the Sea Tribunal as recommended by Evensen[33] as well as preliminary proposals regarding the kind of payments a contractor would make to the Authority, including fixed charges, production charges and a share of net proceeds.

As a result of the significant changes made by Engo, the United States immediately issued a statement criticising the ICNT on both substantive and procedural grounds,[34] and describing the provisions concerning the system of exploitation as unacceptable. Of particular concern to the United States was the lack of a reasonable assurance of access to the area, which in turn served only to encourage the movement of deep seabed legislation through American congressional committees.[35] The reaction of other conference participants was more muted.

Canada for one did not appear unduly concerned about the changes incorporated in the ICNT. At a press briefing by the Canadian delegation, Mr. Beesley acknowledged that the text required careful interpretation but was confident that it provided for the parallel system.[36] The Canadian delegation also regarded the new resource policy in the ICNT as a significant improvement over the RSNT, the most important difference being that the former used actual figures for the calculation of the increase in world demand rather than the arbitrary figure of 6%.[37] While the ICNT formula also included provision for a "build-up period," it was not regarded as completely satisfactory as it contained a number of defects and technical shortcomings.[38] The new provisions for the composition of the Council were also viewed favourably by the delegation, and Mr. Beesley expressed optimism that Canada would secure a seat.[39] Finally, in the case of financial arrangements, the delegation reserved judgement in light of the preliminary nature of the provisions and lack of figures.[40]

COMMITTEE II

The most extensive negotiations in Committee II focused on the EEZ which was the major outstanding issue. Important negotiations also occurred with respect to the continental shelf, navigation and delimitation of seaboundaries between adjacent or opposite states.

Exclusive economic zone

a. Legal status: -

At the outset of this session, the maritime states continued to argue that the EEZ should be regarded as high seas except for those rights specified in the convention while the coastal state group, including Canada, insisted that the EEZ was a zone *sui generis*. Late in the session, an informal group of directly affected states[41] was formed outside the framework of II to deal with the issue, despite strenuous objections from some coastal states and several territorialists. This group was able to produce a compromise text on the legal status of the EEZ[42] which allowed for all high seas freedoms in the zone, including the movement of naval vessels. This text was acceptable to the United States but the USSR had some reservations.[43]

Although Canada agreed that the EEZ should be considered *sui generis*, it adopted a moderate stance within the coastal state group and urged that the rights of both coastal and maritime states be protected within the zone.[44] Recognising that this issue was a potential conference-breaker, Canada participated in the informal working group and actively encouraged the formulation of a compromise which would receive widespread support but not undermine the EEZ concept. Hence, Canada was pleased that the compromise text formulated by the group was regarded as an improvement over the RSNT by the Chairman and included in the ICNT.[45]

In an attempt to accommodate the two points of view, the ICNT included an article outlining the specific legal regime of the EEZ which did not describe the zone as either high seas or *sui generis*.[46] Within this zone, coastal states would have sovereign rights with respect to the exploration and exploitation of resources and jurisdiction over marine pollution and marine scientific

research.[47] Freedom of navigation and overflight in the zone would be identical to these freedoms on the high seas.

b. Access by the LLGDS: -

The right of LLGDS to have access to the living resources of neighbouring EEZs was also the subject of intensive negotiations. During the course of further informal discussions by the Group of 21, a compromise text was formulated but final negotiations on the text were not completed by the end of the session. The LLGDS, therefore, decided that rather than endorse the inclusion of this new text in the ICNT, they would prefer to have the RSNT articles retained.[48] The ICNT did include one new provision, known as the Icelandic exception, whereby a coastal state whose economy was "over-whelmingly dependent" on the exploitation of the living resources of its EEZ would not be bound by the provisions giving LLGDS rights of access.[49]

During these negotiations, Canada continued to express concern about the vagueness of the term "region." However, no specific proposals were made by the delegation to alleviate the problem nor did it support the suggestion by some states that the various regions be defined and the states within each identified.[50] The delegation feared that such a move would not only precipitate further dissention and delay agreement, but that Canada would likely be included in one or more regions. Most states remained uninterested in this issue, and Canada received little sympathy from either the coastal state group or other states which might be effected by the provision, including Australia, New Zealand and the United States. Canada was also unsuccessful in its efforts to amend the "Icelandic exception" to include provision for "parts of a coastal state," in order that Newfoundland would be exempted from fishing by foreign fleets.

Continental shelf

At this session, there was widespread agreement that coastal state jurisdiction over the continental margin was an essential element of the overall package deal, providing that provision was made for revenue-sharing and a more precise definition of the outer edge of the margin.[51]

a. Payments and contributions: -

Negotiations on this issue were resumed by the Group of 21. At the previous session, there had been a trend in favour of the American production payments formula, and the acceptance thereof by the LLGDS facilitated agreement at this session on the actual rate of payments. The ICNT specified that beginning after the first five years of production at a given site, the coastal state would pay 1% of the value or volume of production for the sixth year and an additional 1% annually thereafter until the tenth year, after which the rate of payment would remain at 5%.[52] Agreement was also reached on a new article exempting developing states from making payments if they were not importers of the mineral resources produced from their shelves.[53] Canada played only a minor part in these negotiations having accepted the American formula at the previous session.

b. Definition of the outer edge of the margin: -

At this session, the broad shelf state group endorsed the Irish Formula which combined the Hedberg and Gardiner principles, and thereby gave coastal states the option to chose a definition based either on their thickness of the sediments or a distance of 60 nautical miles from the base of the slope. The Hedberg formula had been regarded as more practical at the previous session but was not politically feasible as it was completely unacceptable to both Argentina and India.[54] Agreement on the Irish Formula was facilitated by increasing support for this particular formula by the LLGDS.

As chairman of the broad shelf state group, Canada had actively encouraged agreement within the group on the Irish Formula, and as part of its strategy to ensure adequate support within the conference, it planned to bring the USSR into the group's deliberations.[55] A definition acceptable to the USSR and hence also to the Eastern European states would virtually guarantee a two-thirds majority in the event of a vote. However, Canada's strategy was thwarted when the USSR introduced its own proposal based on either 200 nautical miles or the 500-meter isobath. As a result of the introduction of this new proposal as well as the failure of Committee II to resolve the LLGDS issue concerning the EEZ,[56] the Chairman decided not to include the Irish Formula in the ICNT, and the definition of the continental shelf based on the concept of "natural prolongation" was retained.[57]

Navigation

Although most states had little interest in amending the provision in the RSNT on passage through the territorial sea and international straits, it was the subject of intense negotiation among a group of interested states, including Canada. Strenuous objections were raised by Canada to the article which prevented the coastal state from making laws and regulations applicable to the design, construction, manning and equipment of foreign vessels.[58] In addition to protesting to the severe restriction on coastal sovereignty in the territorial sea, Canada argued that this provision had serious consequences for coastal state rights and powers of self-protection.[59] The Canadian delegation also attempted to rebut the argument that these restrictions on coastal state sovereignty in the territorial sea were necessary in order to avoid a "patchwork quilt" of coastal state regulations by pointing out that this had not occurred with the existing regime of the territorial sea and innocent passage.[60] Finally, in order to emphasise the importance of this issue, Canada indicated

that it might not be able to ratify the convention without reservation if the offending article was not deleted.[61] Canada appeared unwilling to compromise on this issue, and while it considered an American amendment to be a step in the right direction,[62] nothing short of deletion would be acceptable.[63] This stance represented a significant exception to the otherwise conciliatory attitude adopted by Canada on most other issues.

Few states supported the Canadian position,[64] and despite Canada's threat, the ICNT retained the prohibition of national design, construction, manning and equipment standards in the territorial sea, although some minor changes were made to this article.[65] A small amendment was also made to the list of subjects and issues upon which coastal states could make laws and regulations related to innocent passage in the territorial sea. The RSNT had listed the prevention of pollution whereas the ICNT also included "reduction and control" of pollution.[66] This same amendment was made with regard to laws and regulations in relation to non-suspendable innocent passage or transit passage through international straits but coastal state powers were once again limited to discharge standards.[67] On the question of innocent passage, Canada continued to oppose the double qualification of wilful and serious with respect to acts of pollution and argued that wilful should be deleted because of the problem of proving intent.[68] However, there was great reluctance to reopen this issue, regarded by some as delicate because of the military implications,[69] and no changes were made in the ICNT. Finally, although Canada maintained its position that the definition of international straits should be based on traditional usage, the delegation did not pursue this as it was believed to be counterproductive.[70]

Seaboundaries between adjacent or opposite states

This issue was particularly contentious at this session, and the main point of dispute was which method, equidistance or equitable principles, should be given prominence with respect to delimitation of the EEZ and continental shelf. The RSNT gave prominence to "equitable principles" but about half of the states interested in this issue, advocated that greater emphasis be given to equidistance.[71] Canada had only been marginally involved in the negotiations on this issue at previous sessions but was now somewhat more active as it was interested in having the RSNT amended.[72] This issue was of direct relevance to Canada with respect to negotiations underway with the United States concerning four boundary disputes[73] as well as France concerning St. Pierre and Miquelon. Canada preferred the equidistance method with respect to the Georges Bank boundary but this method was not favourable to Canada in each case, and therefore careful balancing was necessary by the Canadian delegation.[74] Speaking to the working group on delimitation, Canada indicated that Articles 62 and 71 of the RSNT were unacceptable[75] and suggested that the provisions on delimitation contained in the 1958 Conventions on the Territorial Sea and Continental Shelf offered the best solution.[76] These conventions gave prominence to the equidistance method, and it was Canada's position that the basic norm should be equidistance but always qualified by special circumstances.[77]

COMMITTEE III

Negotiations in Committee II focused on marine pollution and marine scientific research. Transfer of technology received only minimal attention although some changes were incorporated in the ICNT.[78]

Marine pollution

An informal working group of interested states, including Canada, was formed to deal with outstanding issues, including coastal state authority to

regulate pollution from vessels in the territorial sea and EEZ as well as enforcement. However, most of the states involved were reluctant to upset or alter the carefully structured compromise in the RSNT, and as a result many of the proposals introduced were either withdrawn or initiated only inconclusive debate.[79] Consequently, while some changes were made clarifying the procedure for the designation of special areas and the enforcement powers of port states and coastal states, most of the revisions made were of a technical nature.

For Canada the key pollution issue was coastal state rights in the territorial sea, and as at the previous session, it objected strenuously to the provision in Part III of the RSNT which linked coastal state rights in the territorial sea to the regime of innocent passage in Article 21 of Part II. Canada had raised strong objections to this latter article which prohibited national design, construction, manning and equipment standards in Committee II, and although it posed a procedural problem, also pressed the issue in Committee III.[80] Once again, few states supported Canada's position, and no amendments were agreed to. With regard to coastal state enforcement of discharge standards, Canada saw little use in resubmitting the amendment which it had proposed at the previous session.

Marine scientific research

Informal negotiations on this issue were resumed by Mr. Yankov, and attention focused initially on the "test proposal" which he had introduced at the previous session. Although a majority of states felt that this proposal was an appropriate basis for negotiation, fourteen new proposals were submitted, including a proposal by the USSR and another by the Federal Republic of Germany, the Netherlands and the United States.[81] These various proposals which was indicative of the presence of still many divergent trends, were ex-

amined by a group of twelve states under the chairmanship of Mr. Castaneda of Mexico. The Castaneda group was able to negotiate a text which was acceptable to the United States but it was not incorporated verbatim into the ICNT. The ICNT included various changes to the qualified consent regime although the regime remained highly favourable to coastal state interests.[82] The United States indicated after the session that the RSNT provisions had been improved.[83]

Although a member of the Castaneda group, Canada maintained a low profile in the negotiations. Largely satisfied with the concept of a qualified consent regime, Canada's primary objective was to assist in finding a solution which was acceptable to the United States but which remained favourable to coastal state interests. The delegation recognised that American acceptance was crucial if there was to be final agreement on a law of the sea treaty.

OVERVIEW:

The publication of the ICNT heralded a significant step forward towards the ratification of a new law of the sea convention. While this third text was issued as an informal document, and was not a negotiated text, it was hoped that it could be presented to the next session for making decisions, and was generally regarded as a close approximation to the final draft treaty in many respects. This new text moved much closer to a consensus on a range of issues and incorporated significant amendments on a number of major questions. Of particular significance were the changes made to the provisions concerning the exploitation of the international seabed area, including the system of exploitation, the functions of the ISA and the resource policy of the Authority. Revisions were also made with regard to other stumbling blocks including the legal status of the EEZ, the continental margin, marine pollution and marine

scientific research. However, there were a number of areas of disagreement as well as various technical issues yet to be resolved.

Canadian reaction to the ICNT was generally favourable, and the delegation expressed satisfaction with the results of the session.[84] In no instance did Canada suffer any setbacks and in some cases, further gains were achieved. With regard to fisheries, the special provision for salmon was retained, and progress was made towards an accommodation between coastal states and the LLGDS even though no changes were made to the relevant RSNT provisions. In the case of the margin, the new text included a more specific provision concerning revenue-sharing. However, the delegation was disappointed that the Irish Formula was not incorporated and that the negotiations had been complicated by the unexpected introduction of a new proposal by the USSR. The delegation was also pleased that the Arctic exception regime was retained but was very discouraged that the revised text did not allow for the right of coastal states to regulate design, construction, manning and equipment standards in the territorial sea. The amendment made to this provision whereby coastal states could now act to implement internationally agreed standards was regarded as an improvement but not a sufficient one.[85]

Insofar as Canada's lower priorities were concerned, the Canadian delegation was confident that progress had been achieved in Committee I. The parallel system was regarded as a suitable compromise although Canada was likely somewhat concerned about American reaction and the threat of unilateral mining legislation. The ICNT was also regarded as a significant improvement with respect to both the Council and resource policy, although in the case of the latter, the new provisions were not considered completely satisfactory. In regard to the scope of coastal state jurisdiction, Canada was very optimistic

about the compromise achieved concerning the legal status of the EEZ. The delegation also considered the provisions for shared jurisdiction by coastal, port and flag states regarding marine pollution in the EEZ as an acceptable compromise,[86] and was satisfied that the ICNT incorporated the "essential character" of the agreement reached in the Castaneda group on marine scientific research.[87] Canada was not, however, satisfied with the results on delimitation as it felt that the ICNT provided for an unworkable rule for delimiting maritime boundaries.[88] Finally, the delegation was optimistic that the ICNT represented a negotiated text on many issues, and that significant progress had been made towards agreement on a law of the sea convention at the seventh session to be convened in March 1978.

Intersessional Period:

As a result of developments at the sixth session, intersessional negotiations were largely confined to Committee I issues. While it appeared that a consensus had been reached on the parallel system, there were many issues yet to be resolved, some of which were very technical and complex. Hopeful that a law of the sea convention was imminent, Canada participated in these negotiations and took an active part in discussions on production limitation.

At the domestic level, Canada engaged in negotiations with the United States concerning mutual maritime boundaries, and fisheries. Considerable attention was also given to the new proposed fisheries commission, NAFO.

Domestic developments

Following the extention of jurisdiction by Canada and the United States, Canada attached increased importance to determining precise boundaries with the United States in the Gulf of Maine (Georges Bank) as well as off the

Strait of Juan de Fuca, Dixon Entrance and in the Beaufort Sea. Therefore, special negotiators were appointed on 1 August 1977 by Prime Minister Trudeau and President Carter to reach a comprehensive settlement of bilateral boundaries as well as related resource (fisheries and hydrocarbons) issues.[89] During regular and frequent meetings between the two sides, proposals were discussed for the allocation of management responsibilities and assignment of agreed fishing shares for each country in fish stocks of common interest on both coasts; specific arrangements for the development and sharing of hydrocarbon resources in the boundary areas, and delimitation of the four unresolved boundaries.[90] However, by the end of March 1978 a number of key differences had not yet been resolved, including the actual boundary in the Gulf of Maine and several important fisheries issued on both coasts. Georges Bank was one of the most difficult issues as it involved both valuable fish stocks and potential hydrocarbons. Moreover, both Canada and the United States were subject to considerable domestic lobbying making it difficult for either to alter their position. Canada had long maintained that the equidistance principle was applicable, and it was reluctant to make any but minor concessions. Therefore, in March it was agreed that negotiations should continue and that an interim reciprocal fisheries agreement should apply for the balance of 1978. However, these negotiations were so unproductive that this interim agreement was suspended by Canada in June 1978 in an attempt to precipitate agreement.[91] Little further progress was made before the beginning of the seventh session.

During the intersessional period, Canada also continued negotiations with Bulgaria, Cuba, and the EEC, Japan, Poland, Spain, the United States and the USSR on the functions of NAFO which was to come into effect on 1 January 1979. As this commission would oversee the management of fish stocks beyond

200 miles (as well as scientific cooperation), Canada pressed for recognition of the special interest of the coastal state in fish stocks adjacent to its zone. However, the United States was strongly opposed nor were Norway, Spain, Portugal, Poland and the USSR sympathetic as bilateral agreements negotiated with Canada did not recognise the special interest of the coastal state beyond 200 miles. Agreements negotiated by Canada after 1977 included provision for such but still lacked sufficient leverage on this issue. It was unlikely that Canada would press the matter if it would jeopardise agreement on a new convention.

Conference-related Negotiations

Although considerable progress was made at the sixth session, there was concern that the momentum of the conference would be lost if negotiations were not wrapped up in short order. To this end, three sets of intersessional meetings were held, the first of which was convened in November 1977 under the chairmanship of Mr. Evensen in Geneva. Agreement was reached at these informal consultations on how the work of the seventh session should proceed and the key outstanding issues to be resolved were identified.[92]

Further meetings were convened by the President in December 1977, and informal talks were also held in February 1978. The purpose of these meetings was two-fold: first, to assist the President in formulating procedures for the seventh session; and secondly to facilitate an exchange of views on the critical issues in Committee I as well as the question of access by LLGDS to the EEZ.[93] During these consultations, a general understanding was reached that any amendments to the ICNT would have to emerge from the negotiations or alternatively be reviewed in advance by the conference. This procedural device was introduced in order to prevent a repetition of events at the sixth session

when the Chairman of Committee I had made unilateral changes to the compromise texts agreed upon by the Evensen negotiating group. While states were willing to curb the powers of the Committee Chairmen somewhat, there was considerable opposition on the part of some states at least to giving a greater role to the President, as was proposed by President Amerasinghe.[94] No agreement was reached on this nor on the question of a veto by Committee Chairmen over revisions to the ICNT.[95]

One unexpected development which arose was the matter of Amerasinghe's continuation as President of the Conference. As a result of general elections in Sri Lanka, Amerasinghe was replaced as Sri Lanka's Ambassador to the United Nations and head of the law of the sea delegation. The Government of Sri Lanka indicated at the February meetings that it would not object to Amerasinghe staying on as President as a representative of the United Nations Secretary-General. While the Asian and African states favoured his continuation, many of the Latin American states were opposed, arguing that the President of a diplomatic conference had to be a member of a delegation. The issue was not resolved and hence would have to be dealt with at the seventh session.

At the February meetings a small negotiating group under the chairmanship of Mr. Frank Njenga of Kenya gave detailed attention to the functions of the Authority (Article 151) and resource policy (Article 150).[96] No revisions were prepared with respect to Article 151 but in the case of the latter, Mr. Njenga recommended that Article 150 be divided into three separate articles and proposed a revision of paragraph 1 of the Article dealing with the basic principles governing activities in the area.[97] In addition, a small working group of experts drawn from the industrialised states and landbased producers were established under the chairmanship of Mr. Archer of the United Kingdom to examine the technical problems associated with the production limitation formula.

One major problem with the ICNT formula was that it could be interpreted in two ways with significantly different results,[98] and it was generally accepted that the ICNT required modifications.

Canada participated in these various sets of intersessional meetings and was very active in the Archer Group as it was anxious to remedy what it regarded as serious technical shortcomings in the ICNT production control formula. Canada also participated in meetings of the coastal state group both prior to and at the February talks. At that time, the group updated its negotiating position on the question of access by LLGDS to the EEZ and the settlement of disputes related to the exercise of coastal state sovereign rights in the EEZ as well as upon the procedures to be followed at the seventh session.[99] In the case of the Presidency issue, Canada avoided becoming involved as it was reluctant to antagonise any of its developing states allies. This issue had divided some of Canada's closest allies in the coastal state group.[100]

Seventh Session 28 March - 19 May (Geneva) and 21 August - 15 September 1978 (New York)

The seventh session was convened in Geneva in March 1978 and was reconvened in August of the same year in New York. The latter resumption was a contentious issue which required a secret vote as some states preferred to have an eighth session in early 1979 which would give their governments time to digest the results so as to be able to make the important decisions which would have to be made. Those in favour of resumption of the session argued that it was necessary to sustain the momentum achieved in order to reach agreement on revisions to the ICNT.[101]

Substantive work at Geveva was delayed for two weeks as a result of the Presidency issue which provoked considerable ill-natured wrangling. The Sri Lankan government could not be persuaded to include Amerasinghe as a mem-

ber of their law of the sea delegation, and the Latin Americans continued to oppose his remaining as President on principle. Since a consensus was clearly lacking, a procedural vote was required and Amerasinghe was confirmed as President.[102] Canada did not have a strong interest in this issue and therefore abstained from the vote.

The third week of the session was devoted to organisational matters, and a key decision was taken to give priority to the identification and resolution of the outstanding hard-core issues by seven negotiating groups of limited but open-ended membership. These groups focused on such issues as: the system of exploitation and seabed production limitation (Negotiating Group 1); financial arrangements (Negotiating Group 2); composition, powers and functions of the organs of the Authority (Negotiating Group 3); access of LLGDS to fisheries in the EEZ (Negotiating Group 4); settlement of disputes over the exercise of the coastal state's sovereign rights in the EEZ (Negotiating Group 5); definition of the outer limit of the continental margin and formula for revenue-sharing (Negotiating Group 6); and delimitation of maritime boundaries between opposite and adjacent states (Negotiating Group 7). It was also decided that each of the main committees would be free to discuss any issues which had not received sufficient attention and that Committee III would be convened to discuss matters within its competence.

A second major procedural decision was made on revisions to the ICNT. The Group of 77 was particularly concerned about extensive revisions to the ISA provisions while the coastal state group (particularly its Latin American members) wanted to preserve many of the articles related to Committees II and III. On the other hand, the United States, Japan, EEC and LLGDS were interested in major revisions to the text on a range of issues. The Conference sub-

sequently decided that revisions were to be the collective responsibility of the President and Committee Chairmen, operating as a team with the assistance once again of the Rapporteur-General and the Chairman of the Drafting Committee. Furthermore, any modifications or revisions were "to emerge from the negotiations themselves" and were "not to be introduced on the initiative of any single person....unless presented to the Plenary and found, from the widespread and substantial support prevailing at the Plenary to offer a substantially improved prospect of a consensus."[103]

The remaining four weeks involved very intensive negotiations by the seven negotiating groups. In addition, Committee II conducted an article-by-article review of the ICNT while Committee III discussed both marine pollution and marine scientific research. Significant progress was evident when the resultant texts were presented to the Plenary in the last week of the Geneva talks but a problem arose as to what was to be done with these texts. It was commonly accepted that for practical purposes these texts were to replace the relevant provisions of the ICNT but because of the strict procedural requirements, no actual revisions were made.[104] Reports were also published by the Chairmen of the seven negotiating groups and of the three main committees. These seven negotiating groups were reconstituted in New York and continued their discussion of the hard-core issues. However, an air of confrontation and mistrust plagued the session in New York as a result of American threats to approve unilateral mining legislation and procedural matters. As a result, no revisions were agreed to and the New York round was largely unproductive.

For Canada, this final stage of the negotiations entailed few new developments and no adjustments were made to its negotiating strategy. High

priority was attached to marine pollution control in the territorial sea, the continental margin and the production limitation formula. As a result of unfavourable conditions in the market for nickel, the Canadian government had come under increasing pressure to prevent further unemployment in Canada's nickel producing areas,[105] and the delegation was instructed to press for a more favourable formula. However, Canada did not want a production limitation formula which would act as a disincentive to Canadian companies interested in engaging in deep seabed activities. In the case of the continental margin, Canada's strategy had become seriously complicated as a result of Soviet opposition to the Irish Formula. As this formula commanded significant support, Canada hoped that the USSR could be persuaded to withdraw its proposal and that the Irish Formula would be included in the text. Resolution of this issue would also facilitate agreement on the issue of access by LLGDS to the living resources of the EEZ. Following the sixth session, the delegation had been very pessimistic that it could secure any changes to the ICNT concerning coastal state pollution standards in the territorial sea.[106] However, as a result of the _Amoco Cadiz_ oil-spill off France just prior to the session, Canada was hopeful that this incident could be used as a lever to extract more favourable provisions without provoking an unfavourable reaction from other states. Therefore, Canada planned to continue its efforts to amend the ICNT provisions on vessel-source pollution standards in the territorial sea, and its interest was renewed in coastal state enforcement in the EEZ as well as the right of intervention by coastal states to prevent and control marine pollution in the event of a maritime casualty.

With the exception of the continental margin and resource policy, each of the other hard-core issues were of relatively low priority for Canada.

In a number of cases (access by LLGDS to the EEZ, financial arrangements, settlement of disputes related to the exercise of sovereign rights by coastal states in the EEZ, the delimitation of maritime boundaries) Canada hoped that improvements could be made to the ICNT but it did not wish to adopt a high profile. The delegation did intend, however, to participate in each of the negotiating groups and play a mediating role where possible.

COMMITTEE I

Three negotiating groups were established to deal with the hard-core issues related to the mandate of Committee I, each of which will be discussed in turn.

Negotiating Group 1

There was sufficient progress at Geneva with respect to the system of exploitation, review conference and resource policy that the group was able to move on to discuss the basic conditions of exploitation at New York. However, while there was a general willingness to compromise at the first half of the session, progress at the latter was impeded as a result of dissention caused by procedural matters and the issue of unilateral mining legislation.[107]

a. System of exploitation: -

At Geneva, there was general acceptance that the parallel system represented the only possible basis for compromise. However, the industrialised states argued that Article 151 of the ICNT did not provide for a clear right of access for state parties and other entities. Hence, a revised formula was drafted which gave an assured right of access while also giving the Authority a predominant role in the organisation, conduct and control of activities in the Area.[108] The Group of 77 agreed to this revision in exchange for a number of concessions related to the transfer of technology.[109] The developing states

believed that the Enterprise would not be able to obtain the necessary technology to conduct activities and compete effectively with national companies unless provision was made for mandatory transfer of technology.[110] Generally satisfied with the trend in the negotiations, Canada's participation was slight.

b. Review clause: -

The Review Conference proved to be one of the most controversial issues but a new text was produced which deleted the provision for a conversion to the unitary system in the event that the conference failed to reach agreement within five years. Instead, the Authority was authorised to impose a moratorium on the approval of new contracts or work plans.[111] The United States recognised that this new text was designed to encourage states to reach agreement but it voiced strong reservations. Once again, Canada did not play an active role in these negotiations.

c. Resource policy: -

A major step forward was achieved in these negotiations when Canada and the United States reached agreement on a new production ceiling formula. The United States was not only dissatisfied with the ICNT formula but it believed that resolution of this issue would facilitate an overall agreement in Committee I. Therefore, it initiated negotiations with Canada which was a major landbased producer and influential among the developing states.[112] During these negotiations, one of the most difficult issues to resolve was the division of the increase in world demand for nickel between land and sea-based production: Canada continued to favour a 50-50 split while the United States proposed the apportionment of 70-odd percent to sea-based production.[113] It was not until near the end of the session that the two sides reached an *ad re-*

ferendum agreement on a formula[114] which was tabled by Dr. Crosby on 9 May.[115] The gist of the formula was as follows:

> "For each of the first 20 years of commercial production from the Area, the production ceiling for the Area shall be the sum of: (a) the increase in world nickel consumption for the 5-year period immediately prior to the first commercial production from the Area and (b) 60 percent of the increase in world nickel consumption thereafter through the specific year for which the ceiling is described.
>
> The production ceiling is determined for each year utilising an annually updated projection of the trend of the growth of world nickel consumption, based upon the recent 15-year period for which annual world nickel consumption data are available.[116]

Although the formula did not provide for a 50-50 split, Canadian experts believed that it corrected the technical shortcomings of the INCT and was the best compromise possible. Moreover, it was felt that the formula would reduce the possible adverse effects of seabed mining upon landbased producers in the early stages of seabed mining and yet provide sufficent incentive for deep seabed exploitation by Canadian mining companies.

The Canadian-American formula was submitted to Negotiating Group 1 for its consideration and was examined in conjunction with the report prepared by the Archer Group of Technical Experts on the technical problems associated with a production limitation formula.[117] Canada and the United States participated actively in the Archer Group, both using the technical work of the Group for the package which they had developed.[118] Although the Joint Canada/United States Production Ceiling Formula did not represent a consensus,[119] it was incorporated in the ICNT as the new Article 150 bis.[120]

d. Basic conditions of exploitation: -

At New York, Negotiating Group 1 attempted to avoid politically charged issues and moved on to a discussion of the basic conditions of exploitation on which a number of important proposals were submitted. India proposed

the addition of a new provision whereby the Authority would have the discretion to ensure that the Enterprise participated in seabed mining effectively from the date of entry into force of the Convention.[121] A proposal for anti-monopoly provisions was made by the USSR to limit the number of contracts granted to any one state and its state enterprises and private companies, and an anti-freeze clause related to the banking system was submitted by the United Kingdom.[122] The Indian proposal was the only amendment to command broad support but it was not included in Njenga's draft of a compromise formula for Annex II. Instead, Njenga chose to adopt a cautious approach and included only amendments which he believed would not raise serious problems.[123] Most of these amendments related to the transfer of technology. Canada's participation in these negotiations was negligible although it was concerned that the system of contract-granting in Annex II was made compatible with the production ceiling formula.[124] Canada's negotiators also lobbied actively in the corridors in order to generate further support for the Joint Canada/United States Production Ceiling Formula.

Negotiating Group 2

Under the leadership of Ambassador Koh of Singapore, Negotiating Group 2 dealt with three specific items: financial arrangements of the Authority; financial arrangements of the Enterprise; and financial terms of contracts. New articles were drafted on both the first and second items[125] but major disagreements arose with respect to the third. The Group of 77 was anxious to ensure that payments by contractors to the Authority were sufficiently large to allow the Enterprise to undertake its mining operations with minimal delay while the industrialised states argued that onerous payments would act as a disincentive to seabed mining. It was agreed by both sides that the issue

was extremely complex and technical and a financial group of experts was established to deal with the matter. A framework for financial arrangements between contractors and the Authority was subsequently agreed upon but a number of issues were not resolved. The main income question was the basis for financial contributions by contractors. Most of the industrialised states including the EEC, Japan and the United States favoured a nominal royalty plus profit-sharing approach while Australia, Norway and the USSR preferred a royalty-only or production charge approach.[126] Canada also continued to advocate the production charge system although it did not introduce any specific proposals.[127] It supported this system on the grounds that it would be relatively easy to administer and uniform in its application[128] and lobbied the developing states in an attempt to persuade them of the drawbacks of the profit-sharing approach.[129] The Group of 77 did not adopt a unified position on this issue but a majority favoured the profit-sharing method because of the potentially significant revenues which would be generated.

Koh attempted to resolve this question by incorporating both options into his amendments whereby contractors could chose one of the two methods, the first consisting of a production charge only and the second incorporating a combination of a production charge and a share of net proceeds, whichever was most compatible with their social and economic system.[130] At the resumption of the session, Koh included specific amounts for these payments as well as safeguard clauses.[131] While Canada had misgivings about Koh's compromise proposal, it realised that the conference would not accept a production charge only approach, and therefore it refrained from participating actively in the debate.[132]

Negotiating Group 3

Chaired by Mr. Engo, Negotiating Group 3 identified three fundamental questions to be resolved: the composition of the Council; the voting system of the Council; and the interrelationship between the respective powers and functions of the Assembly and Council.[133] There was general agreement that there should be an equitable balance between the special interest groups and the general interest in the distribution of seats, and that there should not be any radical departure from the categorisation of special interests in the ICNT. However, two separate proposals were introduced, each designed to increase the membership of the industrialised states.[134] Canada was alarmed by this development as it believed that if any change was made which would increase the membership of one group, compensating efforts would be made by other groups thereby not only impeding agreement but also possibly jeopardising Canada's membership.[135] Reluctant to antagonise the industrialised states on this issue, Canada did not explicitly reject either of the two proposals but emphasised that it was satisfied with the ICNT provisions. Most states shared Canada's reluctance to revise the ICNT, and hence only one minor amendment was made.[136]

With regard to voting, the ICNT provided for a three-quarters majority instead of the traditional two-thirds requirement. At this session, the United States introduced a proposal supported by the western industrialised states for a concurrent majority system in which the overall majority would be coupled with simple majorities in three of the four special interest categories or alternatively four of the five categories.[137] The Group of 77 rejected this proposal as it appeared little different from "weighted voting" or a "collective veto," and retaliated by proposing a return to a two-thirds or simple majority. Canada refrained from playing an active role in this contentious issue but was willing

to accept the concurrent majority system in order to ensure acceptance of a final treaty by the major industrialised states.[138]

Agreement on each of these issues, as well as the third item, was greatly impeded as a result of different perceptions on both sides concerning the purpose of the Council. The industrialised states viewed the organ as a counterbalance to the Assembly in which the developing states would have a large majority, and hence as a mechanism which would protect their special interests. The Group of 77 on the other hand regarded the Council as merely an executive committee of the Assembly in which the members drawn from special interests and regions would serve in a representative capacity.[139] For this reason, at New York Negotiating Group 3 moved on to a discussion of the subsidiary organs of the Council, including the Economic Planning Commission, the Technical Commission and the Rules and Regulations Commission.[140] While Canada had previously expressed doubts about the necessity of these commissions, the issue was of very low priority, and no amendments were proposed by Canada. A number of changes were made by Engo in his revised text, all of which were largely non-controversial.[141]

Unilateral seabed legislation

As noted above, little progress was made in Committee I during the New York round as a result of considerable ill-will caused by the impending passage of American unilateral seabed mining legislation. Lengthy debates were held on the impact of unilateral legislation permitting companies to mine the deep seabed before a convention and system of exploitation were agreed to. At the close of the session, the Group of 77 made a "strong condemnatory" statement arguing that unilateral legislation could conceivably wreck the conference which in turn might have a disastrous effect on the entire system of multilateral negotiations under the aegis of the United Nations.[142] The Group also declared

that such legislation would be contrary to customary international law and a violation of the United Nations Declaration of Principles. The United States responded by rejecting the argument that international law prohibited national action and insisted that exploration and exploitation of the seabed beyond the limits of national jurisdiction was a freedom of the high seas.[143] It also argued that unilateral mining legislation could no longer be deferred because important investment decisions had to be made although it hoped that an agreement could be reached at the conference before exploitation occurred under the terms of national legislation.

While the Canadian delegation had adopted a very low-key stance within negotiating groups 1, 2 and 3, it intervened on this issue for two main reasons: first, the delegation was concerned that the issue might have very adverse effects on the conference; and secondly, it wished to disassociate Canada from those industrialised states in favour of unilateral legislation. In a statement on this issue, Mr. Beesley rejected the urgent need for unilateral legislation and urged governments to exercise a little more patience with the pace of the negotiations.[144] He also emphasised that Canada did not support the exploitation of the seabed in the absence of an international treaty although it supported the development of ocean technology. This was a longstanding position of the Canadian government dating back to the Seabed Committee when it had proposed the establishment of transitional machinery to ensure that mining did not occur without international regulation. In addition to the old concern that other states not initiate exploitation before Canadian companies were prepared to do so,[145] Canada was now also worried about the implications for Canada's nickel markets if unregulated mining was to proceed.

COMMITTEE II

Four negotiating groups were established to deal with specific outstanding issues falling within the mandate of Committee II. These groups were very active at Geneva and significant advancements were made. However, virtually no progress was made in any of the groups when the conference resumed in New York. In Geneva, Committee II also met informally to deal with a number of other issues, and the legal status of the EEZ and straits used for international navigation, received the greatest attention. Articles related to the territorial sea, archipelagoes, islands and semi-enclosed seas were also reviewed although in no case did a clear mandate for change emerge. Although Canada continued to disapprove of the ICNT provisions concerning coastal state standards in the territorial sea and the respective definitions of international straits and innocent passage, its participation was only slight in these peripheral negotiations. The delegation recognised that there was great reluctance within Committee II to amend the ICNT, and thus, focused its efforts on Committee III where it hoped there was greater likelihood of success.

One amendment was approved by the Committee, and this concerned the provision on anadromous species. This amendment was the result of intensive negotiations between Japan and the USSR with American mediation and some participation by the other salmon-interested states, including Canada. These negotiations did not effect Canada directly but Canadian officials were anxious to ensure that Canadian interests were not inadvertently affected.[146] The revised text was intended to increase the obligation of states concerned to consult, particularly when fisheries for anadromous stocks occurred in the high seas in order to prevent the economic dislocation of states other than the state of origin.

Negotiating Group 4

Chaired by Ambassador Nandan of Fiji who had led the negotiations in the Group of 21 at previous sessions, Negotiating Group 4 began its discussion by identifying the five key issues to be resolved: whether the LLGDS should be given access as a matter of right rather than licence; whether the access of LLGDS should be on a preferential basis; how to deal with the question of access above the surplus; whether a distinction should be drawn between developed and developing LLGDS; and how to define geographically disadvantaged states.[148] Extensive amendments were proposed by Nandan which accommodated the LLGDS while at the same time providing safeguards for the coastal state.[149] Reaction to the various amendments was generally favourable but progress was seriously impeded as a result of difficulties encountered in Negotiating Group 6 concerning the definition of the continental margin. These two issues had originally been linked by the LLGDS but the coastal state group now insisted that they would oppose any amendment to the ICNT on the basis of the work of Negotiating Group 4 unless amendments to the ICNT based on the Irish Formula also went forward.[150]

Canada was a member of Negotiating Group 4 but allowed other coastal states to carry the negotiating ball and continued to work beyond the scenes within the coastal state group. Canada's position coincided with the group on the various issues discussed within the negotiating group but it received little support for its position with regard to either the region problem or the extension of the Icelandic exception to Newfoundland. In the case of the former, Canadian officials were now confident that Canada was allowed sufficient powers and discretion to prevent any LLGDS from obtaining access to Canada's fishing zone if it so desired.[151] The latter issue was of low priority but remained part of Canada's official position because of its value as a "throw-away."[152] No further developments occurred with respect to either of these two issues as

Negotiating Group 4 decided at New York that the time was not appropriate to intensify work on substantive matters, and negotiations were suspended until the subsequent session.

Negotiating Group 5

This group which was chaired by Ambassador Stavropoulos of Greece, was made up of 36 core states (along with 20 other regular participants) and included primarily coastal states, LLGDS and distant-water fishing states. The coastal states retained their traditional position that no disputes related to fisheries should be subject to compulsory settlement while the LLGDS and distant-water fishing states argued that all disputes concerning living resources in the EEZ, particularly those related to access by foreign states should be subject to compulsory and binding settlement.[153]

In order to find a compromise, a smaller group of 15 (later 22) was formed and formulated a solution based on compulsory conciliation in three particular cases.[154] A conditional consensus was obtained on this procedure, and it was approved by the entire negotiating group for inclusion in any revised text.[155] Both the LLGDS and coastal states accepted the concept of compulsory conciliation but the coastal state group made its acceptance conditional upon inclusion of the Irish Formula in the revised text.[156] Only one meeting was held by Negotiating Group 5 in New York, and no progress was made on outstanding issues.[157] Canada was not a main actor in these negotiations.

Negotiating Group 6

The Chairman of Committee II, Mr. Aguilar also undertook the chairmanship of this negotiating group which was responsible for devising a definition for the outer edge of the margin. During these discussions, two major problems arose: first, the Irish Formula had become linked with access by LLGDS

to the EEZ and dispute settlement; and secondly, the USSR voiced strong objections to the Irish Formula and introduced a separate proposal.

The Irish Formula gave states two alternative criteria for determining the outer edge of the continental margin: the first consisted of linking the outermost fixed points at each of which the thickness of the sediments was at least 1% of the shortest distance from such point to the foot of the slope; and the second was based on a distance of not more than 60 miles from the foot of the slope.[158] The Soviet proposal employed geological and geomorphological criteria where the shelf extended beyond 200 miles but imposed a maximum width of 300 miles.[159] This latter proposal was revised at the New York phase of the session to provide for either a maximum of 300 miles or 2,500 metres plus 100 miles. The Soviet proposal was supported, at least explicitly, by only a few states (including the Eastern European states and Cuba) while the Irish Formula was endorsed by the coastal state group.

Meanwhile, the members of the broad shelf state group were giving independent consideration to the Soviet proposal. The Canadian delegation gave high priority to the resolution of this issue and was very displeased that the Soviet initiative had not only halted the slow but steady trend in favour of the Irish Formula but also divided and undermined the broad shelf state group.[160] Although none of the broad shelf states expressed explicit support for the Soviet formula, the United States and United Kingdom appeared favourably disposed towards this alternative. The Canadian delegation was unable to reunite the group nor was it successful in persuading the USSR to withdraw its proposal.[161] Although the delegation did not seek Cabinet approval for a change in the Canadian position, it realised that some sort of combination of the two formulae might be the only practicable solution. This issue would be one of the main outstanding issues to be resolved at the eighth session.

Negotiating Group 6 also gave some consideration to the issue of payments and contributions in Geneva. No objections were raised to the production payments scheme provided for in the ICNT but there was some discussion of the maximum rate the coastal state should pay in the tenth year of production. Some states proposed that the 5% figure be increased to 7% but this matter was also left for resolution at the next session.

Negotiating Group 7

Despite the efforts of Judge Manner of Finland to find a compromise, the impasse between the adherents of "equitable principles" as provided for in the ICNT and the proponents of the equidistance line in the delimitation of maritime boundaries between adjacent or opposite states was not overcome at the seventh session. There was widespread support for the retention of the ICNT provisions concerning the delimitation of the territorial sea, but little progress was made with respect to the delimitation of the EEZ or continental shelf. At Geneva, a working document sponsored by 22 states advocated the employment of the median line as a general principle while 29 states drafted a working paper emphasising equitable principles as the basic premise for any measures of delimitation.[162]

As it was evident that a consensus could not be reached on the basis of the ICNT, negotiations were resumed in New York. There the Negotiating Group was able to identify three items for discussion including criteria to be applied for the delimitation of economic zones or continental shelves, the importance of interim measures, and dispute settlement. No compromise formulae could be agreed upon with respect to the first two items,[163] while in the case of dispute settlement,[164] the Group discussed a revised version of a paper pre-

pared by a private group[165] containing a set of alternative approaches. However, no single alternative received widespread and substantial support.[166]

Canada was a member of Negotiating Group 7 and a sponsor of the working document advocating the use of the equidistance principle. However, while Canada disapproved of the ICNT provisions, it was a moderate member of the median line group. Canada agreed that the basic principle should be equidistance but it believed that this principle should be qualified by special circumstances.[167] In addition, while the official position of the median line group was that there should be compulsory dispute settlement, Canada's position was more flexible as it regarded compulsory dispute settlement as necessary only if the ICNT retained the equitable principles rule.[168]

COMMITTEE III

Prior to the seventh session, the prevailing view had been that the ICNT provisions included in Part XII were satisfactory and widely accepted, and therefore, marine pollution was not identified as one of the outstanding issues during the interessional meetings. However, as a result of the *Amoco Cadiz* oil spill off the French coast in March and subsequent pressure by France, the United States and Canada, the Conference agreed to meetings of the Third Committee to examine the issue further. Intensive negotiations proceeded in both Geneva and New York on vessel-source pollution as well as with respect to marine scientific research.

Marine pollution

In order to deal with vessel-source pollution, the informal working group under Vallarta of Mexico was reconvened. Three main issues were then discussed: coastal state standard setting (Article 212); enforcement by coastal

states (Article 212); and measures related to maritime casualties to avoid pollution (Article 222).

In the case of Article 212, a consensus was reached in Geneva on a number of amendments including provision for the adoption of routing systems in order to minimise the threat of accidents and provision for prompt notification to coastal states regarding maritime casualties involving or likely to cause marine pollution.[169] In addition, there was a minor change to the provision concerning coastal state standards in the territorial sea which clarified the right of coastal states to establish and enforce discharge standards stricter than international standards for ships in innocent passage.

The issue of coastal state standard setting was of prime importance to Canada which had long argued that Article 212 (along with Article 21, Part II) represented an erosion of the sovereign rights of coastal states traditionally exercised within the territorial sea under existing international law. However, in Geneva, Canada moderated its position and cosponsored an amendment along with ten other states[170] which stipulated that coastal state laws and regulations in the territorial sea concerning design, construction, manning and equipment standards of foreign ships should be in conformity with generally accepted international rules where such laws existed.[171] Despite this new emphasis on residual rights, the amendment failed to receive widespread or substantial support[172] either in Geneva or New York although it was expected to be the subject of future negotiation.[173] Although the United States had been the prime mover beyond the other amendments to Article 212, and was sympathetic to the Canadian position, it refrained from explicitly endorsing this amendment while the United Kingdom and USSR continued to lead the opposition to national design, construction, manning and equipment standards in the territorial sea.

A number of amendments were also proposed to the coastal state enforcement regime. One which received substantial support in Geneva after intensive negotiations stipulated that coastal state enforcement no longer be limited to "flagrant or gross" violations of international standards by vessels resulting in discharge causing or threatening major damage but "clear objective evidence" of the violation was now necessary.[174] Other amendments designed to eliminate or restrict the qualified right of flag states to preempt prosecutions by coastal states concerning violations in the EEZ did not receive similar support.[175] A Canadian amendment also sponsored by Iceland and Trinidad and Tobago which was designed to permit coastal state inspection in the case of offences in the EEZ giving rise to a threat of significant pollution,[176] also failed to attract widespread support.[177] This article was not acceptable to some maritime states and attempts to redraft the amendment to allow for physical inspection where there was substantial discharge <u>or</u> significant pollution were also resisted.[178] In New York, Canada introduced a slightly revised version of its original amendment which strengthened coastal state boarding and inspecting powers in the event of a violation of pollution laws in the EEZ which caused substantial discharge resulting in or threatening marine pollution. With the support of France and the United States, this amendment was categorised as offering a substantially improved prospect for consensus.[179]

In the case of the third item discussed, there was widespread agreement in Geneva on a new article concerning maritime casualties which clarified the right of states to intervene and adopt measures following such incidents.[180] France was the prime mover behind various amendments to enable coastal states to take effective measures to deal with maritime casualties and while this matter was also of concern to Canada, it did not introduce or cosponsor any amendments.

Other amendments which received substantial support in Geneva included the pooling of port entry requirements and increased penalties for acts of serious and wilful pollution in the territorial sea. In New York, widespread support was also expressed for the regional setting and enforcement of pollution negotiations as a condition of port entry, the investigation and detention of foreign vessels for violations in the territorial sea and EEZ, and coastal state measures related to the avoidance of pollution from maritime casualties. However, no new amendments were added to the category of provisions on which a consensus was reached.

Marine scientific research

Despite extensive discussions on marine scientific research, no amendments were introduced at the seventh session which either represented a consensus or received a substantial degree of support. In his report on the first phase of the session, Mr. Yankov indicated that there was overwhelming support to keep the package in Part XIII intact without making substantive changes.[181] The coastal states as well as the USSR were particularly reluctant to accept any amendments which might disturb the balance between the interest of the coastal state and the research state. The United States, however, made strenuous efforts to return to the Castaneda text of the previous session.[182] On the other hand, reversion to the Castaneda text was rejected by the USSR, Eastern European states and a large group of developing states,[183] while Canada's position was more muted. At the conclusion of the sixth session, the Canadian delegation had indicated that it felt that the ICNT incorporated the essential character of the Castaneda text but it was concerned about American acceptance.

At the end of the Geneva half of the session, the United States took issue with Yankov's conclusion that the existing text on marine scientific research represented a reasonable balance, and following a review of what elements should constitute a consensus on this issue,[184] introduced a set of informal suggestions when the session reconvened. The American delegation did not propose any changes affecting the coastal state consent regime but included a large number of amendments intended to facilitate the conduct of research.[185] However, in his final report Yankov continued to assert that there was substantial support for the view that the ICNT offered a good prospect for compromise.[186]

Overview:

Despite the initial controversy over the Presidency of the Conference, the seventh session began on an optimistic note and substantial progress was made at least in Geneva, particularly in Committee I. The endorsement of the parallel system by the Group of 77 and the concessions made by the industrialised states relating to the transfer of technology facilitated agreement on a number of changes to the ICNT which augered well for further compromise and agreement. However, in sharp contrast to the Geneva talks, the New York negotiations proved to be very unproductive particularly in the case of Committee I. This stemmed in part from the conflict between the Group of 77 and the EEC as a result of the latter's reservations about Njenga's Geneva text on the system of exploitation and in part because of the dispute which arose between the Group of 77 and the industrialised states concerning the legality and implications of national seabed mining legislation. Hence, there was no further progress concerning the system of exploitation nor was the conference able to make use of the detailed examination of the complex technical problems related

to the production limitation formula which had occurred at Geneva. On the other hand, some headway was made on financial arrangements in that amounts for the various payments were specified for the first time although the conference was far from agreement on this issue. Only minimal progress was made in Geneva and New York concerning the organs of the Authority, and the negotiations on the Council were particularly disappointing.

With respect to the other four hard-core issues identified at the outset of the session, the prospect for consensus was considerably more promising even though there was little negotiation in New York. The most problematic issue was the definition of the outer edge of the continental margin as it was generally believed that the issues of access by LLGDS and dispute settlement were near to resolution. However, final agreement on these two matters remained outstanding pending agreement on the margin problem. Finally, negotiations in both Geneva and New York failed to overcome the impasse on the delimitation of maritime boundaries.

In the case of Committee III, there was general agreement that the ICNT texts on marine pollution and marine scientific research offered a basis for compromise although a number of states had strong objections. Canada, France and the United States were the main proponents of changes to the marine pollution provisions while the United States was also dissatisfied with the articles on marine scientific research. Numerous amendments were introduced and discussed with regard to both these issues but no revisions were agreed to which significantly altered the balance between coastal states and flag states on the one hand and coastal states and research states on the other.

Canada, for the most part, reacted very favourably to the developments at the first half of the session but was particularly disappointed that the sec-

ond phase had been so unproductive. The delegation had been very optimistic about the prospect for agreement on the parallel system in Committee I and hence was quite concerned that agreement might be jeopardised by the plans of some states to enact national seabed mining legislation. Such a possibility was of real concern to Canada because of the domestic implications for Canada's nickel industry after the vigorous efforts which had been made to secure an agreement with the United States on a new production ceiling formula. This issue was of high priority to Canada, and the delegation was confident that the Canadian-American formula would prevent disruption of land-based production while at the same time allowing for exploitation of the deep seabed by Canadian companies on an economic basis. Moreover, although the delegation had not succeeded in negotiating a 50-50 split, it was satisfied with the other related features of the formula.

Also of high priority was the definition for the outer edge of the continental margin, and the lack of agreement on this question was a major disappointment. Moreover, the Soviet initiative on this issue had disrupted the broad shelf state group and significantly undermined Canada's influence. The third issue of high priority for Canada was vessel-source pollution, and the delegation had identified three items of particular concern at the beginning of the session: coastal state standard setting in the territorial sea, coastal state enforcement and the right of intervention by coastal states to prevent and control pollution as a result of a maritime casualty. Canada along with France and the United States used the Amoco Cadiz incident as a lever to extract more favourable provisions with regard to the latter two items as a time when it had appeared that there was little hope of further changes to the ICNT. Canada was pleased with the number of amendments which received substan-

tial support in Geneva and New York as it regarded these amendments as a "substantial improvement,"[187] and, although those amendments upon which a consensus was reached generally represented only minor changes, they were all regarded as improvements. However, Canada was unable to use the Amoco Cadiz incident to its advantage in the case of coastal state standards in the territorial sea, and there was little prospect of any revisions to the ICNT in this regard.

With respect to the more minor issues, Canada was somewhat disheartened that the negotiations concerning the composition and voting procedures of the Council had not been more fruitful although it was pleased that there had been no changes to the balance of interests specified in the ICNT. It was also satisfied with the emergence of an improved text on the conservation and harvesting of anadromous species.[188] Similarily, it regarded the compromise text concerning access by LLGDS formulated in Geneva as a significant improvement over the ICNT although the delegation believed that a number of clarifications were still necessary.[189] The compromise text on dispute settlement with respect to coastal state rights in the EEZ was also viewed favourably, and compulsory conciliation in the case of fisheries disputes was considered to offer a substantially improved prospect for consensus.[190] On the other hand, the delegation was discouraged that sharp differences remained between the two sides concerning the delimitation of maritime boundaries as it had been optimistic after Geneva that provisions ameliorating the deficiencies in the ICNT by giving greater prominence to the principle of equidistance could be agreed to.[191]

In conclusion, Canada had left the Geneva talks very encouraged by the progress made in the various negotiating groups with the exception of Negotiating Group 6 dealing with the continental margin. As a result, the New

York negotiations were particularly disappointing, and the delegation was concerned that the conference might be jeopardised just when final agreement appeared to be imminent. The fate of the conference, however, would be determined when it reconvened for its eighth session in March 1979 for six weeks. There was a strong sentiment that the conference should conclude its negotiations in 1979 with the final ratification of the convention in 1980, assuming agreement on the outstanding issues was reached.

Footnotes: Chapter VII

1. Barbara Johnson, "Canadian Foreign Policy and Fisheries," in B. Johnson and M.W. Zacher, eds., Canadian Foreign Policy and the Law of the Sea, (Vancouver: 1977), p. 89.

2. Ibid, p. 91.

3. Following their meeting, a joint communique was issued which suggested that a permanent settlement would not be forthcoming in the near future. "The two leaders concurred that a fishery agreement for 1977 should be concluded on the basis of the same spirit of cooperation which marked their overall discussion. They also reviewed the principles which would ensure that the interests of each in the fishing zone of the other are accommodated reciprocally for the end of the year. The two sides looked forward to longer term arrangements which are yet to be negotiated. They welcomed the signature of the agreement as an important step in the evolution of their fisheries relationship and a contribution to their close ties as neighbouring states." External Affairs, Communique No. 14, Joint Communique, "Canada/USA Reciprocal Fisheries Agreement," 24 February 1977.

4. United Nations Press Release, Third United Nations Conference on the Law of the Sea to Hold Sixth Session in New York starting 23 May, Rules for International Seabed Area to be Tackled First, SEA/225, 19 May 1977, p. 7.

5. The conference decided on 28 June 1977 that the ICNT should be prepared and submitted at the end of the session. However, delays prevented the text from being released until 20 July 1977.

6. Informal Composite Negotiating Text (ICNT), Explanatory Memorandum by the President, Third United Nations Conference on the Law of the Sea, Sixth Session, New York, A/CONF.62/WP.10/Add.1, 22 July 1977, p. 5.

7. Cabinet members as well as other highranking officials of a significant number of governments were in attendance. Also of importance was the presence of a number of new representatives of new governments, including Mr. Elliot Richardson, Special Representative of President Carter and Shanti Bhushan, Law Minister of the new regime in India. Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea: the 1977 New York Session," American Journal of International Law, January 1978, Vol. 72, p. 52.

8. Edgar Gold, "The Third United Nations Conference on the Law of the Sea: the Sixth Session, New York, 1977," Maritime Studies Management, Vol. 5, 1978, p. 64.

9. Mr. Beesley also expressed support for a Brazilian proposal whereby at a given date no further contracts would be issued until a decision was reached as to whether the regime would continue unchanged or in some altered form. In making those remarks, Mr. Beesley indicated that he was not giving the official view of the Canadian government but rather offering his personal views. Statement by J.A. Beesley, Assistant Under Secretary of State for External Affairs and Legal Adviser, Deputy Head of Delegation and Representative, "New Articles 64 and 65: Review Clause," 7 June 1977.

10. This group developed a command method for making calculations in order to deal with the problem of contradictory sets of figures, and a method was also agreed upon for interpreting the various proposed formulas. In addition, these different formulae were analysed to determine the number of mine sites that would come into production over a twenty-year period. Explanatory memorandum by the President, p. 7.

11. D.G. Crosby, Committee I Working Group Chaired by Jens Evensen, 10 June 1977, p. 1. As nickel could not be extracted from manganese nodules without destroying the manganese, cobalt and copper present, the production of these minerals would also be limited.

12. Statement by J.A. Beesley, First Committee: Chairman's Working Group, 26 May 1977, p. . Canada used an actual growth rate figure of 4.5% in its calculations.

13. In both cases, Canada assumed an annual growth rate of 4.5%, a commencement date of 1985 and a cost per mine site of somewhere between $750 million and $1 billion. Beesley, 26 May 1977, pp. 1-2.

14. Ibid, pp. 1-2. Canada opposed a fixed rate based on an historical basis because it was afraid that such a figure would be artifically high. Canada illustrated that if the average was based on a 20-year historical period, the future would be about 6% for nickel. Therefore, Canada preferred a rolling average which could be obtained by providing for the use of actual figures from a previous 10-year period and adjusting this average every five years throughout the period of time that the production control formula was in effect.

15. Ibid, p. 3.

16. Confidential interview with government official.

17. Two other developed states which would qualify for a seat under this criterion were Australia and France. France would likely be given a seat however as a major contributor to the exploration and exploitation of the resources of the Area.

18. Confidential interview with government official.

19. Gold, p. 65.

20. This small expert group worked on the question of the "Special Appendix" on financial matters and prepared a discussion paper for the Evensen negotiating group. This paper was later revised following several meetings on the subject in the Evensen group. Explanatory Memorandum by the President, p. 7.

21. The other four outstanding questions to be negotiated on financial arrangements were: (i) whether payment to the Authority should be based on processing activities, as well as the mining operations themselves; (ii) whether an agreed basis can be found that will provide the Authority with effective powers to scrutinise costs and profits of contractors; (iii) with (i) and (ii) in mind, the consideration that should ultimately determine the level of payment to the Authority; and (iv) whether there is a need in the Convention for financial arrangements for activities other than those under contracts in the non-reserved area. Explanatory Memorandum by the President, p. 8.

22. Confidential interview with government official.

23. Gold, p. 66.

24. Or persons natural or juridical which possess the nationality of State parties or are effectively controlled by them or their nationals when sponsored by such States, or any group of foregoing. ICNT, Part XI, Article 151, para. 2 (ii), p. 82.

25. ICNT, Annex II, para. 5 (i), p. 158. Article 151, para. 2 (ii) also stipulated that State parties or Entities contribute the technological capability, financial and other resources necessary to enable the Authority to fulfill its function.

26. ICNT, Annex II, para. 5(j) (i), p. 158.

27. ICNT, Part XI, Article 153, para. 6, p. 85.

28. Explanatory Memorandum by the President, p. 10.

29. See ICNT, Part XI, Subsection 6, Finance, pp. 99-100.

30. ICNT, Part XI, Article 150, para. 1 (g) B.(i), p. 80.

31. ICNT, Part XI, Particle 150, part. 1(g) B.(iii), p. 80.

32. Of the remaining fourteen members, four were to be elected from among states which had made the greatest contributions to the exploration and exploitation of the resources of the Area, another four were to be elected from states which were major importers of the minerals to be exploited from the Area and finally six developing states representing a variety of special interests. ICNT, Part XI, Article 159, p. 90.

33. See ICNT, Part XI, Article 187, p. 104.

34. Speaking on 20 July 1977, the date of the release of the ICNT, Ambassador at-large Elliot Richardson stated that the text "substantially sets back prospects for agreement on an international regime for the conduct of seabed mining. Both the substance of the text on this issue and the lack of fair open processes in its final preparation require me to recommend that the United States undertake a most serious and searching review of both the substance and procedures of the conference." Oxman, p. 59.

35. Murphy-Breaux Bill and others. See Gold, p. 66.

36. Mr. Beesley, Press Briefing, Sixth Session, Third U.N. Conference on the Law of the Sea, New York, 20 July 1977, p. 4.

37. D.G. Crosby, Press Briefing, 20 July 1977, pp. 9-10. Mr. Beesley also stated that "with respect to the seabed beyond national jurisdiction...we think its a much better approach on production controls that's reflected in the text now...a much more fair and much more sensible approach...we're not entirely satisfied with the outcome...but at least we've got away from that simplistic approach." Press briefing, p. 51.

38. In a speech on this issue, L.L. Herman of the Department of External Affairs outlined five specific shortcomings: (1) the adjustment to the rate of increase every five years rather than a method whereby the projects could be smoothed out to provide for a more or less continuous curve; (2) an arbitrary date of 1 January 1980 for the commencement of the control period rather than actual commencement; (3) the lack of a phasing-in-

process for seabed production during the first seven years; (4) the lack of a definite termination date for the interim period; and (5) technical flaws with regard to the method of determining the base amount as well as the method used to calculate the increase in world demand for nickel. Herman, pp. 21-24.

39. Speaking on this matter, Mr. Beesley stated: "....we know that throughout the Conference it's always been the intention of the Group of 77 that we would be on the Council - but that kind of thing can never be guaranteed, especially, for example, if we had to be nominated, for example, by the Western European group...." Beesley, Press Briefing, p. 21.

40. Crosby, Press Briefing, pp. 18-19.

41. Members of this group included Canada, Brazil, India, Mexico, Norway, Peru, Tanzania, United Kingdom, United States and USSR.

42. This compromise text also included provisions related to marine scientific research and dispute settlement for fisheries.

43. Confidential interview with government official.

44. Ibid.

45. Explanatory memorandum by the President, p. 10.

46. The ICNT defined the EEZ "as an area beyond and adjacent to the territorial sea subject to the specific legal regime established in this part, under which the rights and jurisdictions of the coastal state and the rights and freedoms of other states are governed." ICNT, Part V, Article 55, p. 41.

47. Article 56 of the ICNT stipulated that in the EEZ the coastal state has (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds; (b) jurisdiction with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the preservation of the marine environment; (c) other rights and duties provided for in the present Convention. ICNT, Part V, Article 56, p. 41.

48. Explanatory Memorandum by the President, p. 10.

49. ICNT, Part V, Article 71, p. 49.

50. Confidential interview with government official.

51. The RSNT defined the continental shelf as the seabed and subsoil of the submarine areas that extend beyond the coastal state's territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles. RSNT, Part II, Article 64.

52. ICNT, Part VI, Article 82(2), p. 54. These figures were identical to those initially proposed by the United States.

53. ICNT, Part VI, Article 82(3), p. 54. These figures were identical to those initially proposed by the United States.

54. There was still some dispute at the sixth session as to the practicality of determining a limit by means of the thickness of sediments, a point which was raised by several delegations in the debate on a proposal by Colombia that the Secretariat prepare a study demonstrating the implications of the various formulae. See Second Committee, 50th Meeting, 23 June 1977, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VII, pp. 35-39.

55. Confidential interview with government official.

56. The LLGDS regarded the continental shelf issue and matter of access to the EEZ as part of one package.

57. ICNT, Part VI, Article 76, p. 16.

58. RSNT, Part II, Article 20(2).

59. Statement by Canadian Representative, Mr. L.H.J. Legault, in Committee II on Article 20(2), Part II, RSNT, 23 June 1977, pp. 1-2. Mr. Legault also outlined four additional problems. First, Article 20(2) imposed an absolute prohibition on the enactment of DCME standards even if these laws were intended to give effect to existing international rules and standards, thereby placing greater restrictions on the coastal state's right to protect its environmental integrity in the territorial sea than in the EEZ. Secondly, the prohibition extended to other "matters" regulated by accepted international rules unless coastal state regulations were specifically authorised by such rules, without defining these matters. Thirdly, this article deprived the coastal state of the ability to respond to threats to the marine environment not covered by international rules, even if it was acting in anticipation of the entry into force of rules already adopted by competent international organisations. Fourthly, the coastal state would have great difficulty exercising even the very restricted powers granted by the article because of the difficulty of agreeing on what is an "international standard" and when it is "generally accepted."

60. Ibid, p. 2.

61. Ibid, p. 2.

62. American amendment.

63. Legault, 23 June 1977, p. 5.

64. Those states which supported Canada's position included New Zealand, Indonesia, Philippines, Kenya and Nigeria.

65. Article 21(2) of Part II of the ICNT now read: "Such laws and regulations shall not apply to the DCME of foreign ships unless they are giving effect to generally accepted rules or standards." Thus, the new provision no longer prohibited coastal state standards with respect to "matters regulated by generally accepted international rules."

66. ICNT, Part III, Article 21(1)(f), p. 27.

67. ICNT, Part III, Article 42(1)(b), p. 35.

68. Confidential interview with government official.

69. Some delegations were concerned that reopening this issue would lead to renewed attempts to block the passage of military vessels through the territorial sea.

70. Confidential interview with government official.

71. Oxman, p. 79.

72. Article 62 of the RSNT stipulated that "delimitation of the EEZ between adjacent or opposite states shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account all of the relevant considerations." Article 71 applied the same rule with respect to the delimitation of the continental shelf between adjacent or opposite states. The Canadian delegation had no objections on the other hand to the provisions concerning the delimitation of the territorial sea.

73. The necessity of resolving these boundary questions in the Gulf of Maine/ Georges Bank, off the Strait of Juan de Fuca, Dixon Entrance and in the Beaufort Sea became apparent following the extension of jurisdiction by Canada and the United States in January and March 1977 respectively.

74. In his remarks on this issue Mr. de Mestral indicated that Canada did not have a strong national interest in either method and that Articles 62 and 71 "were unacceptable not so much for reasons of national interest but rather because they would promote conflicts instead of resolving them, because they would place negotiators, arbitrators and ajudicators in an impossible position, analogous to the position of a delegation without instructions." de Mestral also pointed out that Canada bordered three oceans and shared six maritime boundary areas and that it did not argue that equidistance was applicable in each case. de Mestral, 17 June 1977, pp.

75. Statement by Mr. A. de Mestral, Canadian Delegation, Second Committee: Working Group on Delimitation, 17 June 1977, p. 5. Mr. de Mestral's remarks were based on the views expressed by Mr. Beesley at the Annual Meeting of the American Society of International Law in San Fransisco in April 1977.

76. Confidential interview with government official.

77.

78. See Explanatory Memorandum by the President, p. 13.

79. Ibid, p. 11.

80. Confidential interview with government official.

81. Mr. Yankov, 31st Meeting of the General Committee, 20 June 1977, Third United Nations Conference on the Law of the Sea, Official Records, Vol. VII, p. 22. Of these fourteen proposals, ten were written and four were oral. The proposal by the Federal Republic of Germany, the Netherlands and the United States was similar to the proposal introduced by Australia at the previous session.

82. The ICNT (Article 247) stipulated that while coastal states in normal circumstances would grant their consent, such consent could be withheld if particular circumstances prevailed. In this new version, two additional persons were included for the withholding of consent, namely, if the information communicated about the nature and objectives of the project was inaccurate or if the research state or competent international organisation had outstanding obligations to the coastal state from a previous research project. A special provision (Article 253) was also made for implied consent in cases where the coastal state failed to communicate in a specified period of time why a research project could not proceed.

83.

84. Beesley, Press Briefing, 20 July 1977, p. 31.

85. Ibid, p. 33.

86. Ibid, p. 31.

87. Jane Caskey, Press Briefing, 20 July 1977, p. 45.

88. Beesley, Press Briefing, p. 50.

89. Ambassadore Marcel Cadieux for Canada and Ambassador Lloyd Cutler for the United States were appointed and were instructed to report to the governments in October 1977 on the principles of a settlement and to try to develop the substance of an ad referendum agreement for submission to the two governments, if possible, before the end of 1977. See Lorne Clark, General Coordinator, Officer of the Negotiator for Maritime Boundaries (Canada/US), Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, 27 April 1978, p. 9.

90. Ibid, p. 9.

91. External Affairs, Communique, Canada - U.S.A. Boundaries Negotiations, Opening Statement by Ambassador Marcel Cadiex, Canadian Negotiator for Maritime Boundaries, at the June 19, 1978 Meeting, p. 1.

92. Australia, Department of Foreign Affairs, Third United Nations Conference on the Law of the Sea, Seventh Session, Geneva, 28 March - 19 May 1978, Report of the Australian Delegation, (Canberra: 1978), p. 32.

93. Ibid, p. 32.

94. A major role for the President was opposed by the Latin American states as well as by other members of the coastal state group.

95. The idea of a veto was introduced by....Rejected by the Group of 77.

96. United States Delegation Report, Seventh Session of Third United Nations Conference on the Law of the Sea, March 28 - May 19, 1978, Unclassified, p. 10.

97. Report of the Australian Delegation, p. 33.

98.

99. Report of the Australian Delegation, p. 92.

100. Statement by Mr. Eric Wang, Director, Legal Operations Division, Department of External Affairs, Minutes of Proceeding and Evidence of the Standing Committee on External Affairs and National Defence, 27 April 1978, Issue No. 16, p. 19.

101. In the end, 51 states voted in favour of a resumed session while 46 states voted against and 12 abstained. Report of the Australian Delegation, p. 31.

102. The vote was 75 in favour, 18 opposed and 13 abstentions. Twenty-one states did not participate in the vote. Most of these were East and West European states which felt that the matter should be resolved by consensus, United States Delegation Report, p. 2.

103. United States Delegation Report, p. 3.

104. Ibid, pp. 7-8.

105. Wang, p.

106. Confidential interview with government spokesman.

107. The Group was initially disabled by a dispute concerning the organisation of its work. Some states wanted to reopen the discussion on the issues dealt with at Geneva and to comment on the compromise formula prepared by the Chairman, Mr. Njenga. The EEC in particular was eager to review the work done at Geneva as its members had serious reservations about the Njenga text. However, the Group of 77 was reluctant to discuss these issues, and it was ultimately agreed that the negotiations should proceed from where they had left off at Geneva, and that there would be a reexamination of the entire package once all the relevant issues had been discussed. Memorandum by the Chairman of Negotiating Group 1, Mr. Frank X. Njenga, (Kenya), on the work of the Group during the resumed session, NG1/4, 14 September 1978, p. 1.

108. Explanatory memorandum by the Chairman concerning document NG1/10/Rev.1, NG1/12, United Nations, Third Conference on the Law of the Sea, Reports of the Committees and Negotiating Groups on negotiations at the Seventh Session contained in a single document for the purposes of record and for the convenience of delegations, 19 May 1978, p.1/2.

109. Substantial changes were proposed by Njenga to Article 144 and para. 4 of Annex II. See Njenga, NG1/12, p. 5 and pp. 9-10.

110. The developed states were willing to accept an obligation to transfer technology to the Enterprise by contractors under fair and reasonable contract terms set out in the Convention. However, some developed states were less inclined to accept the transfer to technology to developing states interested in exploiting the seabed under the banking system in association with the Enterprise. Report of the Australian Delegation, pp. 12-13.

111. Article 153, Njenga, NG1/12, p. 9.

112. In addition, the American delegation had been changed by the new Carter administration and the presence of Elliot Richardson apparently eased Canadian-American relations and facilitated dialogue between the two delegations. Confidential interview with government spokesman. According to the United States' Delegation Report, "these bilateral discussions were aimed at creating a 'technical' framework for a production control formulation that would be easier to interpret and more workable than the ICNT's." United States Delegation Report, p. 13.

113. Confidential interview with government spokesman.

114. The production ceiling formula was worked out by the technical advisers to the delegations and was agreed upon by Elliot Richard and Dr. Crosby on 4 may 1978. The formula was ad referendum, however, because of the necessity of obtaining governmental approval. Although the new formula pushed the instructions of both delegations, Canada was able to obtain the approval of interested ministers.

115. The Canada/United States Proposal included specifically a new production ceiling formulation as well as a proposed production ceiling workout. See statement by D.G. Crosby, Representative of Canada, in Tabling Joint Canada/United States Production Ceiling Proposal in Negotiating Group 1 chaired by Mr. Frank Njenga, 9 May 1978.

116. Statement by Crosby, 9 May 1978, p. 2.

117. At its first meeting the Archer Group agreed that it should approach the technical problems under three main headings: (a) discussion of the technical problems involved in a production limitation formula; (b) examination of the issues involved in converting a quantity of nickel into a number of mine sites; (c) identification and clarification of any other technical problems that might arise in relation to any production limitation formulation. Negotiating Group 1, Subgroup of Technical Experts, Progress Reports, NG1/7, in United Nations, Third Conference on the Law of the Sea, Reports, p. 11.

118. In particular, Canada and the United States worked together to ensure that five of the ten-point package which they had formulated in their technical talks were included in the Group's report. These five points were: (1) The production ceiling formulation should be calculated by an extension of a trend line; (2) Data should be updated annually; (3) The data base for each update should be the latest 15-year period; (4) Growth should be calculated on an exponential, rather than a linear function; and (5) The calculations should be made on the basis of consumption data. The remaining five points were: (6) The interim period would begin 5 years prior to first planned commercial production, and would last 25 years; (7) The 100% build-up period would last 5 years; (8) The percentage split would apply to what portion of the growth segment accruing after the fifth year of the interim period; (9) The ceiling applicable to a plan of work would be that calculated for the year in which the contract is approved; and (10) Once a contract or plan of work is approved on the basis of a particular level of production, that level could not thereafter be cut back. United States Delegation Report, p. 14.

119. Many of the other industrialised states disapproved of any production limitation formula and the EEC in particular expressed its preference for

he limitation of seabed production by market forces. Meanwhile, other land-based producers which had been advised by Canada of the negotiations with the United States and were briefed on the Canadian-American formula, were not completely satisfied with the new formula.

120. Njenga, NG1/12, pp. 6-7. (Article 150 bis, Production policies)

121. Memorandum by Chairman of Negotiating Group 1, NG1/14, p. 2.

122. This proposal would allow sites reserved for the Enterprise under the banking system not developed within a specified period of time to be re-opened for mining applications.

123. Ibid, p. 2.

124. Confidential interview with government spokesman.

125. There were no major disagreements in the case of the first item and the relevant articles (Articles 170, 171, 172, 173, 174 and 175) were re-drafted to clarify the ICNT provisions. See Report of the Chairman of Negotiating Group 2 to the First Committee, NG2/9, United Nations, Third Conference on the Law of the Sea, Reports, pp. 37-38. While new articles (Articles 158 and 160 and paragraph 9 of Annex III) were drafted on the second item, the issue was somewhat problematic as the United States disagreed with the section....of the redraft which gave the Assembly more power to determine what income the Enterprise would transfer to the Authority. See United States Delegation Report, p. 16 and for exact details of these revisions, see NG2/9, pp. 39-40.

126. The United States favoured this approach because it avoided heavy front-end payments to the Authority and provided a way to share risks. The USSR preferred the royalty-only system because it was more compatible with its economic ideology. United States Delegation Report, pp. 17-18.

127. Specific proposals were submitted by Norway and the USSR.

128. United States Delegation Report, p. 18.

129. Canada was particularly concerned that the major mining companies would disguise their profits under this scheme and hence contribute little to the International Seabed Authority.

130. Para. 7 (quinquies) and (sexies), NG2/9, p. 42.

131. A compromise proposal was made by Mr. Evensen at New York on this matter but Koh made a number of changes to the amounts and figures recommended by the Norwegian representative. Reservations about these figures were expressed during the final days' debate by Japan, The Federal Republic of Germany, United States, France, Belgium, The Netherlands, Italy, and the United Kingdom. At New York, Koh also introduced a revised compromise proposal providing for an application fee and an annual fixed fee and included figures for these payments. At Geneva, revisions had been made to paragraph 7 of Annex II as related to the application fee and annual fixed fee. The annual fixed fee was opposed by the industrialised states on the grounds that it was superflous in light of the large investment which miners must make. The Group of 77 on the other hand liked this charge as it would give the Authority a regular source of income, especially in the early years. United States Delegation Report, p. 17.

132. Canadian officials recognised that if contractors were given a choice, most, including Canadian mining companies, would not select the production charge approach.

133. Report to the First Committee on the work of Negotiating Group 3, NG3/2, United Nations, Third Conference on the Law of the Sea, Reports, p. 57.

134. Some states proposed that there be an increase in the representation from one to at least two from each geographical region in order to increase the likelihood of Council membership for the small industrialised states from the Western European and Other States group. Some industrialised states also proposed an increase in the number of representatives from the category of states which had made the greater contribution to the exploration and exploitation of the resources of the area.

135. Confidential interview with government spokesman.

136. There was a minor addition to Article 159, para. 1(c) whereby two of the major exporters of the categories of minerals to be derived from the Area, had to be developing states "whose exports of such minerals have a substantial bearing on their economy." Engo, NG3/2, p. 58.

137. United States Delegation Report, p. 19.

138. Confidential interview with government spokesman.

139. United States Delegation Report, p. 19.

140. Report by the Chairman of Negotiating Group 3 (Mr. Paul Engo, United Republic of Cameroon) on the work of Negotiating Group 3, NG3/5, 14 September 1978.

141. Department of External Affairs, Legal Operations Division, Assessment by the Canadian delegation, Law of the Sea Conference, Resumed Seventh Session, New York, 21 August - 15 September 1978, 21 September 1978, p. 3.

142. Statement Declaring the Position of the Group of 77 on Unilateral Legislation Affecting the Resources of the Deep Seabed, Delivered by Ambassador Satya A. Nandan, Chairman, 15 September 1978, pp. 3 and 9.

143. Statement by Ambassador Elliot L. Richardson, Special Representative of the President for the Law of the Sea Conference to the Plenary Meeting, 15 September 1978, p. 1.

144. Intervention by Ambassador J. Alan Beesley, Canada, in General Committee, 28 August 1978, p. 2.

145. A consortium led by INCO had announced the success of technical tests during the last session, but it had also indicated that it was setting aside further development for the time being. Intervention by Beesley, p. 2.

146. Confidential interview with government spokesman.

147. The new text for Article 166 was as follows with underlined portions indicating revisions:
    2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landwards of the outer limits of its EEZ and for fishing provided for in subparagraph (b) of paragraph 3. The State of origin, may,

after consultations with other states referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its waters.

3.(a) Fisheries for anadromous stocks shall be conducted only in waters landwards of the outer limits of exclusive economic zones, expect in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fisheries, beyond the outer limits of the EEZ, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and needs of the State of origin in respect of these stocks. Report to the Plenary by Ambassador Aguilar (Venezuela), Chairman of the Second Committee, United Nations, Third Conference on the Law of the Sea, Reports, p. 69.

148. United States Delegation Report, p. 22.

149. With regard to preferential access, for which the explicit provision was proposed by coastal states, Nandan introduced a compromise proposal which brought out the need for special consideration for LLGDS without making specific reference to their participation on a preferential basis. A new text was also proposed by the Chairman concerning access of LLGDS to the EEZ when the coastal state had the capacity to fully harvest the stocks. This new text required coastal states to take appropriate measures to enable developing LLGDS to have adequate participation in any joint ventures or similar arrangements undertaken by them. The coastal states had argued that access by LLGDS when they had the capacity to harvest the entire total allowable catch would have a detrimental effect on their own fishing communities while the LLGDS expressed fears that coastal states could through joint ventures with the advanced fishing states, harvest the entire allowable catch and thus argued that their exclusion would be inequitable. Finally, the Chairman introduced the new phrase of "states with special characteristics" as a compromise between the LLGDS which favoured the term geographically disadvantaged states and the coastal states which supported the ICNT which did not include any term. Explanatory Memorandum on the Proposals (NG4/9/Rev.2) by the Chairman of Negotiating Group 4 - Ambassador Satya Nanadan (Fiji), NG4/10, United Nations, Third Conference on the Law of the Sea, Reports, p. 72, and suggestions by the Chairman of Negotiating Group 4, NG4/9/Rev.2, 18 May 1978, United Nations, Third Conference on the Law of the Sea, Reports, p. 76.

150. The coastal state group had also decided that it had reached the limit of it negotiating flexibility in regard to the work of Negotiating Group 4, and that the LLGDS should not expect any further concessions in this area as the price of agreement in Negotiating Group 6. Report of the Australian Delegation, p. 93.

151. Canadian officials believed that even if a LLGDS were to receive a favourable decision as a result of a dispute settlement, Canada could charge such high licence fees that it would be prohibitively expensive for the state to actually fish in the Canadian zone. Confidential interview with government spokesman.

152. Confidential interview with government spokesman.

153. The coastal states thus proposed that para. 4 of Article 296 be deleted while the LLGDS and distant-water fishing states introduced an amendment to strengthen para. 4 and bring more fishieres disputes within compulsory adjudication. Para. 4 of Article 296 of the ICNT read as follows: "No dispute relating to the interpretation or application of the provisions of the present Convention with regard to the living resources of the sea shall be brought before such court or tribunal unless the conditions specified in paragraph 1 have been fulfilled; provided that: (a) when it is alleged there has been a failure to discharge obligations arising under articles 61, 69 and 70 and in no case shall the exercise of a discretion in accordance with articles 61 and 62 be called in question." This particular provision was so unclear that an alternative paragraph had been circulated at the end of the sixth session. The effect of this revision was to provide for compulsory conciliation, rather than binding settlement, but only if the coastal state was endangering a species by over-exploitation. This was not regarded as satisfactory by the LLGDS and distant-water fishing states at Geneva. United States Delegation Report, p. 27.

154. Compulsory conciliation was required where there was not settlement and when it was alleged that: the coastal state had failed "to ensure through proper conservation and management measures that the maintenance of the living resources...is not seriously endangered"; the coastal state had arbitrarily refused to determine either the allowable catch or its own harvesting capacity for a particular species in which some fishing state was especially interested; or the coastal state had arbitrarily refused to allocate surplus to any state in accordance with Articles 62, 69 and 70. Results of the Work of the Negotiating Group on Item (5) of Doc. A/CONF.62/62, Report to the Plenary by the Chairman, Ambassador Constantin Stavropoulos, (Greece), United Nations, Third Law of the Sea Conference, Reports, pp. 104-05.

155. According to Ambassador Stavropoulos, the final formula received widespread and substantial support amounting to a "conditional consensus", that is, a consensus conditional upon an overall package deal. United Nations, Third Conference on the Law of the Sea, Reports, p. 100.

156. Report of the Australian Delegation, p. 93.

157. Report to the Plenary by Ambassador Constantin Stavropoulos, (Greece), Chairman of the Negotiating Group on the Item (5) of Document A/CONF.62/62, NG5/19, 14 September 1978, p. 1.

158. Report to the Plenary by Ambassador Aguilar (Venezuela), United Nations, Third Conference on the Law of the Sea, Reports, p. 67.

159. Ibid, p. 67.

160. Confidential interview with government spokesman.

161. Canadian negotiators attempted to persuade the USSR in New York that its revised proposal was too complicated. Confidential interview with government spokesman.

162. Report by the Chairman of Negotiating Group 7 on the Work of the Group, United Nations, Third Conference on the Law of the Sea, Reports, p. 107.

163. Report by the Chairman of Negotiating Group 7 on the work of the Group at its 17th-27th Meetings, NG7/24, 14 September 1978, pp. 1-2.

164. The ICNT contained an optional exception of such disputes from settlement under the convention provided that a regional or other binding procedure was accepted (ICNT, Part XV, Article 297, para. 1(a)), and a number of states regarded this provision as unacceptable.

165. This private group of 14 states had been formed in Geneva and under the chairmanship of Professor L.B. Sohn of the United States prepared a paper on possible approaches to a compromise solution. Report to the Plenary by the President on the Settlement of Disputes, United Nations, Third Conference on the Law of the Sea, Reports, p. 99.

166. Report by the Chairman of Negotiating Group 7, NG7/24, pp. 2-3.

167. Confidential interview with government spokesman.

168. Canada was anxious to have binding procedures in the case of equitable principles becasue of the subjective nature of this rule. In any event, Canada was not overly concerned because both the United States and France were willing to agree to third party settlement in the event that their boundaries with Canada could not be resolved on a bilateral basis. Confidential interview with government spokesman.

169. Report to the Plenary by the Chairman of the Third Committee, Ambassador A. Yankov, (Bulgaria), United Nations, Third Conference on the Law of the Sea, Reports, p. 81.

170. These ten states were Bahamas, Barbados, Iceland, Kenya, New Zealand, Philippines, Portugal, Spain, Somalia, and Trinidad and Tobago.

171. Report to the Plenary, Yankov, p. 91.

172. In his report, Yankov divided the amendment proposals into three categories: provisions on which a consensus was reached; provisions emerging from intensive negotiations resulting in compromise formulae with a substantial degree of support as to provide a reasonable prospect for a consensus, but on which no consensus was reached as there were still some objections and reservations; and informal proposals submitted on which, owing to lack of time or divided views, no compromise formulae emerged. Report to the Plenary, Yankov, p. 80.

173. Report by Mr. Jose Vallarta (Mexico), Chairman of the Informal Negotiations on Part XII (Protection and Preservation of the Marine Environment), Annex II to Report by the Chairman of the Third Committee, C.III/Rep.1, p. 25.

174. Report to the Plenary, Yankov, p. 83.

175. United States Delegation Report, p. 33.

176. This article already stipulated that coastal states had the right to inspect a vessel if a violation of international or national laws and regulations in the EEZ had resulted in significant pollution.

177. Report to the Plenary, Yankov, p. 92.

178. Report of the Australian Delegation, p. 76.

179. See Report by the Chairman of the Third Committee, Ambassador A. Yankov, (Bulgaria), C.3/Rep.1, 13 September 1978, pp. 2-3.

180. Report to the Plenary, Yankov, p. 83.

181. Report by Yankov

182. Initially, the American delegation was supported by only the Netherlands and the Federal Republic of Germany but by May its proposal was endorsed by the entire EEC as well as Australia, Israel, Mexico, and New Zealand. United States Delegation Report, pp. 34-5.

183. Argentina, Brazil, Pakistan and Uruguay in particular were vehemently opposed. United States Delegation Report, pp. 34-5.

184. Ibid, p. 7.

185. Informal Suggestion by the United States, Amendments to the texts on marine scientific research and the transfer of technology, Report by the Chairman of the Third Committee, C.3/Rep.1, pp. 12-14. In notes to its amendments, the American delegation stated that the amendments were limited in their scope to improving and clarifying the relevant provisions of the ICNT without disturbing the overall jurisdictional framework and balance reflected in the text.

186. Report by the Chairman of the Third Committee, C.3/Rep.1, p.4. Ambassador Yankov indicated that consideration of the American suggestions were inconclusive and that the general view was that they needed further consideration.

187. Assessment of the Canadian Delegation, p. 3.