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CANADA AND THE LAW OF THE SEA

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Introduction

Recent discussion of the setting and process of Canadian foreign policy has focused on the relative utility of organizing devices. Whether they called them "paradigms," "theoretical frameworks," "models," "theories," or something else altogether, analysts of Canadian foreign policy during the past decade or so have made increasing use of such devices. This essay will be no exception to the trend, for it is my view that the work of political science proceeds poorly, if indeed it proceeds at all, in the absence of such useful constructs. In saying this, I am of course mindful that however useful, all such constructs are necessarily flawed, for the good reason that, as simplifying mechanisms employing unavoidably imprecise variables, they leave out -- and must leave out -- much of the reality they seek to elucidate. Let me then, at the outset, plead guilty to abusing reality in my treatment of Canada and the Law of the Sea in the post-World War II decades; for not only will I arbitrarily simplify objective reality, but in doing so I will be adopting one of the "simplest" of the simplifying concepts available to students of foreign policy, the idea of the "national interest."[1]

In what follows, I will also be implicitly utilizing the handy "black box" known as statist theory to attempt to show how and why Canada has fairly consistently been able to achieve foreign-policy gains in the oceans issue-area during the forty or so years since the end of the Second World War.[2] In addition, my analysis leads me to employ yet another helpful conceptual ordering device, that of Canada as a "principal power," for I shall attempt to show that insofar as oceans politics and Law of the Sea matters are concerned, images of Canada as either a peripheral or a middle power do not capture the

true significance of Canadian geographic, political, and economic interests in the oceans, nor do they come close to accounting for the degree of skill with which those various interests have been articulated and defended by the Canadian "state."[3] Though it may not be a leading actor in other issue-areas, it is clear that in the context of the Law of the Sea, Canada has been for much of the postwar period a major player with major stakes and assets.

At the most general level, Canadian foreign policy on the law of the sea can be characterized by two related tendencies during the post-World War II era: expansionism, and success. Since 1945, but especially since the 1960s, Canadian interests in ocean issues have increasingly been conceived by policy makers in Ottawa as being preeminently those of a coastal state. This new conception marked a significant change from the pre-World War II era, when Canada consistently interpreted its interests to be those of a maritime state, and in this regard shared a common self-image with the major maritime powers, Great Britain and the United States. From the new conception of national interest has emerged a policy, namely to extend to the fullest degree consonant with international law -- even if that meant, in some instances, creating international law -- Canada's jurisdiction over the living and non-living resources of the continental shelf and the superjacent waters.[4] Additionally, Canadian ocean interests have been concerned with the furtherance of a non-material value, sovereignty, above all in the Arctic. In large measure, Canadian interests so conceived have been a function of geography: with frontage on three oceans and a margin area second only to that of the Soviet Union, and with neither the military/strategic nor the merchant-shipping interests of the maritime states, Canada it seems could scarcely have avoided being other than what it has become, a coastal state par excellence.[5]

But to argue that interests are a "function of geography" is to run the risk of succumbing to the same kind of geographical determinism that plagued the study of "geopolitics" in the late nineteenth and early twentieth centuries.[6] Clearly, Canada could not have become such a strong proponent of coastal-states' rights if it did not have the physical attributes of a coastal state; but just as clearly, it requires more than geographical factors to explain satisfactorily the evolution of Canadian ocean policy in recent decades. Both Canadian expansionism and Canadian success in law-of-the-sea issues stem from at least two non-geographical exogenous considerations: technology, and changes in the international political system. Technology has had a profound impact on Canadian ocean interests. Indeed, technology has forced the articulation of previously inchoate interests in such ocean matters as protection of the environment, management of the fisheries, and exploitation of seabed resources. And changes in the international political system have constituted the predisposing factor underlying many Canadian ocean initiatives since the 1960s, for in the past two decades Canada has been able to attain international legitimacy for many of its coastal-state interests as a result of a shifting balance of power in multilateral fora away from the maritime states and toward the coastal states.[7]

Since 1945, Canada has had several interests related to the sea, but for the purposes of this chapter only the most important of those interests will be examined. They can be grouped into two sets of values: material and non-material values. In the category of material values are: 1) living resources of the continental shelf; 2) non-living resources of the continental shelf; and 3) non-living resources of the deep seabed. Put differently, material values comprise fisheries, offshore oil and gas, and deep-seabed minerals. The category

of non-material values is practically synonymous with the issue of Arctic sovereignty, but it also touches on the preservation of the marine environment.

This chapter will consist in a review of the manner in which Canada's "objective" (or, geographical) situation with regard to marine interests, under the stimulus of technological developments affecting certain important values, and abetted by a profound shift in the international organizational balance of power in favour of Canada and other coastal states, has led in the postwar decades to the development of an expansionist Canadian foreign policy in ocean issues -- a policy that by the 1980s had succeeded in obtaining international recognition and therefore approval of most (but not all) of the country's major ocean interests. For the sake of imposing some sort of logical (albeit artificial) order to this review, chronological considerations will determine the sequence in which Canada's ocean interests are presented, beginning with the question of the fisheries.

Living Resources of the Continental Shelf

The fisheries represent the longest-standing Canadian ocean interest, dating back some 150 years prior to Canada's becoming an independent state.[8] Until the 1960s, fisheries issues had traditionally been bilateral ones involving the United States and Canada (and including, on Canada's behalf, Great Britain during the eighteenth and nineteenth centuries), and usually these centred on boundary or sovereignty issues, not on issues of actual resource depletion.[9] But starting in the initial post-World War II decade, and accelerating during the 1960s, there developed what for Canada became a very worrisome increase in the level of exploitation of East Coast stocks, particularly on the part of the technologically most advanced of the distant-water fishing nations. Among these, the Soviet Union was especially active off the East Coast: in the Georges

Bank, one of the world's richest fishing grounds, the Soviet Union was harvesting some 40 percent of the total catch by the early 1970s. In comparison, both the United States and Canada, who by the end of that decade would both claim jurisdiction over the entire Bank (as a result of their extension of fisheries jurisdiction to 200 miles), were taking only 11 and 9 percent of the catch respectively as recently as 1973.[10]

From the Canadian perspective, there was on the East Coast a definite problem of maldistribution of resources. But there was another source of concern: it was feared that the level of exploitation might soon render some species of fish in dangerously short supply. In the long-term, possible commercial extinction loomed;[11] while in the short-term, declining harvests were having a serious effect on the economy of Atlantic Canada, a region in which fishing has a great economic impact. Beginning in 1968, total catch weights diminished in Atlantic Canada, primarily because of pressure put on stocks by the distant-water fishing fleets. Within a few years, catch weights had declined to levels that had not been seen since the early 1950s.[12] Although fishing accounts for only about one percent of total employment in Canada, the majority of the 80,000 or so jobs in the fishing industry are located in the Atlantic provinces, where their economic significance is greatly magnified by the chronically weak economy of the region. As André-Louis Sanguin explains, there can be no question of the economic threat that foreign fishing posed to East Coast communities: "La logique de la position canadienne dans l'Atlantique du Nord-Ouest tient au fait que, pour 250,000 personnes des Maritimes, il n'y a pas d'autres sources de revenus que la pêche et qu'à Terre-Neuve, entre autres, 15% de la main-d'oeuvre travaille directement à la pêche et à son traitement."[13]

The "logic" of the Canadian position was the logic of protectionism and expansionism and at three law of the sea conferences since 1958, the Canadian delegations have sought to extend coastal-state power.[14] As explained by Barbara Johnson, Canada's "policy can be characterized as expansionist throughout the period. This expansionism has not been directed against the United States. Instead, both countries have sought to exclude foreign distant-water fishing yet to accommodate each other."[15] To be sure, what Canadian diplomats set out to achieve in 1958 was not at all what they were hoping to receive by 1977: in the earlier years, Canada was desirous of extending Canadian control over offshore fisheries in a rather circumscribed fashion, by extending the territorial sea to six miles, and adding an additional six-mile fishing zone beyond that;[16] in the latter year, Canada implemented legislation extending its exclusive control over offshore fisheries resources out to 200 nautical miles.

What was responsible for the changing order of magnitude of Canadian protectionist desires between 1958 and 1977? In the first place, as noted above, technology forced a reconsideration of the optimum limits that an effective fishing zone should have. In 1958 it was still not possible to discern future trends in the East Coast fishery; since there appeared to be ample stocks and relatively little danger of depletion, a narrower fishing zone was thought to be sufficient for the purposes of protection. By 1977, however, the situation had changed dramatically. Not only was the spectre of depleting resources in existence, but so too was the predisposing element for legitimizing extended coastal-state jurisdiction. Thus the second reason why Canada would go for a 200-mile fishing zone by the mid-1970s: it needed one, and it seemed quite apparent that, due to shifting international organizational realities, it could

successfully claim one. Although it is true that Canada's claim to a 200-mile fishing zone was made unilaterally, it is nonetheless true that the prevailing trend in international law was for increased coastal-state control over offshore resources; hence the question of legitimacy that might otherwise attend a unilateral initiative of such nature was already answered by the time of implementation. Canada, in effect, could do what it would do, in the eyes of the international community.[17]

The winning of jurisdiction over fisheries to a distance of 200 miles was undoubtedly a victory for Canadian foreign policy, but it was not a total victory. Canada sought, but did not get in UNCLOS III, exclusive management rights and preferential harvesting rights for coastal species beyond 200 miles, as well as exclusive rights for both management and harvesting of anadramous species (salmon) for the state of origin, even if the fish were taken on the open ocean. In addition, the implementation of the fishing zone, coupled with phase-out or phase-down agreements with distant-water fishing nations, and subsequently new bilateral treaties with some states, did lead to the reduction of tension between Canada and many of those states, but ironically at the cost of an increase in short-term tension from an unexpected quarter.[18] Up to 1977, both Canadian and American fishermen were more concerned with problems posed by distant-water fleets than by competition from each other. But once the former problem was mitigated by the introduction of the fishing zones, new problems arose of a bilateral nature: how to determine where one country's fishing zone ended and the other's began; and how to apportion the catch between Canadians and Americans in areas, like the Georges Bank, where each country had been fishing for centuries.

Canadian-American friction over the fisheries since 1977 could serve to

illustrate F.S. Northedge's hypothesis that there is a "law of conservation of tension" in international relations (analogous to the law of the conservation of energy in the physical world) whereby "the reduction of tension in one area of the international system not only fails to prevent tension arising in another area, but may quite positively aggravate and encourage it."[19] Canadian and American fishermen, content to imagine they shared a common interest so long as together they were taking only 20 percent of the total catch (as they were in the early 1970s) from "their" Georges Bank, suddenly awoke to the realization after 1977 that now they were each other's biggest problem, not the distant-water fishing fleets.

Space permits only a cursory treatment of the current fisheries disputes between Canada and the United States.[20] The most important symbolic component of the dispute, of course, has been the failure of the United States to move the ratification of the East Coast Fisheries Agreement, calling for adjudication of the maritime boundary and cooperative management of the fisheries.[21] But there are other fishing disputes besides those on the East Coast; and on the Pacific Coast questions of a different sort arose. There the major issue was not reciprocal access to a traditional fishing ground but rather a resolution of the salmon-interception problem. An important secondary issue was the Canadian-American difference of opinion on the question of jurisdiction over highly migratory species like the albacore tuna: Canada claimed that the fishing zone confers jurisdiction over tuna; the United States disagreed. A short-lived "tuna war" was brought to a halt by a treaty giving each country's tuna fishermen access to fisheries of the other, as well as to specified ports in each country, where the landing of catches may occur.[22] This treaty aside, the dominant tendency on the West Coast seems to be, as Erik Wang has noted, for

a "fence-building mentality" to take hold, resulting in a phasing out of reciprocal fishing rights for important stocks like halibut and ground-fish.[23]

The East Coast Fishery Resources Agreement may have been withdrawn, but a companion Boundary Settlement Treaty did result in the boundary dispute in the Gulf of Maine being submitted to third-party arbitration. The refusal of the United States to ratify the fisheries agreement was widely seen in Canada as a betrayal of a commitment that, withal, was held to be fair to both sides. In the absence, however, of a resolution of the maritime boundary dispute, it was impossible really to determine the distribution of gain associated with the fishery-resources treaty, for without clear agreement on the boundary, the question of trade-off became metaphysical: How can one "give something up" if one is not sure that one "owns" it to begin with? Suffice it to say in this context that while regional interests in the United States claimed to have gotten a "raw deal" from the Fishery Resources Agreement, there are at least a few observers in Canada who feel that Canada would have been the loser had the American Senate ratified.[24]

The two countries did agree, in 1981, to send the question of the boundary between them in the Gulf of Maine to the International Court of Justice. In October 1984 a five-judge panel imposed, nearly two years after the submission of the case, a boundary settlement that was binding on each country. The settlement reflected the panel's view that neither the US claim nor the Canadian one adequately captured the most logical dividing line between the two states' conflicting economic zones. Still to be arranged, subsequent to the ICJ decision, was the negotiation of bilateral fisheries quotas.

In summary, Canada can be seen to have pursued with much (if not total) success an expansionary fisheries policy during the post-World War II decades.

The result has been that by the early 1980s Canada had beaten back the economic challenge of distant-water fishing, to find itself once again confronting its historical fisheries adversary, the United States. Whether Canadian interests are as well-served in the bilateral arena as they have been in the multilateral one remains unclear. But what does seem clear is that the success that was achieved in the latter arena is primarily owing not to any particular policy orientation of post-1968 Canadian governments, but rather to Canada's good fortune in having articulated a coastal-state conception of ocean interests at precisely the moment when international trends in many issue-areas were moving against maritime states. In the words of Barbara Johnson, "while the Trudeau government and its so-called nationalist foreign policy encouraged an aggressive law of the sea position, that policy was not initiated by the central political leadership. Canadian fishery policy during the last decade is the outcome of a dramatic shift in the international environment in favour of coastal-state power and authority over the oceans."[25]

Non-Living Resources of the Continental Shelf

The fisheries may have represented the oldest, but they were far from being the only, Canadian ocean interest in the post-World War II years. The non-living resources of the continental shelf constitute the second of the material values that Canadian ocean policy has sought to advance in recent years; and just as the emerging coastal-state power bloc benefited Canadian fishery interests, so too did this emergence benefit Canadian interests in the mineral (essentially hydrocarbon) resources of the continental shelf. But the predisposing element of favourable international political environment constituted only one part of the development of Canadian continental-shelf policy: it was a necessary, but not a sufficient condition. Technology was once again, as in the case of the fisheries,

the motivating factor in Canadian policy making.

The post-1945 years have witnessed an unprecedented, sustained, and ultimately triumphant challenge to the centuries-old régime that had previously governed the oceans and their exploitation. From the late seventeenth century until fairly recent, the Grotian doctrine of Mare Liberum constituted most of what was important about the law of the sea: narrow territorial seas of roughly three miles, beyond which lay the high seas open to the use of all. The Grotian concept rested upon the assumption that the seas were res communis, waters belonging to everyone, hence not to be appropriated by anyone. The opposing theoretical conception was of the oceans as res nullius, belonging to no one, hence subject to appropriation.[26] The striking feature of the past three and a half decades is the intensity with which the notion of res communis has been challenged by the competing idea of res nullius.

One of the ironies of the challenge is that it was the premier maritime power of the postwar period, the United States, that launched the scramble for the resources of the continental shelf. There had been, to be sure, pressure building (especially from Latin American states) before 1945 to extend jurisdiction over living resources substantially past the three-mile limit; but it was not until the Truman Proclamation of 1945 that any important claim was made to the mineral resources of the continental shelf beyond the territorial sea.[27] The Proclamation has been called "a landmark in seabed politics, ...a conceptual breakthrough,"[28] and rightly so, for it was not only the first claim made by a major maritime power to continental-shelf jurisdiction, but it also maintained that propinquity and not historical usage would determine a state's right to claim jurisdiction over the offshore seabed.

Canada was not a participant in the early res-nullius challenge, although it

has been a major beneficiary of that challenge. As Barry Buzan has noted, "not until the late 1960s did Canada in any sense become a leader on this issue..."[29] But when it did begin to take a serious interest in the shelf, Canada did so for reasons identical to those of the United States: to gain exclusive access to the offshore oil lying outside the territorial sea. Technology in the case of the fisheries had presented a challenge of a negative sense, and had awakened in Canada a protectionist response; in the case of offshore oil, technology had created not so much a challenge as an opportunity, and had awakened in Canada an acquisitive response that some observers have considered highly inconsistent with the Trudeau government's professed commitment to a more equitable international distribution of wealth.[30]

The opportunity offered by technology to drill ever deeper in offshore areas coincided with the need for new domestic sources of oil to arrest the trend toward ever-growing oil imports into eastern Canada; this was especially evident by the end of the 1970s.[31] The combination of technology and need made the continental shelf off the East Coast (and also in the Arctic) seem for a time an economically attractive, indeed necessary, adjunct to the Canadian landmass.[32] Accordingly, Canadian policy has in recent years been extremely expansionist, with the ultimate goal being to push Canadian jurisdiction over offshore mineral resources far out beyond the 200-mile limit of the emerging Exclusive Economic Zone.[33] This is considered necessary due to the great width of the continental shelf off the East Coast, where it extends to 265 miles. It is not just the shelf that Canada is claiming, but the entire margin, which off the southeastern coast of Newfoundland reaches some 650 miles into the Atlantic.[34] Indeed, by the mid-1970s, Ottawa had already issue oil and gas exploration permits covering more than a million square miles, in some places as far as 400

miles offshore.[35]

The issuance of permits itself constitutes one basis of the Canadian claim to the entire margin, but there are other bases to that claim with more of an international cachet. The most important of these is the 1958 Geneva Convention on the Continental Shelf, which established coastal-state ownership of the shelf resources either to a depth of 200 metres or, beyond that depth, to the limit of resource exploitability -- a limit that has advanced pari passu with the development of deep-water drilling technology. In addition, the Canadian claim rests on a 1969 World Court judgement involving a North Sea boundary dispute, in which the Court indicated that natural prolongation of territory must be given weight in support of a state's claim to the shelf. Canada also takes guidance from the way other states pursue maximalist claims over the shelf. The UN Convention on the Law of the Sea has attempted to resolve the problem of delimiting the continental shelf by merging the shelf and the margin in the following definition: "The continental shelf of a coastal state comprises the seabed and subsoil areas that extend beyond its 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 from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin doe not extend up to that distance."[36] Of course, there still remains a delimitation problem, only this time it is the edge of the margin that must be determined (that is, for states like Canada, with shelves extending past 200 miles).

As with fisheries, so it has been with the non-living resources of the shelf (including the margin): Canada has achieved most (but not all) of what it has sought in the UN law-of-the-sea process. Thus, if a comprehensive treaty does

get ratified by the necessary sixty states, Canada will be accorded sovereign rights to the mineral resources up to the edge of the margin, subject, however, to an obligation to share resources that are exploited beyond 200 miles. The maximum sharing obligation ultimately will be 7 percent of the value or volume (if sharing is in kind) of the yearly production of the resource.[37] In the unlikely event that the treaty fails to obtain necessary ratification, Canada would presumably have no sharing obligation, and could go on exploiting the offshore resources according to the "exploitability" criterion of the 1958 Convention.[38] In any case, Canada conceivably stands to benefit immensely (someday) from its offshore oil wealth, and since most of the oil and gas production will be coming from parts of the shelf not subject to the sharing provision, there is little likelihood of the sharing obligation becoming a drain on either federal or provincial revenues.

The Issue of Arctic Waters

The third major, and in many ways the most important, ocean question to occupy Canadians in the post-war years has been the question of the status of Canadian claims to jurisdiction over Arctic waters. Primarily, this was and is a question of sovereignty, but it has also involved serious environmental concerns. Indeed, it was environmental concerns touched off by technological developments in the oil industry that reawakened Canadian interest in the somnolent Arctic-sovereignty issue during the late 1960s. Canada had for years assumed that the islands and the waters of the Arctic archipelago belonged to it, but the assumption was characterized by a certain degree of "casualness," which was born of a comforting knowledge that no other state was disputing Canadian northern claims.[39]

The first, and, prior to the summer of 1985, only, major challenge to

Canadian sovereignty in the Arctic came in 1969, when Humble Oil Company of the United States, desirous of finding a commercially viable means of bringing Alaskan oil to the eastern United States, sent the tanker Manhattan through the Northwest Passage, a strait that the United States considers to be an international passage, but which Canada argues is internal waters.[40] Here was exposed the core of the Arctic sovereignty problem: no one, least of all the United States, doubted that Canada was sovereign over the islands of the archipelago; the real question was whether Canada could claim sovereignty over the waters of the Arctic. Canada has long argued it could, first on the basis of the "sector theory" (which in effect would give Canada a pie-shaped slice of the area enclosed between 60 degrees west longitude to the east, and 141 degrees west longitude to the west), and more recently on the assumption that a coastal "archipelagic state" has the right to establish internal waters by drawing baselines (or closing lines) between the mainland and the various islands of the archipelago, thus effectively fencing off the entire chain of islands. Alternatively, Canada has advanced the claim that the Arctic constitutes internal Canadian waters because it consists of "historic waters," a category marked by not a little ambiguity.[41]

Whatever the basis of the Canadian claim to the Arctic (including, it goes without saying, the Northwest Passage) as internal waters, the United States has consistently refused to recognize it. In the early 1960s, for instance, the Pearson government attempted to press the archipelagic case for enclosing the Arctic waters, but Washington, fearful of Canada's setting a precedent for more bona fide archipelagic states like Indonesia and the Philippines, vigorously objected, forcing Ottawa to withdraw its claim.[42] American concern over the Canadian Arctic-sovereignty claim focused, by the end of the 1960s, on two

issues: the possible movement of Alaskan oil to East Coast markets via the Northwest Passage; and the more general problem of obstruction of navigation in international straits. Despite the construction of the Trans-Alaska Pipeline, which effectively laid to rest plans to move North Slope oil east through Arctic waters, the United States (and certain other maritime states) continued to view with extreme displeasure any Canadian attempt to make of the Arctic internal or even territorial waters. Were the Arctic recognized as Canadian internal waters by the international community, then of course foreign shipping, both military and commercial, would have no more "right" to be there than to be in any other Canadian internal waters, such as the Minas Basin. In internal waters, sovereignty is complete, and as E. J. Dosman has noted, "complete sovereignty in internal waters means that the national will can be imposed."[43] But even though Canada has until recently restricted its claim only to the incomplete sovereign status known as territorial waters for the Northwest Passage (and other offshore areas in the Arctic),[44] the United States and some other maritime powers have continued to raise objections; for as international law now stands, "innocent passage" through territorial seas does not include submerged passage of submarines or any right of overflight.[45]

Since it is quite apparent that the coastal-state momentum in favour of a twelve-mile territorial sea is unlikely to be reversed, it follows that the entire Northwest Passage will be recognized (even by the United States) as Canadian territorial waters, with or without a comprehensive law of the sea treaty. But should the treaty be ratified, and should all or most of its provisions be recognized as binding on all states, then it is likely the maritime powers will benefit from the creation of a new category to resolve the "innocent passage" dilemma. This new category, "transit passage," will allow vessels transiting

international straits to do what they could do under "innocent passage," but it will also apply to submerged submarines as well as airplanes.[46] The status of the Canadian claim to the Arctic waters, thus, has become linked to the issue of passage through international straits.[47] The point is important, for if the Northwest Passage is considered an international strait (a matter on which there is no agreement at all between Canada and the maritime powers), then there can be no suspension of either the traditional right of innocent passage or its new jurisdictional cousin, transit passage. In other words, while territorial-waters status allows a coastal state to suspend, with cause, innocent passage, there is no such allowance for territorial waters that are also classified as international straits.[48]

Recently, Ottawa has taken some dramatic steps to reiterate and defend the Canadian claim to the Northwest Passage and other straits in the Arctic archipelago as internal waters. In response to the transit of a U.S. icebreaker, the Polar Sea, in the summer of 1985, made without permission being sought from Canada, the Mulroney government has proposed the Canadian Laws Offshore Application Act. This proposed legislation was tabled on 11 April 1986, at which time Justice Minister John Crosbie announced that "we are going to include in the boundaries of the Northwest Territories the Arctic archipelago and the islands and all the waters in between those islands...because of the historical use of those areas and waters and the ice, and what lives under and on the ice."[49]

It can be argued that, ceteris paribus, the prospect of the Northwest Passage being considered an international strait would hinder any Canadian efforts to control pollution in the Arctic. As it turns out, however, all things are not equal in this matter, for two reasons. The first is that Canada has

consistently and quite strenuously rejected the proposition that the Northwest Passage is an international strait. The status of the Northwest Passage remains at this writing ambiguous, with the Canadian position being that an international strait has to have been used historically for international navigation, something that Ottawa maintains has never been the case in the Arctic. Thus, until it can be determined -- if, indeed, it can be -- whether the Northwest Passage is or is not an international passage, the question of suspension of transit rights remains open. The second reason why Canadian anti-pollution efforts in the Arctic are unlikely to be challenged is that the unilateral measures adopted in the 1970 Arctic Waters Pollution Prevention Act have been given international approval in the UN Convention on the Law of the Sea. This is the famous "Arctic exception," an article giving coastal states certain rights in respect of pollution prevention in "ice-covered areas."[50]

The significance of this international sanctioning of Canada's unprecedented creation of an Arctic pollution control zone is that, for all practical purposes, Canada's limited sovereignty over the Arctic has been accepted by the international community. To be sure, the kind of complete sovereignty associated with internal-waters status is not now, and may never be, recognized by other states. But Canada's Arctic sovereignty concerns have undeniably been conmingled with concerns over the Arctic environment; and to the extent that these latter concerns have resulted in the passage of strict anti-pollution measures, Canada can be said to have exercised a limited, or "functional," form of sovereignty in a successful manner.[51] The primary national interest in the Arctic, to repeat, was jurisdictional;[52] it was sovereignty, not the environment, that motivated Canadian policy makers.[53] However, inasmuch as the effective establishment of sovereign status for the area was dependent upon international

recognition of such status, for the moment a most unlikely outcome, Canada had no choice but to settle for a second-best, but still very good, solution to its Arctic problem.[54]

That solution was to take international law into Canada's own hands and declare a 100-mile pollution control zone in Arctic waters north of 60 degrees north latitude.[55] The Arctic Waters Pollution Prevention Act and accompanying measures (such as the government's announcement that it would not accept the compulsory jurisdiction of the International Court of Justice in this matter) constituted, as Peter Dobell has noted, a "unilateral action in breach of established international law."[56] It also constituted something of a political "master-stroke,"[57] for it allowed the Trudeau government to defend an important national interest in the Arctic -- an interest for which the Canadian public had been vociferously demanding protection -- while at the same time it avoided the kind of confrontation with the maritime powers that a Canadian claim to complete rather than functional sovereignty in the Arctic would have occasioned. To be sure, the maritime powers (the United States in particular) objected to the imposition of the Arctic pollution control zone; but equally importantly, the maritime powers have, over the past decade, become reconciled to the idea that the zone is to be a permanent feature of the Arctic ocean régime, whether as a part of conventional international law with the ratification of the Law of the Sea Treaty, or as a part of customary international law without such ratification.

By the middle of the 1970s, the job of obtaining international recognition for Canada's Arctic pollution control initiatives had more or less been accomplished; thereafter, the Canadian government began to de-emphasize the environment as a priority law-of-the-sea concern. Having been an early

advocate of increased coastal-state control over marine pollution, Canada was prepared to bow to the persistent maritime opposition that this particular issue awakened. On the environment issue, Canada after 1976 adopted what Barry Buzan has called a "spirit of reluctant realism," which has seen it acquiesce in "a compromise marine environment régime much weaker than that which it had originally advocated, though stronger than what had existed previously."[58] But if on the related issues of Arctic waters and the marine environment Canada did not achieve the kind of near-total success that it obtained in the fisheries and the hydrocarbon resources of the continental shelf, it is still the case that it did achieve some important goals. Certainly, the goal of obtaining international recognition of the Arctic waters as internal Canadian waters has not yet been met; but it must be reiterated that Canada has solidified its claim to functional (or limited) sovereignty north of 60 with the international acceptance of the AWPPA and attendant measures. It may be that functional sovereignty will ultimately prove to have been a necessary stage in the gaining of complete sovereignty.[59] Whether it does or not, it remains that the country has done rather well for itself on yet another law of the sea issue.

Non-Living Resources of the Deep Seabed

The final major Canadian ocean interest under examination here was the most recent priority concern of Canadian delegations at UNCLOS III, and it is also the law-of-the-sea issue about which it is most difficult to predict an ultimately successful outcome for Canadian interests. Canadian interest in the issue of deep-seabed mining is twofold: on the one hand, Canada is concerned that its domestic nickel mining industry, already feeling the effects of stern competition from foreign mining operations, might suffer real damage if seabed nodule mining becomes economically feasible between now and the end of this

century;[60] on the other hand, Canada has a vested interest in a successful conclusion of the UN law-of-the-sea process, not specifically because of the seabed-mining issue, but because of its successes in other areas of the law of the sea.[61] Canada, in other words, wants at least a modicum of protection for its land-based nickel producers from a comprehensive law of the sea treaty; and it also wants to make sure that conflict over seabed mining does not put in jeopardy that comprehensive treaty, which it is held offers Canada a wide range of benefits.

The main problem with the seabed-mining provisions of the treaty was that the United States and the developing countries were unable to come to an agreement over the method by which seabed minerals would be exploited, as well as over the division of the revenues from production. As things now stand, an International Seabed Authority will be created to conduct seabed mining. This UN agency will have as its operating entity something called "The Enterprise." The crux of the dispute between the United States (and some other advanced industrialized states) and the developing countries (the Group of 77) concerns the role of private mining corporations in the new régime: the United States wants enlarged opportunities for its mining companies to carry on business in those parts of the seabed not subject to any national jurisdiction, while the developing countries, in keeping with the premise that those parts of the seabed are the "common heritage of mankind," want the greatest possible involvement of The Enterprise.[62] No other single issue in the UN law-of-the-sea process has generated as much debate as seabed mining, which as Victor Prescott has observed, became a contest between "two broad philosophies."[63]

But the debate was not solely "philosophical"; it also rested on a certain conception of material interest. This is particularly the case when one examines

the position of the United States, the biggest stumbling block to quick passage of a comprehensive treaty, and the most conspicuous non-signatory. The seabed-mining provisions in the convention were seen by many in the United States to be antithetical to many of the ideological tenets of the Reagan administration. As one critic of the proposed seabed-mining régime tellingly put it, "a powerful new international cartel, operated under the United Nations and dominated by the world's socialist nations, would control the ocean bottom, demanding that private mining companies share their bounty.... This treaty as it stands is an ideological surrender to third-world demands for a 'new world economic order'."[64] The disposition to link up the seabed-mining issue with the more general problem of a new international economic order indeed magnified, for many in the United States, the ideological stakes of the UNCLOS III process, but it would be a mistake to attribute American opposition to the convention solely to ideology.

Underlying American concerns -- and of direct relevance to Canada -- was the fear that the United States position as a major importer of strategic minerals would become tenuous in the coming decades, primarily for geopolitical reasons. The United States during the early 1980s was worried that its increasing dependence upon certain mineral imports would make the country vulnerable to supply disruptions induced either by price or political considerations. Concern for raw-material supplies has been a recurring worry that has, at various times in this century, preoccupied American policy makers.[65] The opinion of many at the start of this decade was that the coming twenty years would witness an acceleration in America's dependence upon mineral imports: America, it was thought, would be self-sufficient in only four minerals by 2000, after having been self-sufficient in 32 in the early 1970s.[66]

Given that some of the minerals about which the United States considered itself to be most vulnerable were also minerals that might, or so it seemed at the time, someday be producible from the seabed, it is understandable that the seabed-mining issue should have had such salience in Washington.

For instance, in 1980 the United States was relying on imports for 98 percent of the manganese it consumed, and 97 percent of the cobalt. What made this reliance doubly worrisome was that the chief sources of these two minerals were felt to be unreliable, from a geopolitical standpoint: 82 percent of American cobalt imports came from Zaire, and 72 percent of imported manganese was supplied by South Africa and Gabon.[67] Both manganese and cobalt are present in the polymetallic nodules that are found in various parts of the deep seabed. The problem from the Canadian point of view is that so too is nickel found in these "manganese" nodules (as well as copper, molybdenum, and vanadium). Since the United States is also a heavy importer of Canadian nickel (taking about 45 percent of Canada's yearly production), it becomes evident that any large-scale American seabed mining -- even if it were primarily intended to reduce American dependence upon imported cobalt and manganese -- would have serious effects upon the land-based Canadian nickel industry.

The UN Convention will not result in an absence of seabed mining, but it will almost certainly lead to lower production levels than if there were no international régime for seabed mining, assuming of course such mining could be made economically feasible. Thus it is in Canada's interest to see that there is as little mining as the international environment will permit (and it should be noted in this context that the Group of 77 does, by and large, want production of seabed minerals -- albeit production done under international auspices and shared in a way that reflects the "common-heritage-of-mankind" ethos). Canada

would be best served in the medium term if there were no production of deep-seabed minerals; failing this, Canada looks favourably on any minimization of such production, and has been one of the beneficiaries of the struggle to impose production ceilings upon seabed mining.[68]

The production ceiling will be determined by means of a complex formula, and it is really impossible at this stage to do more than guess at production levels for the 1990s.[69] Projections made only six or seven years ago assumed typically that the world demand for nickel, the variable upon which the ceilings are calculated, would grow at an annual rate of 3.5 percent (using the years 1975 to 1984 as a base) and that nodule production would commence in 1988, and would be accounting for 32 percent of world nickel demand by the year 2000.[70] This is by no means an insignificant figure, and if realizable it compels the conclusion that the Convention's production ceilings would only be temporary protection at best for Canada's land-based nickel mining industry. However, what will really determine the amount of seabed mineral production under the treaty is not ceilings but market conditions: if such production is economic at 1990s' price levels for nickel and the other minerals contained in the nodules, then seabed mining will almost definitely take place on a significant scale. Whether the economic criterion can be met turns on the questions of future price levels and improvements in technology. While no one can say for sure what price and technology conditions will prevail in ten years' time, it is instructive that the economic potential of deep-seabed mining, once regarded by many as promising, is now seen to be extremely slight, at least for the rest of this century.

One thing does seem certain: if deep-seabed mining ultimately proves economic, there will eventually be a great deal of it taking place, whatever the

future prospects of the Convention are. What is uncertain is whether that mining would take place within an international régime and under conditions that would, temporarily at least, provide a breathing space for Canada's land-based nickel industry, or whether the United States, as the leader of a "Gang of Five" industrialized and technologically advanced states (the others being Britain, France, Japan, and the Soviet Union) would continue to assert the res-nullius doctrine in this instance, and carve up the choicest seabed mineral sites between itself and the others. All that can be said at this juncture is that if a future U.S. administration should bring itself to compromise on the seabed-mining provisions of the Convention (an open question at the moment), it will be in large measure because of a recognition that the U.S., like Canada, has much at stake in other parts of the treaty, especially (and here it is unlike Canada) in those dealing with the free navigation of the seas.

Conclusion

The above summaries have indicated both that Canadian ocean interests have been well-served and that those interests emerged principally as a result of the interplay between evolving technology and an improved political environment for the advancement of coastal-state interests in general. In making such an assessment, one runs counter to another interpretation of Canadian ocean policy since 1968, namely that it was chiefly a function of the Trudeau foreign policy review of 1970, Foreign Policy for Canadians, which enjoined a greater attentiveness to the "national interest" as a guide to policy-making.[71] The purpose of this chapter has not been to slight the efforts of Canadian policy makers and diplomats who have laboured on law-of-the-sea issues, or to deny any influence to the Trudeau policy review. Obviously, they and it were important elements in the formulation of Canadian positions, but

equally obviously, the conception of Canada as a coastal state had already developed by the mid-1960s, antedating Pierre Trudeau's attainment of power. That Trudeau and others were strong defenders of what they perceived to be the national interest does not detract from the conclusion of Barbara Johnson and Mark Zacher that "most other political leaders would have responded in the same way to the opportunities presented for furthering national oceans interests by the international political climate in the late 1960s and early 1970s."[72]

In a word, Canadian success in the creation and defence of its ocean policy stems from the fact that in this area of policy making, the "national interest" seemed so limpid. Coupled with this clarity of perception was a decision-making apparatus that concentrated authority for ocean questions in one department, External Affairs. To all intents and purposes, the "state" was External Affairs. Few countries could match the diplomatic effectiveness demonstrated by Canadian negotiators at various multilateral law-of-the-sea sessions during the 1970s; the United States, for one, could not, in large measure because its law-of-the-sea policy was to a significant extent the outcome of a clash of bureaucratic and domestic political interests clamoring for a variety of different policies.[73] In contrast to the Tower of Babel that was (and is) the American system of making foreign policy, Canada was able to articulate a coherent set of goals, and to defend them skillfully at various UNCLOS III sessions over the past thirteen years.[74]

In this connection, it is worth suggesting that Canadian foreign policy in law-of-the-sea matters disconfirms the applicability of the bureaucratic-politics model to this particular issue-area.[75] It may possibly be, as Denis Stairs has argued, that the bureaucratic-politics model is of less overall utility in the Canadian than in the American policy-making context.[76] But whether that is

the case or not, it is arguable that based on the record of Canadian diplomacy on ocean issues, the rational-actor assumption implicit in "statist" paradigms provides a more effective medium for policy analysis.[77] That this should be so is simply another way of putting the point that policy makers in Ottawa first developed a strong conception of Canada as a coastal state, then defended that coastal-state set of interests born of the logic that inhered in Canada's geographical situation, and supported by a fortuitous shift in the international organizational balance of power away from the maritime interests.

Notes

[1]For an interesting discussion of the concept and its operationalization, see Donald E. Nuechterlein, America Overcommitted: United States National Interests in the 1980s (Lexington: University Press of Kentucky, 1985), chap. 1: "National Interest as a Basis of Foreign Policy Formulation."

[2]Fundamental to any analysis of statist theory is Stephen D. Krasner, Defending the National Interest: Raw Materials Investments and U.S. Foreign Policy (Princeton: Princeton University Press, 1978). The best recent application of statist conceptualizing to Canadian foreign-policy making is Kim Richard Nossal, The Politics of Canadian Foreign Policy (Scarborough: Prentice-Hall Canada, 1985).

[3]The seminal work on this perspective remains David B. Dewitt and John J. Kirton, Canada as a Principal Power: A Study in Foreign Policy and International Relations (Toronto: John Wiley & Sons, 1983). A useful critique is Michael K. Hawes, Principal Power, Middle Power, or Satellite?: Competing Perspectives in the Study of Canadian Foreign Policy (Toronto: York Research Programme in Strategic Studies, 1984).

[4]The continental shelf is but one part of the larger geological entity, the continental margin, which in turn is one of the two geographical divisions of the seabed, the other being the deep ocean floor. The margin constitutes roughly 15 percent of the area of the seabed, and is divided into three conceptual parts: the continental shelf, held to be a natural extension of the land that inclines gradually toward greater depths; the continental slope, a discontinuity with the shelf that descends more steeply toward a great depth; and the continental rise, a sedimentary accumulation at the foot of the slope that gradually merges into the deep ocean floor. Barry Buzan, Seabed Politics, Praeger Special Studies in International Politics and Government (New York: Praeger, 1976), p. xiv.

[5]"Like all other [Law of the Sea] Conference participants, Canada's objectives were largely determined by geography and economics." Robert E. Hage, "The Third United Nations Conference on the Law of the Sea: A Canadian Retrospective," Behind the Headlines, July 1983, p. 2.

[6]For a discussion of the postwar demise of geopolitics, see David G. Haglund, "La Nouvelle Géopolitique des Minéraux: Une Etude sur l'Evolution de l'Impact International des Minéraux Stratégiques," Etudes Internationales 13 (September 1982): 445-71.

[7]Barbara Johnson and Mark W. Zacher, "An Overview of Canadian Ocean Policy," in Canadian Foreign Policy and the Law of the Sea, ed. Barbara Johnson and Mark W. Zacher (Vancouver: University of British Columbia Press, 1977), pp. 363-64.

[8]Interestingly, it was a fishery matter that marked an important stage in the development of Canadian constitutional status within the Commonwealth. In 1923 Canada signed a treaty entirely on its own for the first time. That treaty, concluded with the United States, regulated the Pacific halibut fishery. See G. P. de T. Glazebrook, A History of Canadian External Relations, 2 vols., rev. ed.

(Toronto: McClelland and Stewart, 1966), 2: 69-70.

[9]Except for the Canadian-American dispute over pelagic sealing in the Bering Sea, where the question of resource depletion was a central issue. See D. G. Paterson, "The North Pacific Seal Hunt, 1886-1910: Rights and Regulations," Explorations in Economic History 14 (April 1977): 97-119. Details of Canadian-British-American diplomatic wrangling over fisheries can be found in Donald C. Masters, The Reciprocity Treaty of 1854 (Toronto: McClelland and Stewart, 1963), pp. 20-25 passim; Lester B. Shippee, Canadian-American Relations, 1849-1874, Carnegie Endowment for International Peace: The Relations of Canada and the United States (New Haven: Yale University Press, 1939), pp. 161-87, 426-48; and Charles Callan Tansill, Canadian-American Relations, 1875-1911, Carnegie Endowment for International Peace: The Relations of Canada and the United States (New Haven: Yale University Press, 1943), pp. 1-120, 267-95.

[10]Erik B. Wang, "Canada-United States Fisheries and Maritime Boundary Negotiations: Diplomacy in Deep Water," Behind the Headlines, April 1981, p. 3.

[11]Commercial extinction must be differentiated from outright physical extinction. If commercial stocks become too low as a result of excessive exploitation, fishing becomes uneconomic and ceases. Stocks then have a chance to recover, which leads to a rebirth of the fishing industry. Unless proper management techniques are applied to a fishery, the pattern recurs. Paul A. Driver, "International Fisheries," in The Maritime Dimension, ed. R. P. Barston and Patricia Birnie (London: George Allen & Unwin, 1980), pp. 43-44.

[12]André-Louis Sanguin, "La Zone Canadienne des 200 Milles dans l'Atlantique: Un Exemple de la Nouvelle Géographie Politique des Océans," Etudes Internationales 11 (June 1980): 242-43.

[13]Ibid., p. 242.

[14]The First United Nations Conference on the Law of the Sea (UNCLOS I) was held in 1958, the second (UNCLOS II) in 1960, and the third (UNCLOS III) began in December 1973 and concluded in December 1982.

[15]Barbara Johnson, "Canadian Foreign Policy and Fisheries," in Canadian Foreign Policy and the Law of the Sea, p. 52. (Emphasis in original.)

[16]In international law, the territorial sea is a band of water seaward of a state's internal waters and over which a state may claim all the rights associated with sovereignty, except that it must accord foreign ships a right of "innocent passage," which essentially means that transiting vessels must do so as expeditiously as possible, engaging neither in military exercises nor fishing. Today, more than 100 states (Canada included) claim a territorial sea of at least twelve miles, which is the distance recognized by Art. 3 of the UN Convention on the Law of the Sea.

[17]"Politically, the claim to a 200-mile zone had been so legitimized by continuing sessions of the law of the sea conference that the unilateral Canadian legislation of 1 January 1977 was implemented without resistance.

This was in itself an enormous achievement." Johnson, "Canadian Foreign Policy and Fisheries," p. 94. Art. 56 of the Convention accords to coastal states a 200-mile exclusive economic zone (EEZ).

[18]Donald Barry, "The Canada-European Community Long Term Fisheries Agreement: Internal Politics and Fisheries Diplomacy," Journal of European Integration 9 (Autumn 1985): 5-28.

[19]F. S. Northedge, The International Political System (London: Faber & Faber, 1976), p. 274. For a discussion of bilateral fishing "tension," see Stephen Greene and Thomas Keating, "Domestic Factors and Canada-United States Fisheries Relations," Canadian Journal of Political Science 13 (December 1985): 731-50.

[20]For a very good analysis of this complex set of problems, see Wang, "Canada-United States Fisheries and Maritime Boundary Negotiations."

[21]Donald Barry, "The U.S. Senate and the Collapse of the East Coast Fisheries Agreement," Dalhousie Review 62 (Autumn 1982): 495-503.

[22]"Signature of a Canada/USA Pacific Coast Albacore Tuna Vessels and Port Privileges Agreement," Department of External Affairs Communiqué, 26 May 1981.

[23]Wang, "Canada-United States Fisheries and Maritime Boundary Negotiations," p. 17.

[24]See, for this view, Hal Mills, "Georges Bank and the National Interest," New Directions in Ocean Law, Policy and Management 1 (February 1981): 4-5. According to Mills, "Canadians should breathe a collective sigh of relief that the Agreement on East Coast Fishery Resources has not been ratified...."

[25]Johnson, "Canadian Foreign Policy and Fisheries," p. 95.

[26]For an elucidation of this distinction, see Buzan, Seabed Politics, p. 1. Also see F. V. Garcia Amador, The Exploitation and Conservation of the Resources of the Sea (Leyden, Neth.: Sythoff, 1963); and Gerard J. Mangone, The United Nations, International Law, and the Bed of the Seas (Newark, Del.: University of Delaware Press, 1972).

[27]Ann L. Hollick, "The Origins of 200 Mile Offshore Zones," American Journal of International Law 71 (July 1977): 494-500.

[28]Buzan, Seabed Politics, pp. 7-8.

[29]Barry Buzan, "Canada and the Law of the Sea," Ocean Development and International Law Journal 11 (1982):160. Although some 40 states had made various kinds of unilateral claims to the continental shelf by the time of UNCLOS I in 1958, Canada was not among them.

[30]See, for this view, Peyton V. Lyon and Brian W. Tomlin, Canada as an International Actor, Canadian Controversies Series (Toronto: Macmillan of

Canada, 1979), p. 186: "One must conclude that Canada's performance in the law-of-the-sea negotiations augurs ill for its response to the demands for fundamental changes that constitute the New International Economic Order. If Canada is so acquisitive concerning territory and resources that it got along without for many generations, what hope is there that it will agree to measures that would drastically alter existing structures to the advantage of the nations that must presently endure living conditions cruelly inferior to those of the industrialized North?"

[31]Canadian reliance upon imported crude oil began to seem worrisome after the oil shock of 1978/79. See David G. Haglund, "Canada and the International Politics of Oil: Latin American Source of Supply and Import Vulnerability in the 1980s," Canadian Journal of Political Science 15 (June 1982): 259-98. For offshore hydrocarbon exploitation in general, see Peter Odell, "Offshore Resources: Oil and Gas," in The Maritime Dimension, pp. 76-107.

[32]Estimates of the size of potential reserves in Hibernia and nearby fields in the Atlantic Grand Banks varied widely, ranging from 1 to 10 billion barrels. The Newfoundland government assumed some years ago that there were 1.8 billion barrels of proved reserves in offshore fields over which it was claiming jurisdiction. See Bob Williams et al., "North American Arctic Report," Oil and Gas Journal, 25 June 1984, pp. 55-77; David B. Brooks, "Black Gold Redrilled: Are the Economics of Beaufort Sea Oil Getting Better or Worse?" Northern Perspectives 11, 3 (1984): 1-4; and John F. Helliwell, Mary E. MacGregor, and André Plourde, "Changes in Canadian Energy Demand, Supply, and Policies, 1974-1986," Natural Resources Journal 24 (1984): 297-324.

[33]According to Art. 56 of the Convention, the coastal state has in the EEZ "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters..."

[34]Barry Buzan and Danford W. Middlemiss, "Canadian Foreign Policy and the Exploitation of the Seabed," in Canadian Foreign Policy and the Law of the Sea, p. 3. Off the West Coast, the shelf averages only 20 miles in width, and the margin nowhere exceeds 120. In the Arctic, most of the margin lies within the 200-mile limit of the EEZ.

[35]R. M. Logan, Canada, the United States, and the Third Law of the Sea Conference (Montreal: Canadian-American Committee, C. D. Howe Research Institute, 1974), p. 64.

[36]Convention, Part VI, Art. 76, Sec. 1.

[37]Ibid., Art. 82, Secs. 1 and 2.

[38]James H. Breen, "The 1982 Dispute Resolving Agreement: The First Step toward Unilateral Mining Outside of the Law of the Sea Convention," Ocean Development and International Law, 14, 2 (1984):201-34.

[39]J. L. Granatstein, "A Fit of Absence of Mind: Canada's National Interest in the North to 1968," in The Arctic in Question, ed. E. J. Dosman (Toronto:

Oxford University Press, 1976), p. 13.

[40]Evan Browne, "Sovereignty Questions Remain after Century in the Arctic," International Perspectives, July/August 1980, p. 8; Donat Pharand, "The Legal Regime of the Arctic: Some Outstanding Issues," International Journal 39 (Autumn 1984): 742-99.

[41]For a discussion of archipelagic and historic waters, see Donat Pharand, The Law of the Sea of the Arctic (With Special Reference to Canada) (Ottawa: University of Ottawa Press, 1973), pp. 65-144.

[42]E. J. Dosman, "The Northern Sovereignty Crisis, 1968-70," in The Arctic in Question, p. 35. This was not the first time that an American reaction to a Canadian initiative north of 60 degrees north latitude was predicated upon a fear that a precedent would be set for an Asian country to do something the United States felt was inimical to its interests. In the spring of 1940, the United States successfully pressured Canada to abandon a preemptive occupation of Greenland planned in the wake of the German conquest of Denmark. In this instance, Washington feared that Japan would seize upon any Canadian precedent to stage a preemptive strike of its own against the Netherlands East Indies. See David G. Haglund, "'Plain Grand Imperialism on a Miniature Scale': Canadian-American Rivalry over Greenland in 1940," American Review of Canadian Studies 11 (Spring 1981): 15-36.

[43]E. J. Dosman, "Northern Sovereignty and Canadian Foreign Policy," in The Arctic in Question, p. 6.

[44]See footnote 16.

[45]The American worry (shared to a degree by the Soviets) is that extension of territorial seas from three to twelve miles would enclose more than 100 straits, which are wider than six but narrower than 24 miles. This, according to the former head of the U.S. UNCLOS III delegation, "could seriously impair the flexibility not only of our conventional forces but of our fleet ballistic missile submarines, which depend on complete mobility in the oceans and unimpeded passage through international straits. Only such freedom makes possible the secrecy on which their survivability is based." Elliot L. Richardson, "Power, Mobility and the Law of the Sea," Foreign Affairs 58 (Spring 1980): 905.

[46]Convention, Art. 38.

[47]For a good discussion of the issue, see Donat Pharand, with Leonard H. Legault, Northwest Passage: Arctic Straits (Dordrecht: Martinus Nijhoff, 1984).

[48]Roger D. McConchie and Robert S. Reid, "Canadian Foreign Policy and International Straits," in Canadian Foreign Policy and the Law of the Sea, p. 170.

[49]Citizen (Ottawa), 12 April 1986, p. 43.

[50]Convention, Art. 234. According to this article, "coastal states have the right to adopt and enforce non-discriminatory laws and regulations for the

prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance."

[51]The "functional principle" is arguably one of the hallmarks of Canadian foreign policy in this century, having been especially prominent in connection with Canadian law-of-the-sea policy. The principle is associated with the substitution of "custodianship" for full sovereignty, and with the concomitant delegation of powers for the performance of specific duties. For a comprehensive analysis, see A. J. Miller, "The Functional Principle in Canada's External Relations," International Journal 35 (Spring 1980): 309-28. For functionalism and law-of-the-sea matters, see John W. Holmes, Canada: A Middle-Aged Power (Toronto: McClelland and Stewart, 1976), pp. 66-70: and Georges Antoine Léger, "Droit de la Mer: La Contribution du Canada au Nouveau Concept de la Zone Economique," Etudes Internationales 11 (September 1980): 421-40.

[52]Maxwell Cohen, "The Arctic and the National Interest," International Journal 26 (Winter 1970/71): 52-81.

[53]"[T]he impetus for Canadian policy came from internal public pressure, pressure motivated largely by jurisdictional and not environmental concerns. The basis for these concerns was the planned Arctic voyage of the American supertanker Manhattan, a voyage that aroused far greater fears of loss of sovereignty than of environmental destruction." R. Michael M'Gonigle and Mark W. Zacher, Pollution, Politics, and International Law: Tankers at Sea (Berkeley: University of California Press, 1979), p. 280.

[54]One of the biggest impediments to Canada's obtaining full-sovereignty status in the Arctic waters, of course, remains the attitude of the United States. In a policy statement released in the aftermath of the Gulf Of Sidra fighting of March 1986, the State Department affirmed that "the United States is committed to the exercise and preservation of navigation and overflight rights and freedoms around the world.... Examples of the types of objectionable claims against which the United States has exercised rights and freedoms are unrecognized historic waters claims, territorial sea claims greater than 12 nautical miles, and territorial sea claims that impose impermissible restrictions on the innocent passage of any type of vessels..." U.S. Embassy, Ottawa, "U.S. Committed to Free Passage Rights," Text, 27 March 1986 (emphasis added).

[55]For a discussion of the impact of Canadian Arctic legislation on international law, see Donat Pharand, "La Contribution du Canada au Développement du Droit International pour la Protection du Milieu Marin: La Cas Spécial de l'Arctique," Etudes Internationales 11 (September 1980): 441-66.

[56]Peter C. Dobell, Canada's Search for New Roles: Foreign Policy in the Trudeau Era (London: Oxford University Press, 1972), p. 77.

[57]R. Michael M'Gonigle and Mark W. Zacher, "Canadian Foreign Policy and

the Control of Marine Pollution," in Canadian Foreign Policy and the Law of the Sea, p. 113.

[58]Buzan, "Canada and the Law of the Sea," p. 156.

[59]The argument that the functional approach constitutes a "back-door means" to sovereignty in the Arctic is made in Michael Tucker, Canadian Foreign Policy: Contemporary Issues and Themes (Toronto: McGraw-Hill Ryerson, 1980), p. 181.

[60]"Twenty-five years ago, nearly all the world's nickel came from either Sudbury, Ontario, or New Caledonia, off the Australian coast. Even though production has increased in absolute terms, Canadian-based mining now represents a far smaller share of the total market and, very significantly, competes for world trade with the output of mines around the world...." W. E. Cundiff, Nodule Shock? Seabed Mining and the Future of the Canadian Nickel Industry, Occasional Paper No. 1 (Montreal: Institute for Research on Public Policy, 1978), p. iii.

[61]The argument is not that Canada must lose what it has gained in the matters of fisheries, offshore hydrocarbons, or Arctic pollution control power should the seabed mining talks ultimately fail. Rather, the concern is that inability to resolve this issue might "lead to a much less comprehensive and less widely supported Law of the Sea Convention, and therefore result in a less stable law of the sea regime than Canada had hoped for." Buzan and Middlemiss, "Canadian Foreign Policy and the Exploitation of the Seabed," p. 46.

[62]Elliot L. Richardson, "Law of the Sea," Naval War College Review, May-June 1979, p. 9. The phrase, "common heritage of mankind," is from a 1967 speech by Arvid Pardo, Malta's then-representative to the United Nations.

[63]Victor Prescott, "The Deep Seabed," in The Maritime Dimension, p. 65. "The importance of the debate can be roughly measured by the fact that in the Informal Composite Negotiating Text there are thirty-four pages dealing with the deep seabed, which is only one page less than the space occupied by the text dealing with the territorial seas and contiguous zone, straits used for international navigation, archipelagic states, the exclusive economic zone and the continental shelf."

[64]William Safire, "The Great Ripoff," New York Times, 19 March 1981.

[65]An account of American concern over mineral supplies is found in Alfred E. Eckes, Jr., The United States and the Global Struggle for Minerals (Austin: University of Texas Press, 1979).

[66]Bohdan O. Szuprowicz, How to Avoid Strategic Materials Shortages: Dealing with Cartels, Embargoes, and Supply Disruptions (New York: John Wiley & Sons, 1981), p. 60. For a review of American mineral dependence since World War II, see John Drew Ridge, "Minerals from Abroad: The Changing Scene," in The Mineral Position of the United States, 1975-2000, ed. Eugene N. Cameron (Madison: University of Wisconsin Press, 1973). A useful corrective to some of

the more melodramatic assessments of U.S. dependence is Bruce Russett, "Dimensions of Resource Dependence: Some Elements of Rigor in Concept and Policy Analysis," International Organization 38 (Summer 1984): 481-99.

[67]New York Times, 15 March 1981.

[68]The director of the Ontario government's division of mineral resources succinctly stated his province's view that "anything that postpones the eventual competition for Sudbury is a good thing." Globe and Mail, 18 May 1981.

[69]For the production ceiling, see UN Convention, Art. 151.

[70]V. E. McKelvey, "Seabed Minerals and the Law of the Sea," Science, 25 July 1980, p. 471. The ceilings for cobalt and manganese would amount to, respectively, 116 and 47 percent of world demand by 2000.

[71]This interpretation of Canadian ocean initiatives is given in A. E. Gotlieb, "Canadian Diplomatic Initiatives: The Law of the Sea," in Freedom and Change: Essays in Honour of L. B. Pearson, ed. M. G. Fry (Toronto: McClelland and Stewart, 1975), pp. 136-51.

[72]Barbara Johnson and Mark W. Zacher, "An Overview of Canadian Ocean Policy," in Canadian Foreign Policy and the Law of the Sea, p. 362.

[73]"The Diversity of United States interests and lines of influence makes the negotiation of a single national policy as difficult, if not more difficult [sic], as negotiating the policy internationally." Ann L. Hollick, "Canadian-American Relations: Law of the Sea," in Canada and the United States: Transnational and Transgovernmental Relations, ed. Annette Baker Fox, Alfred O. Hero, and Joseph S. Nye, Jr. (New York: Columbia University Press, 1976), p. 180. (Emphasis in original.)

[74]The argument that Canada possesses certain structural bargaining advantages vis-à-vis the United States -- stemming principally from the smaller size of its "governmental machinery" -- is made in Gilbert R. Winham, "Choice and Strategy in Continental Relations," in Continental Community? Independence and Integration in North America, ed. W. Andrew Axline et al. (Toronto: McClelland and Stewart, 1974), pp. 230-31. For a generalized application of this structural observation, see Robert O. Keohane and Joseph S. Nye, Power and Interdependence: World Politics in Transition (Boston: Little, Brown, 1977), p. 53: "States with intense preferences and coherent positions will bargain more effectively than states constrained by domestic and transnational actors."

[75]The bureaucratic (or governmental) politics model is elucidated in Graham T. Allison's now-classic Essence of Decision: Explaining the Cuban Missile Crisis (Boston: Little, Brown, 1971), pp. 144-84. An interesting grafting of Allison's approach to the parliamentary system is Kim Richard Nossal, "Bureaucratic Politics and the Westminster Model," in International Conflict and Conflict Management, ed. Robert O. Matthews, Arthur G. Rubinoff, and Janice Gross Stein (Scarborough: Prentice-Hall of Canada, 1984), pp. 120-27.

[76]Denis Stairs, "The Foreign Policy of Canada," in World Politics: An Introduction, ed. James N. Rosenau, Kenneth W. Thompson, and Gavin Boyd (New York: Free Press, 1976), p. 185.

[77]For an example of the application of this model to Canadian UNCLOS diplomacy, see Barry Buzan and Barbara Johnson, "Canada at the Third Law of the Sea Conference: Strategy, Tactics, and Policy," in Canadian Foreign Policy and the Law of the Sea, pp. 255-310.

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