SUBMISSION
TO THE
STANDING COMMITTEE
ON
EXTERNAL AFFAIRS & NATIONAL DEFENCE
IN THE MATTER OF THE
THIRD UNITED NATIONS
LAW OF THE SEA CONFERENCE

JANUARY, 1974
IMPERIAL OIL LIMITED

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INTRODUCTION

The Third United Nations Conference on the Law of the Sea, scheduled for the summer of 1974 in Caracas, will have a major impact on Canada. At the same time, Canada will have a major impact on the Conference, as one of the most influential voices on Law of the Sea issues. As such, she is in a position to influence the quality and hopefully the outcome of many of the United Nations discussions.

Imperial Oil Limited, as an offshore explorer and operator of a modest tanker fleet, is vitally interested in the outcome of the Law of the Sea Conference. Our concern was made evident in June 1973 when we submitted a summary of Imperial’s positions on three of the key seabed issues to Mr. J.A. Beasley, at that time Director General of the Bureau of Legal Affairs in Ottawa. These positions related to Jurisdiction of Seabed Resources, Transit Through Straits Used for International Navigation and Ocean Dumping.

We appreciate the recent invitation from Georges-C. Lachance, Chairman of the Standing Committee on External Affairs and National Defence, to submit the following brief to the Committee. It comments on:

- Jurisdiction of Seabed Resources
  - including the related International Seabed Area.

- Transit
  - including Width of Territorial Seas,
    Transit Through Straits Used for International Navigation.

- Protection of the Marine Environment

- Marine Scientific Research
JURISDICTION OF SEABED RESOURCES

BACKGROUND SUMMARY

Through United Nations sponsorship, the world's nations are seeking an international definition of the extent of coastal state jurisdiction over seabed resources. The outcome will have a profound effect on the development of world resources and particularly on Canadian resources.

Canada, with a shoreline on three oceans and with the second largest Continental Margin in the world, has a proprietary interest in seabed resource jurisdiction. The Continental Margin is the natural extension of Canada's land mass out to sea and comprises the continental shelf, the continental slope and the continental rise (Figure 1). Its width in some cases extends well beyond 200 miles (Figure 2).

The 1958 Geneva Convention on the Continental Shelf confers on coastal states the rights to seabed exploitation, "to where the depth of the adjacent waters admits to the exploitation of the natural resources of the said areas." On this basis and on the basis of existing practices, Canada contends that she has sovereign rights over the natural resources of this potentially rich area, which includes the entire Continental Margin.

The U.S. Government, which once preferred a narrow definition of exclusive coastal state jurisdiction, has now backed away from this approach and is willing to discuss an "economic resource zone" which might extend seaward some 200 miles. On the functions of an international regime, industrialized states generally favour a regulatory body not operating for its own account. The developing states favour a regime with very extensive powers including controls over production and price; such a regime could operate for its own account.
The UN General Assembly Moratorium Resolution of December 1969 declared that pending the establishment of an international regime:

"(a) States and persons, physical or juridical, are bound to refrain from all activities or exploitation of the resources of the area of the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; and (b) No claim to any part of that area or its resources shall be recognized."

The next important international step will result from the December 17, 1970, UN General Assembly adoption of a resolution convening in 1974, a Convention on the Law of the Sea:

"which would deal (along with other matters such as free transit and fishing) with the establishment of an equitable international regime -- including an international machinery -- for the area and resources of the seabed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues ....."

The result is expected to be a compromise which will include an economic resources zone for specified purposes and broad coastal state jurisdiction. Coastal states may be given jurisdiction over most of the continental margin. An international regime may control the remainder, enforcing explicit regulations, including leasing, and operating both as licensor and for its own account.
IMPERIAL POSITION

Current and future activities in exploration, production and transportation can be affected by the outcome of this effort. In the short term, withholding decisions on attractive continental margin areas can only delay the discovery of urgently needed hydrocarbons. In the long term, control or possible exclusion of competitive enterprise could result in undeveloped resources. Consequently, from a national or world point of view, the development of energy sources could be so encumbered and delayed as to affect standards of living.

Therefore, Imperial believes that:

- Coastal states signatory to the 1958 Convention on the Continental Shelf now have exclusive jurisdiction to the subsea and subsoil resources out to the seaward edge of the continental margin and should reaffirm those rights.

- Coastal states should permit the continuation of oil and gas exploration and development in the continental margin, pending any new international agreement. The UN Moratorium is "advisory" and involves no legal force.

- Final UN resolution should clearly affirm coastal state jurisdiction to the subsea and subsoil resources out to the seaward edge of the continental margin or 200 miles, whichever is greater.

- A coastal state should develop its seabed resources according to its own policies and regulations, subject only to international agreement on regulations concerning the following principles: (1) Preventing unreasonable interference with other uses of the ocean, and (2) Protecting the ocean from pollution.
- Where the adjacent ocean lying between nations is entirely within the continental margin, the equi-distance rule should ordinarily apply, in accordance with current international law, subject only to special arrangements between the countries involved.

- All subsea resources beyond the greater of 200 miles or the edge of the continental margin should be developed under an international regime for the benefit of all signatory nations.

- An international regime to be constituted for the management of the seabed resources beyond the continental margin should be charged with overseeing the development of resources in the most efficient and timely manner. Its management should report to a balanced board consisting of signatory nations and not be hampered from the outset with detailed specific leasing rules or other restrictions embedded in treaty. It should operate on a non-discriminatory basis with incentives for the attraction of capital and technology on a fair and competitive basis. Its objective would be to promote exploitation through terms and arrangement which would necessarily have to be at least as attractive to investors as those offered by adjoining coastal states for resources under their jurisdiction. Where practical, the international regime should not duplicate other available international institutions, such as the International Court of Justice.

In all aspects of ocean resource development, an effective balance must be struck between the need for energy and conservation of resources; effective pollution control and costs thereof -- emphasis being placed on wise, multiple use of the oceans and seabed with present and future generations in mind.
TRANSLIT THROUGH WATERS USED FOR INTERNATIONAL NAVIGATION

BACKGROUND SUMMARY

The primary objective of maritime interests in the Law of the Sea Conference is the reaffirmation of the right of transit or unimpeded passage through all waters necessary to international navigation. A renewed effort to reach a common definition of the breadth of "territorial seas" is of fundamental importance to maritime nations. General agreement on a uniform width will limit the geographic extent to which coastal states exercise paramount jurisdiction over commercial transit.

The exclusive rights exercised by coastal states in their territorial seas have been limited in recent years by international acceptance of the principle of "innocent passage", which allows for the unhampered transit of vessels bound to and from the high seas as long as they do not compromise the "peace, good order and security" of the coastal state. Today, the concept of "innocent passage" has been widely challenged, especially by developing states. Moreover, Canada seeks to modernize the concept, permitting the coastal state to submit such passage to its own anti-pollution regulations.

Canada established its own territorial seas at twelve miles in 1970 and would like to see the conference agree on such a breadth provided coastal states' interests in the marine environment are adequately protected. The United States has offered to accept the twelve-mile limit for territorial seas if enough other states do likewise, but subject to reaffirmation of the right of passage for all vessels through straits connecting high seas which, by virtue of the new twelve-mile limit, would lie within one or more coastal states' territorial seas. More than 100 straits, previously considered to be "high seas", would lie within one or more coastal states' jurisdiction with an extension of the territorial sea to twelve miles.
IMPERIAL POSITION

Imperial has a fundamental interest in the related issues of (1) the width of territorial seas, and (2) passage of commercial vessels through straits and other waters over which a coastal state simply claims or in fact has jurisdiction.

In each case there are two basic requirements. First, international agreement on the breadth of territorial seas and on the right to transit all waters (except internal waters) should have the acceptance of a very large majority of coastal and maritime states. Second, the agreement should, wherever possible, preclude states from unilaterally increasing the width of newly-agreed limits of territorial seas and/or from attempting to modify the right of passage by imposing ship-operating or other standards varying from those agreed upon internationally.

Imperial recognizes the Canadian Government's desire to protect its Arctic waters from pollution and to have an international agreement with operating standards pertaining specifically to ice-infested Arctic waters. Imperial also recognizes the need for pollution control machinery beyond the territorial limit to protect Canada's coastline. In summary, Imperial:

1. Supports a uniform width of twelve miles for territorial seas.

2. Supports the concept of a right of passage for commercial vessels through straits used for international navigation; and through such territorial seas as may be necessary for access to straits.
3. Supports international agreements covering commercial vessels transitting all seas except internal waters but including straits used for international navigation, which will include general principles pertaining to safe navigation and pollution control.

4. Supports special international agreements covering commercial vessels transitting ice-covered waters except internal waters, but including straits used for international navigation. These will include general principles pertaining to safe navigation and pollution control for such ice-covered waters.
PROTECTION OF THE MARINE ENVIRONMENT

BACKGROUND SUMMARY

All nations accept, at least in principle, the idea that the marine environment must be preserved from pollution. Protection of the marine environment has been discussed at two major conferences recently: the United Nations Conference on the Human Environment held in Stockholm in 1972, and the Intergovernmental Maritime Consultative Organization (IMCO) Conference in 1973.

The Stockholm Conference adopted a Declaration on the Human Environment, an achievement of considerable stature. Principle 21 states that:

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that the activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction."

The Stockholm Conference also endorsed a Statement of Objectives, which reads:

"The marine environment and all the living organisms which it supports are of vital importance to humanity and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired. This applies especially to coastal nations, which have a particular interest in the management of coastal area resources. The capacity of the sea
to assimilate wastes and render them harmless and its ability to regenerate natural resources is not unlimited. Proper management is required and measures to prevent and control marine pollution must be regarded as an essential element in this management of the oceans and seas and their natural resources."

The various principles adopted at the Stockholm Conference have been referred to the Third Law of the Sea Conference for translation into binding treaty obligations.

The 1973 IMCO Conference of maritime states resulted in an International Convention for the Prevention of Pollution from Ships, which will come into force one year after it has been ratified by at least 15 maritime states. During the course of the IMCO Conference, the most contentious single issue concerned the degree to which individual states should retain sole rights to enact more stringent local legislation in respect to ship design and equipment of foreign vessels.

Canada considers that coastal states should be empowered to prescribe and enforce their own anti-pollution standards to the extent necessary, over and above internationally agreed rules, not only in their territorial waters but within their areas of jurisdiction beyond. The Canadian delegation spoke strongly in favour of Draft Article 9 which pertained to Powers of Parties to the Convention. Draft Article 9 just failed to gain a two-thirds majority and reads:

"(1) Nothing in the present Convention shall be construed as derogating from the powers of any Party to the Convention to take more stringent measures, where specific circumstances so warrant, within its jurisdiction, in respect of discharge standards."
"(2) A Party shall not, within its jurisdiction, in respect of ships to which the Convention applies other than its own ships, impose additional requirements with regard to ship design and equipment in respect of pollution control. The requirements of this paragraph do not apply to waters the particular characteristics of which, in accordance with accepted scientific criteria, render the environment exceptionally vulnerable."

"(3) Parties which adopt special measures in accordance with the present Article shall notify them to the Organization without delay. The Organization shall inform Parties to the Convention about these measures."

The provisions of Draft Article 9 would have allowed special regulations for ice-covered waters or waters with high ice concentrations, if it were agreed that these waters are exceptionally vulnerable to pollution.

**IMPERIAL POSITION**

Imperial strongly endorses the principles and objectives outlined at the 1972 Stockholm Conference, and therefore takes the following position relative to preserving the marine environment:

1. As a strong supporter of the 1973 IMCO convention, Imperial favours early ratification of this convention.
2. We support Canada's approach that the Law of the Sea should elaborate an "umbrella" treaty which would link all other pertinent treaties pertaining to the realm of marine environment. However, we believe that treaties of a technical nature such as those developed by IMCO should not be reopened for substantive discussion by Law of the Sea. We believe that IMCO is the only technically competent body to deal with ship-source pollution, and that Law of the Sea should recognize this fundamental IMCO role.

3. We recognize Canada's concern for its ice-covered waters and those with high ice concentrations. We believe there should be special international agreements pertaining to ship design, equipment and operating procedures in waters that are exceptionally vulnerable to pollution.
MARINE SCIENTIFIC RESEARCH

Marine scientific research is any study, fundamental or applied, intended to increase knowledge of the marine environment, including all its resources and living organisms. It embraces all related scientific activity. Knowledge resulting from marine scientific research is part of the common heritage of all mankind, and such knowledge and information of a non-proprietary or non-military nature should be exchanged and made available to the whole world.

The foregoing statements have been taken from a Working Paper submitted by the Canadian Delegation to a United Nations Committee of the Peaceful Uses of the Seabed and Ocean Floor, dated July 25, 1972. The definition and basic principle of Marine Scientific Research is extremely well stated. Other principles from the Working Paper are well worth reiterating:

- Marine scientific research shall be conducted in a reasonable manner, and shall not result in any unjustifiable interference with other uses of the marine environment; nor shall other uses of the marine environment result in any unjustifiable interference with marine scientific research.

- The availability to every State of information and knowledge resulting from marine scientific research shall be facilitated by effective international communication of proposed major programmes and their objectives, and by publication and dissemination through international channels of their results.
- Marine scientific research in areas within the jurisdiction of a coastal State shall only be conducted with the consent of the coastal State. If such consent is granted, the coastal State shall have the right to participate or to be represented in such marine scientific research and shall have the right of utilizing samples, the right of access to data and results, and the right to require that the results be published.

- Marine scientific research concerning the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction shall comply with any regulations developed by a competent international organization to minimize disturbance and prevent pollution of the marine environment and interference with exploration and exploitation activity.

Obviously, Canada's position on Marine Scientific Research is one of encouragement with wide dissemination of findings. At the same time Canada recognizes that scientific research undertaken in the jurisdictional area of a coastal state should only be undertaken with its prior consent, and must have due regard for pollution control regulations, non-interference with other uses of the marine environment, and must be conducted in accordance with the rules and recognized principles of international law.

**IMPERIAL POSITION**

Imperial supports the Canadian Government position on Marine Scientific Research.
RECOMMENDATIONS

1. Imperial is in general agreement with the Canadian Government stance on all key ocean issues. However, we find it difficult to obtain a feeling for the Canadian Government's priorities. There is no doubt in our minds that Canada must establish its priorities and be prepared to give way on certain lesser ones in order to gain those of prime importance.

2. We believe that the 1973 IMCO Convention is a major step forward in control of ship-generated pollution and therefore recommend that Canada proceed with early ratification of the Convention.

3. The IMCO Convention should not be reopened for discussion by Law of the Sea. However, the intent of Draft Article 9, which failed to gain a two-thirds majority at the IMCO Conference, could be pursued further by Canada at the Law of the Sea Conference. It would allow Canada to have additional controls over ice-covered waters, at the same time prohibiting unilateral national regulations in less unusual areas. We are opposed to the granting of rights to coastal states to impose local or non-international standards beyond territorial waters, other than as outlined in Draft Article 9.

4. In the matter of Seabed Resource Jurisdiction, Canada will undoubtedly encounter some resistance to extending coastal state jurisdiction beyond 200 miles. To ensure that the portion of the Continental Margin beyond 200 miles is included within coastal state jurisdiction, we recommend that Canada place this matter high on its list of priorities.
SCHEMATIC REPRESENTATION OF THE SEABEDS AND OCEAN FLOOR

Figure 1

COASTLINE

SHELF EDGE

CONTINENTAL SHELF

CONTINENTAL SLOPE

CONTINENTAL RISE

CONTINENTAL MARGIN

DEEP OCEAN FLOOR

OUTER CONT. MARGIN

TERR. LIMIT

LAND