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The U.S. Senate and the Collapse of the East Coast Fisheries Agreement¹

The East Coast fisheries agreement was signed by the Canadian and U.S. governments in March 1979 amid considerable fanfare. It was the product of eighteen months of intensive bargaining conducted by special negotiators—Mr. Marcel Cadieux and Mr. Lloyd Cutler respectively—appointed by Prime Minister Pierre Trudeau and President Jimmy Carter. The agreement was important for both countries because it appeared to offer a comprehensive solution to two problems. The first of these was a longstanding dispute over overlapping boundary claims on Georges Bank in the Gulf of Maine that had escalated in 1977 when both countries proclaimed two hundred mile fishing zones. The second was the continuing problem of managing Canadian and U.S. access to East Coast fish stocks.²

Although the accord is commonly referred to as the East Coast fisheries agreement it actually consisted of two treaties, the Maritime Boundary Settlement Treaty and the East Coast Fishery Resources Agreement, neither of which could enter into force until both had been approved. The Boundary Settlement Treaty submitted the boundary jurisdiction question to international arbitration. The Fishery Resources pact established trans-border access and management provisions for East Coast fish stocks, setting Canadian and U.S. quotas for designated species in both the contested and undisputed waters. These shares would be subject to adjustments of up to ten per cent every decade by an East Coast Fisheries Commission composed of seven members from each country. The Fishery Resources treaty would continue in effect irrespective of the outcome of the boundary adjudication.³

The Canadian government quickly approved the two treaties. But the Fishery Resources accord provoked strong opposition among American fishing groups who pressured the U.S. Senate to reject it.⁴ As a result, both treaties languished for two years in the Senate which,

led by a coalition of East Coast legislators refused to ratify them without major modifications that were unacceptable to Canada. The impasse finally ended in April 1981 when the Senate, acting on a request from the newly elected President Ronald Reagan, agreed to approve the Boundary Settlement pact only. The Canadian government reluctantly agreed to the action. But it served notice that before endorsing future treaties with the U.S. it would demand assurances of Senate concurrence where that approval was in question.

This essay examines the Senate's role in the collapse of the East Coast fisheries agreement. The analysis focuses on the Carter administration's domestic approach toward the negotiation, the Senate's refusal to approve the agreement, and especially the Canadian government's attempts to prompt Senate acceptance of the accord. It also discusses some implications of the case for Canadian efforts to influence congressional behaviour and the conduct of Canada-U.S. treaty negotiations.

The Unravelling of the Agreement

The explanation for the unravelling of the East Coast fisheries agreement lies in a combination of unforeseen circumstances and political miscalculation by the U.S. special negotiator. Mr. Cutler tried to develop a compromise package on the Fishery Resources accord's key fishing access provisions that would split American gains and losses in a way that would enable the overall fisheries agreement to survive potential Senate opposition. Under that package Maine fishermen would gain access to Canadian redfish off Nova Scotia while Canadian fishermen would secure access to loligo squid off the U.S. mid-Atlantic Coast. In addition, a high Canadian entitlement to the lucrative Georges Bank scallop fishery would be balanced by high American entitlements to East Coast groundfish. It was assumed that this approach would gain the support of then Senator Edmund Muskie (D-Maine) and neutralize Senator Edward Kennedy (D-Massachusetts) whose state includes both groundfishermen and scallopers. This support, it was thought, would be sufficient to overcome anticipated opposition from Massachusetts and Rhode Island scallop fishermen who would pressure Senators Kennedy and Claiborne Pell (D-Rhode Island).⁵

Although Mr. Cutler appeared optimistic that the agreement would win Senate approval, his approach was not free of risks. For example, he kept domestic fishing groups and senators apprised of the progress of the negotiations with Canada and included fishing representatives on the U.S. negotiating team. But the representatives were apparently

excluded from the Canada-U.S. fishing access decisions and the advice of such senators as Kennedy and Pell went unheeded.⁶ In addition, State Department officials responsible for Canadian affairs, who were concerned that the strategy would alienate important fishing groups and senators, were less confident than the special negotiator about the agreement's prospects in the Senate. Mr. Cutler, however, downplayed their misgivings and they went along with his approach.⁷

Canadian and U.S. officials signed the Maritime Boundary and Fishery Resources treaties on March 29, 1979. President Carter submitted them to the Senate on April 18. In his accompanying message the President argued that the treaties were "in the best interest of the United States" and warned that "further delay in resolution of these issues would be detrimental to conservation of the fishery resources and could lead to serious irritants in United States relations with Canada."⁸

Hopes for quick ratification of the treaties were thwarted by the Senate leadership's decision to clear the legislative agenda for the unobstructed passage of the now moribund SALT II treaty. The delay was fateful for the pacts because it allowed time for opposing U.S. fishing interests to mount a major lobbying effort against them. By mid-May Rhode Island and Massachusetts scallopers had formed themselves into the American Fisheries Defence Committee. They appealed for the support of other U.S. fishing groups on the basis that the Fishery Resources treaty undermined the powers of the system of regional fishery management councils created under the Fishery Conservation and Management Act of 1976. Those groups, including Gulf Coast shrimpers and West Coast tuna and salmon fishermen, accordingly joined the scallopers.⁹ They were augmented by mid-Atlantic state squid fishermen who opposed Canadian access to loligo squid. Meanwhile, expected support from the groundfish and redfish industries failed to materialize. Resistance began to develop among the groundfishermen because of the joint management procedure and the exclusion of certain types of catches from their entitlements, while the ratification delay prevented Maine fishermen from gaining access to Canadian redfish, forcing them to move into groundfishing.¹⁰

The fishing lobby began pressuring U.S. legislators, concentrating on East Coast senators and members of the House of Representatives Committee on Merchant Marine and Fisheries which was to be responsible for legislation implementing the treaties. The effort was highly successful. The House Merchant Marine Subcommittee on Fisheries and Wildlife Conservation and Environment held a special hearing on the agreements on June 22, 1979 and declared its opposition in a March 1980 report.¹¹ And when the agreements finally came

before the Senate Foreign Relations Committee on April 15 and 17, 1980, East Coast senators were almost unanimous in opposing them. Only Senator Muskie seemed favorably disposed toward the treaties and even he later expressed hesitancy.¹² The senators made their approval of the overall fisheries agreement contingent on Canada's acceptance of a compromise set of changes that had been developed by Senator Kennedy and the fishing lobby and supported by seven of the remaining nine New England senators. The changes included a three year limit on the Fishery Resources treaty (presumably it would be renegotiated after the boundary dispute had been resolved), increased American access to scallops and greater U.S. control over scallop management. However, the Canadian External Affairs Minister, Mark MacGuigan, rejected the reservations as "wholly unacceptable."¹³

The lingering impasse over the fisheries agreement became a source of mounting frustration to the Trudeau government. Following the Senate Foreign Relations Committee's April hearing, the Canadian government launched a major Cabinet sanctioned campaign aimed at prompting American acceptance of the accord. Making the pact its number one foreign policy priority, the orchestrating Canadian domestic support through two parliamentary resolutions, the government focused its attention on three U.S. targets: the news media, the fishing lobby and the government.¹⁴

Mr. MacGuigan fired the opening salvos in early June. Terming the agreement "the most serious bilateral issue we have with any country," he threatened to link the pact to the resolution of other Canada-U.S. issues and attempted to capitalize on the U.S. sense of obligation over the Canadian rescue of American hostages from Iran the previous January.¹⁵ The government escalated the pressure in mid-June by raising Canadian groundfish quotas on Georges Bank. The move was intended both as retaliation for U.S. overfishing of scallops in the disputed waters and as a way of dividing the fishing lobby by inducing groundfishermen to pressure the scallopers to modify their opposition to the agreement.¹⁶ Mr. Trudeau also raised the issue directly with President Carter at the western economic summit meeting in Venice in late June.¹⁷

Although the Canadian government's strategy generated important support among such influential American newspapers as the *Journal of Commerce*, the *New York Times* and the *Washington Post*, it failed to move the fishing lobby or the senators.¹⁸ In the view of Senator Pell, the most outspoken legislative opponent of the pact, Canada would have to "face up to the fact that the treaty will have to be changed."¹⁹ An all-party Canadian parliamentary delegation despatched to Washington in late July encountered a similar response.²⁰ For its part, the

beleaguered Carter administration, well aware of the political liability the fisheries agreement had become in a presidential election year, redirected its efforts toward finding a compromise solution acceptable to the opposing senators. But an administration initiative undertaken in August by the recently appointed Secretary of State, Edmund Muskie, and the special treaty negotiator, Mr. Cutler, failed to resolve the deadlock.²¹

Canadian criticism of the U.S. over the fisheries agreement became more strident during the fall months. The criticism, moreover, turned increasingly on the U.S. ratification process itself, especially on the behaviour of the Senate. In mid-October Mr. MacGuigan charged that the Senate was "frustrating the President's foreign policy responsibilities" and asked in exasperation whether "differences in approaches to foreign policy (between the administration and Congress) reach a point where rational management of a crucial bilateral relationship may no longer be possible."²² The criticism, however, failed to impress Senator Pell who argued that the Canadian government had "done a great disservice" to relations with the U.S. by exaggerating the issue's importance and reiterated that without the Senate's proposed reservations "there is no chance that the treaty will be approved."²³

Canada kept up its pressures on the newly-elected Reagan administration. Following a late January 1981 meeting between Mr. MacGuigan and the new Secretary of State, Alexander Haig, the administration appointed Ambassador Rozanne Ridgway as special representative to examine the fisheries agreement's prospects.²⁴ But her soundings revealed that the recalcitrant senators would not move from their "bottom line" position, while the Canadian government was willing to modify its own only to the extent of accepting a twelve year time limit on the Fisheries Resources pact. Moreover, the House of Representatives Committee on Merchant Marine and Fisheries made it clear that it would not approve the necessary implementing legislation without the Senate's recommended changes.²⁵ Accordingly, President Reagan, declaring that the fisheries agreement "cannot be ratified in a form that would be acceptable to Canada" asked that it be withdrawn from the Senate agenda. The President did recommend, however, that the Senate ratify the Boundary Settlement treaty.²⁶ The boundary accord was endorsed by the Foreign Relations Committee on March 25 and approved by the full Senate on April 29.²⁷ The Canadian government formally ratified the agreement in November. However, Mr. MacGuigan stated that the government would require assurances of Senate approval of future treaties "where there is a question, because of the nature of the negotiations, that there might not be subsequent ratification by the Senate."²⁸ The boundary case is now before a special

Chamber of the International Court of Justice. It is expected to render a decision by 1984.²⁹

The two countries appear to have found a formula to meet Canadian demands for prior assurances of Senate approval of future accords in the form of a letter from the Chairman of the Foreign Relations Committee to the Secretary of State indicating Committee members' support for such agreements. The procedure was first used in assuring Committee support for passage of the Pacific Coast Albacore Tuna Vessels and Port Privileges treaty, signed by the two governments in May 1981.³⁰

Analytical Assessment

In a recent interview, former President Carter attributed the Senate's refusal to approve the East Coast fisheries agreement to the flawed nature of U.S. constitutional arrangements for treaty ratification.³¹ This essay argues, however, that the primary reason for the collapse of the accord was mismanagement of the domestic negotiation process by the administration's special negotiator. The critical error in the special negotiator's approach was the strategy of attempting to secure Senate approval of the pact by playing off domestic fishing interests against each other. The strategy seriously miscalculated the importance of the issues involved to the American fishing community and the political strength of the dissenting groups. The special negotiator also failed to engage in effective consultations with the affected fishing groups or the relevant legislators so that modifications ensuring adequate political support for passage of the agreement could be made.

The consequences of the failure to build a coalition of interest group and legislative support for the agreement could be seen when the pact came before Congress. At this stage the administration had no effective leverage over the dissenting legislators. In the Senate, legislators whose interests were not affected by the agreement were unwilling to challenge coastal state senators who, because of the fishing lobby's strong pressures, were firmly opposed to the accord. And the administration had few trade-off incentives to offer them in return for their support.³² The same lack of legislative allies doomed the Canadian government's efforts to failure.

Indeed, in attempting to change congressional views of the agreement, Canada faced an even more formidable task than the administration. For American legislators, concerned with their own regional and constituency interests, did not view the accord as a Canada-U.S. issue at all. They saw the pact as a domestic issue created by the Carter

administration's poor representation of American fishing interests. Despite support for Canada's stand by the Carter administration and major U.S. newspapers, the legislators remained unmoved. Attempts by both governments to alter the Senate's response by stressing the agreement's importance in maintaining friendly bilateral relations also failed. As former Senator Jacob Javits (R-New York) put it, "We must not confuse the idea that we have to ratify a treaty which we may not consider a fair treaty just because we are friends. The Canadians would not do it, and they should not expect us to do it."³³

Some aspects of Canada's lobbying approach were clearly questionable. For example, the government was understandably frustrated over the Senate's recalcitrance concerning the fisheries agreement. However, its criticism of the U.S. treaty ratification process amounted to an attack on the Senate's powers and irritated some senators who were normally favourably disposed toward Canada.³⁴ The government's attempt to exploit U.S. goodwill arising from the rescue of American hostages from Iran and its threat to link the agreement to the resolution of other Canada-U.S. issues was also dubious. The two countries have traditionally avoided the overt linkage of issues in their relations. The government's challenge was an open invitation to the U.S. to do likewise against Canada.³⁵

Conclusion

The collapse of the East Coast fisheries accord illustrates the critical effect that Congress can have on the implementation of American executive policy toward Canada and thus on Canadian interests. This essay has argued that the overall agreement failed because the Carter administration's special negotiator mishandled the domestic negotiation process. The strategy of attempting to divide the fishing community combined with insufficient attention to domestic consultation alienated important fishing groups and interests. As a result, the administration was unable to generate enough Senate support to ratify the pact. The Canadian government's lobbying efforts failed because Canada's concerns were clearly secondary to those of domestic fishing interests in shaping American legislators' perceptions and actions with respect to the accord. Those interests were almost unanimous in opposing the pact.

The failure of the agreement shows that the effectiveness of the U.S. administration as an ally in promoting Canadian interests vis-a-vis Congress depends on its own relations with that body. The case points out that when those relations are not well managed, the administration's effectiveness will likely be quite limited. The study also suggests

that the support of U.S. to domestic interests who have a stake in the policy issue in question is crucial to the success of Canadian efforts to influence Congress. For it was the overwhelming opposition of American fishing groups to the fisheries accord that determined the actions of U.S. legislators toward it. Favourable editorials in major American newspapers could not overcome Senate objections to the agreement. This in turn suggests that U.S. media endorsements will not be effective in influencing congressional behaviour unless they are part of a more broadly based Canadian strategy that will attract the support of affected American interests. The study further points out that it is unwise for Canadian officials to criticize congressional prerogatives in attempting to influence U.S. legislators, for they are sensitive to these attacks. Such criticism, therefore, may alienate the very legislators that Canada seeks to influence. It is similarly unwise to attempt to capitalize on American goodwill toward Canada on too explicit a basis or to threaten to link bilateral issues to secure favorable U.S. policies. This could prompt the U.S. to employ the same tactics against Canada.

It is clear, however, that Canada ought to be able to conduct treaty negotiations with the American government with the expectation that the U.S. will be able to meet its commitments. It is also clear that this can come about only through effective cooperation between the administration, Congress and affected domestic interests. It remains to be seen whether the procedure devised by the two governments for providing assurances of Senate support for such accords will offer adequate insurance against a future repetition of the East Coast fisheries imbroglio.

NOTES

1. I would like to thank I. M. Destler, M. O. Dickerson, James Keeley and Peter Slade for their helpful comments on earlier drafts of this essay. Research for the study was facilitated by a grant from the University of Calgary.
2. During the negotiations an interim fishing pact between the two countries collapsed, resulting in the eruption of a "fish war" between them. For a discussion of this see Stephen Greene and Thomas Keating, "Domestic Factors and Canada-United States Fisheries Relations," *Canadian Journal of Political Science*, XIII, 4 (December 1980) pp. 731-750.
3. U.S. Senate, Message from the President of the United States, Maritime Boundary Settlement Treaty with Canada and Agreement on East Coast Fishery Resources with Canada, May 3, 1979.
4. According to U.S. law, all treaties entered into must be approved by a two-thirds majority vote in the Senate.
5. Confidential U.S. Senate Sources. See also U.S. Senate, Committee on Foreign Relations, *Hearings on Maritime Boundary Settlement Treaty and East Coast Fishery Resources Agreement*, Apr. 15 and 17, 1980.
6. Jacob J. Dykstra U.S. House of Representatives, Subcommittee on Fisheries and Wildlife Conservation and Environment, *Hearings on United States-Canadian Fishing Agree-*

- ments, June 22, 1979, p. 123; Senator Edward Kennedy, U.S. Congress, Congressional Record, April 29, 1981, p. S4058; Senator Claiborne Pell, U.S. Senate, Foreign Relations Committee, *Hearing on the Maritime Boundary Treaty with Canada*, March 18, 1981, p. 4.
7. Cf. "Quiet vs. Public Diplomacy in U.S./Canadian Relations." Notes for a Presentation by Richard J. Smith, Minister, U.S. Embassy, Ottawa, Campobello Conference, August 6, 1982. U.S. Embassy, Ottawa.
 8. Message from the President of the United States, Maritime Boundary Settlement Treaty with Canada, May 3, 1979.
 9. Confidential U.S. Senate Sources. For a listing of U.S. fishing associations supporting the fishing lobby see U.S. House of Representatives, Subcommittee on Fisheries, *Hearings*, June 22, 1979, pp. 142-143.
 10. Confidential U.S. fishing lobby sources.
 11. U.S. House of Representatives, Subcommittee on Fisheries, *Hearings*, June 22, 1979; Committee on Merchant Marine and Fisheries, *Oversight Report on the U.S.-Canada East Coast Fishery Agreement and Boundary Treaty*, March 25, 1980.
 12. U.S. Senate, Committee on Foreign Relations, *Hearings*, April 15 and 17, 1980. See also, *Congressional Quarterly*, November 1, 1980, p. 3269.
 13. Canada, House of Commons, Standing Committee on External Affairs and National Defence, *Minutes of Proceedings and Evidence*, June 10, 1980, p. 3:10.
 14. Canada, House of Commons, *Debates*, April 23, 1980, p. 321 and June 20, 1980, p. 2309. (Hereafter cited as CHCD.) Confidential Canadian Government sources. See also *Globe and Mail*, June 20, 1980.
 15. House of Commons, External Affairs Committee, *Minutes*, June 10, 1980, p. 3:11; *New York Times*, June 15, 1980.
 16. *Globe and Mail*, June 20, 1980.
 17. *Ibid.*, June 24, 1980.
 18. See favorable editorials in the *Journal of Commerce*, June 13, 1980; *New York Times*, June 17, 1980; and the *Washington Post*, August 2, 1980. See also articles in the *Baltimore Sun* and the *Washington Post*, July 6, 1980.
 19. Office of Senator Claiborne Pell, *Press Release*, June 18, 1980.
 20. *Ibid.*, July 23, 1980, and reports in the *Globe and Mail*, July 23, 1980 and the *Halifax Chronicle-Herald*, July 24, 1980.
 21. *Congressional Quarterly*, November 1, 1980, p. 3269.
 22. "Approaches to Foreign Policy—Differences and Similarities," Canada, Department of External Affairs, *Statements and Speeches*, 80/22, October 18, 1980.
 23. *Globe and Mail*, October 22, 1980; and Remarks by Senator Claiborne Pell, International Seminar Series, Algonquin College of Applied Arts and Technology, Ottawa, Canada, October 21, 1980.
 24. *Calgary Herald*, January 31, 1981 and February 21, 1981.
 25. See Committee on Merchant Marine and Fisheries, *Oversight Report*, September 30, 1980.
 26. President Ronald Reagan to Senator Charles Percy, March 6, 1981.
 27. Committee on Foreign Relations, *Maritime Boundary Settlement Treaty with Canada, Report*, April 1, 1981; U.S. Congress, *Congressional Record*, April 29, 1981, p. S4060.
 28. Hon. Mark MacGuigan, CHCD, March 11, 1981, p. 8127, "Canada-United States East Coast Maritime Boundary Settlement Treaty Enters Into Force," *Information Release*, Canadian Embassy, Washington, D.C., November 20, 1981.
 29. "Gulf of Maine Maritime Boundary Case: Constitution of a Chamber by the International Court of Justice," *Information Release*, Canadian Embassy, Washington, D.C., May 26, 1981; Confidential Canadian government sources.
 30. "Signature of a Canada/U.S.A. Pacific Coast Albacore Tuna Vessels and Port Privileges Agreement," *Information Release*, Canadian Embassy, Washington D.C., May 26, 1981; Confidential Canadian government sources.
 31. *Globe and Mail*, November 11, 1982.
 32. Confidential U.S. Senate sources.
 33. U.S. Senate, Foreign Relations Committee, *Hearings*, April 15 and 17, 1980, p. 20.
 34. Confidential U.S. Senate Sources.
 35. For additional assessments of the fisheries case see: Erik B. Wang, "Canada-United States Fisheries and Maritime Boundary Negotiations: Diplomacy in Deep Water," *Behind the Headlines*, XXXVIII (6)/XXXIX (1), 1981; and Brian L. Job, "The Wisdom of Hindsight: the U.S./Canada Maritime Boundary and Fisheries Negotiations." Paper presented at the 1982 Annual Meetings of the Midwest Political Science Association, Milwaukee, Wisconsin, April 29, 1982.