



The Law of the Sea and Canadian Maritime Security

Peace, order, and good government were the founding principles of federal power in Canada¹ and the country has grown prosperous through the application of these same rules to the world's oceans. The majority of global trade moves through the world's sea lanes and, as a trading nation, Canada relies upon the sea to import goods from abroad and send its products to customers worldwide. Strategically, Canada and its allies have long relied upon the seas to project power, to connect North America and Europe in times of war and deploy forces abroad when necessary. As such, the peaceful management of the world's oceans within a stable, rules-based system of international governance has been a Canadian priority for generations.

Today, this framework is provided by the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is one of the world's most comprehensive and effective international treaty systems. Signed in 1982 (and ratified by Canada in 2003) the treaty entered into force in 1994 and has now been ratified by 168 parties. A comprehensive system of maritime governance, UNCLOS sets the rules for the use of the world's oceans, codifying navigational and maritime research rights, environmental responsibilities, and the limits of states' fishing rights, territorial waters, and exclusive economic zones. Upholding this treaty, and defending Canadian rights defined by it, are important components of Canada's maritime policy.

Because Canada relies upon the world's oceans for both trade and defence, maintaining the freedom of the seas has long been a priority for the RCN. Codified by UNCLOS, this freedom provides Canada with navigation and overflight rights through the "high seas", which constitute those parts of the oceans not included in the internal waters or the territorial seas of other states.² This free access provides Canada with the right to operate on, above, and below the surface of the high seas, providing global mobility and the ability to reinforce allies or project force anywhere in the world.³ This area of manoeuvre is expansive, covering nearly half of the earth's surface and, because Canada and its allies and partners possess most of the world's most powerful navies, this freedom skews heavily towards our strategic interest.

UNCLOS also provides access to warships and commercial vessels through the many choke points separating the world ocean. These "international straits," are bodies of water which pass through a state's territorial sea, are commonly used for international navigation, and which connect two parts of the high seas, or the high sea and a state's territorial sea.⁴ These strategic, high-traffic locations – such as the Straits of Malacca or Hormuz – carry a disproportionate amount of global trade and vital commodities, such as oil. UNCLOS provides the legal framework which guarantees the right of transit passage to both state and commercial vessels through these straits, without which global commerce would suffer and Canadian and allied strategic mobility would be badly hampered.⁵

While deployed abroad, RCN vessels enjoy sovereign immunity, a provision within UNCLOS which essentially conveys diplomatic immunity to warships and other government vessels

operating in foreign waters on non-commercial missions.⁶ This legal protection exempts Canadian warships from local territorial jurisdiction while operating in a state's territorial waters or exclusive economic zone. As a blue-water fleet with extensive operations abroad, this provision is essential for Canada.⁷

UNCLOS also enshrines Canada's sovereign rights and responsibilities in its home waters, an immense region of roughly 7.1-million square kilometres of ocean space – roughly 70% the size of the country itself.⁸ This makes Canada one of the world's largest coastal states in the world. It is also one of the richest in terms of the natural resources found in these waters.⁹

Canada's territorial waters stretch 12 nautical miles from its coast. Within these areas it exercises full sovereignty – though foreign states enjoy the right of innocent passage within these areas.¹⁰ Further out, Canada's jurisdiction over living and non-living resources extends to 200 nautical miles within its Exclusive Economic Zone (EEZ). Technically the EEZ is measured from the baselines running along the coast from which the country's territorial sea is measured.¹¹ Within this sizable area, Canada does not have sovereignty but it does have certain rights. Within this area, Canada controls fisheries and other living resources, as well as natural resources such as mineral, oil, and gas deposits.

In addition to its EEZ, Canada also claims jurisdiction over an extended continental shelf in the Atlantic and Arctic. UNCLOS allows states to extend their jurisdiction over shelf resource beyond the 200 nautical miles if they can show that their continental shelf is a natural prolongation, or continuation, of the state's land territory.

The Royal Canadian Navy, in cooperation with the Coast Guard and other government departments, ensures the security of Canada's sovereign waters and those over which it exercises jurisdiction. The maintenance of Canadian sovereignty and its economic interests require the ability to monitor these areas, police and regulate activity, and ensure that Canada's internationally recognized rights are respected.

References

¹ The British North America Act, 1867, SS 1867, section 91.

² United Nations, Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, Article 87.

³ Royal Canadian Navy, *Leadmark: The Navy's Strategy for 2020* (Ottawa: Directorate of Maritime Strategy, 2001), 30.

⁴ UNCLOS, Article 34-36

⁵ *Ibid*, Article 38.

⁶ *Ibid*, Article 95-96.

⁷ RCN, *Leadmark*, 33.

⁸ Department of Fisheries and Oceans, "Defining Canada's Maritime Zones,"

⁹ Royal Canadian Navy, *Canada in a New Maritime World: Leadmark 2050* (Ottawa: Department of National Defence, 2016), iii.

¹⁰ UNCLOS, Article 17.

¹¹ Technically the EEZ is measured from the baselines running along the coast from which the country's territorial sea is measured.