

*We can put in the full detailed proposals
on administrative arrangements*

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We're willing to consider the 2/3 to 2/3 compromise

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July 18, 1980

REPORT TO MINISTERS FROM THE SUB-
COMMITTEE OF OFFICIALS ON OFFSHORE
RESOURCES

The Continuing Committee of Ministers on the Constitution determined on July 15 that a sub-committee of officials should meet to carry out the following mandate:

"To report to the Ministers on possible options for resolution of the offshore resources issue under the following headings:

1. Ownership
2. Concurrent jurisdiction
3. Administrative arrangements between governments."

The Committee was chaired by New Brunswick and was attended by representatives of all governments.

It was acknowledged by the members of the Committee that the three headings were not mutually exclusive. For example, a resolution on ownership would not necessarily preclude concurrent jurisdiction, and various types of administrative arrangements could be required depending on how the ownership and jurisdiction questions might be resolved. Many provincial representatives indicated however that they could not foresee an acceptable solution based solely on administrative arrangements.

All provinces agreed that offshore resources should be treated in a manner consistent with constitutional provisions for resources onshore. The federal government does not agree with this approach.

The Committee proceeded to identify possible options for resolution of the offshore question as follows:

1. Ownership

If provincial ownership of offshore resources were to be constitutionally recognized, it was identified that this end could be expressed in a number of ways: one possible method of expressing this (as proposed by Newfoundland) could be by (a) a new section 109 (Appendix I) and (b) a parallel amendment to Section 92 (Appendix II), because ownership and jurisdiction are not synonymous.

An alternative method of conferring ownership on provinces has been identified by British Columbia. This could be achieved by extension of the boundaries of the provinces seaward to the extent of the Canadian territorial sea by action of federal and provincial legislatures as prescribed under existing Section 3 of the British North America Act (1871). It was suggested that extension of provincial rights over the continental

shelf beyond the limits of the territorial sea might be achieved similarly or by constitutional amendment. It was noted however that this extension of provincial boundaries would result in the recognition of more than mineral rights, but that it would not include ownership of other than things attached to the seabed such as, marine plants and sedentary species.

The Newfoundland approach was preferred as a legal technique.

2. Concurrent Jurisdiction

The Committee noted that under concurrent jurisdiction, the question of ownership would be put aside, and decisions would be required in order to determine which order of government should have jurisdiction, paramount or exclusive, on a broad series of specific matters which are usually associated with resource development.

In order to help Ministers consider this alternative, the Committee developed an illustrative list of matters on which decisions would be required. Two points should be borne in mind in connection with the list below. First, it does not include matters over which there is at present no doubt concerning exclusive federal jurisdiction (e.g., defence). Second, in most cases, the items on the list do not represent possible heads of power. The illustrative list is as follows:

- a) Allocation of rights (permits and licences)
- b) Rate of exploration and production
- c) Pace of development
- d) Price setting
- e) Environmental protection
- f) Safety
- g) Labour relations
- h) Manpower training, etc.
- i) Property and Civil Rights
- j) Fiscal powers (taxes, royalties and rentals, government participation)
- k) Marketing
- l) Spin-offs
- m) Operating regulations
- n) Interprovincial trade
- o) International treaty obligations

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Two possible concurrency regimes, which may not deal with all matters that would have to be resolved, were identified. One is based on the federal draft proposal discussed by First Ministers in February 1979 (Appendix III). Another would be based on whatever regime is agreed upon with respect to onshore mineral resources.

3. Administrative Arrangements Between Governments

It was acknowledged that if it were determined to adopt a regime of administrative arrangements in place of explicit constitutional statements on ownership and/or concurrent jurisdiction, responsibility would have to be allocated for the same type of subjects as described in the preceding section under concurrency.

The Committee noted the existence of the 1977 Memorandum of Understanding based upon the setting aside of the jurisdictional differences between federal and provincial governments.

The federal government has indicated that an improved version of the 1977 agreement could be the basis of new administrative arrangements, including an improved revenue sharing formula.

July 17th, 1980

OFFSHORE RESOURCES DRAFT

Proprietary Rights

109.1 All lands, mines, minerals and royalties within and arising from the seabed and subsoil of internal waters, the territorial sea and the continental shelf* adjacent or appurtenant to any province and all economic or proprietary rights in the non-renewable natural resources thereof, (and all rights to produce energy from the water, current, tides and winds)** shall belong to the adjacent province.

109.2(1) The delimitation of the area adjacent or appurtenant to each Province shall as between adjacent or opposite Provinces, be that area within lines drawn by agreement in accordance with principles of international law.

109.2(2) If no agreement can be reached within a reasonable period of time, the Provinces concerned shall resort to arbitration, one member of the Arbitration Board being chosen by each Province, and one other or two others in the case of an even number either by agreement of the members of the Board or failing agreement by the Chief Justice of the Supreme Court of Canada.

* The continental shelf referred to here includes the shelf, slope and rise to the limit of jurisdiction as determined from time to time by international law.

** Possible inclusion

July 17th, 1980

OFFSHORE RESOURCES
LEGISLATIVE JURISDICTION
(ADDITION TO BEST EFFORTS DRAFT
ON RESOURCE OWNERSHIP)

Proposed Revision - Section 92

92 (8) For purposes of this section "Province" includes the non-renewable natural resources of the seabed and subsoil of internal waters, the territorial sea and the continental shelf* adjacent or appurtenant to any province (and all rights of energy production from the water, currents, tides and winds.**)

* The continental shelf referred to here includes the shelf, slope and rise to the limit of jurisdiction as determined from time to time by international law.

** Possible inclusion

OFFSHORE RESOURCESFederal Draft Proposal Discussed by First MinistersFebruary 1979

"On the question of Offshore Resources, the revised Constitution should provide concurrent legislative authority for Parliament and the legislatures of coastal provinces concerning the management of the offshore resources, lying adjacent to those provinces, which are within national jurisdiction, but which do not fall within the Provinces or Territories of Canada. This provision would be made without prejudice to the ownership of the resources in question.

Federal powers concerning navigation, international affairs, national defence and so on, would continue to apply as appropriate to the offshore areas. Provision would also be made, however, for the application of various provincial powers, for example, concerning labour relations, to the offshore areas.

In describing the concurrent powers, provision should be made for federal paramourncy concerning international trade, environmental control, and other matters to be determined. Provincial paramourncy should apply to various aspects of associated onshore developments, and to other matters to be determined.

On the important question of the rate of exploration and of production, or more generally the pace of development, there should be federal paramourncy. However, in cases where the provincial government affected disagrees with federal proposals dealing with the rate of production, on the basis of anticipated adverse socio-economic effects, or adverse effects on the future availability of resources to meet the province's needs, such federal paramourncy would only be exercised in matters of great concern to Canada.

As a necessary complement to such provisions in a revised Constitution, suitable administrative arrangements should be worked out and confirmed in due course by statute, to assure continuing federal and provincial consultation and co-operation in the management and development of the offshore resources."