

Chapter 1

Introduction

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The recent history of international ocean relations between Canada and the European Union (EU) merits particular scholarly attention. The headlines in the media have tended to focus on differences rather than commonalities, and in particular those few differences that led to confrontation, probably not without some assistance from the media. The “Turbot War” in the 1990s is by now a classic case of confrontation on the high seas motivated by conflicting fisheries and related conservation interests. Canada arrested a Spanish fishing vessel on the high seas, possibly in violation of international law and ostensibly in support of Northwest Atlantic Fisheries Organization (NAFO) fisheries conservation measures to which the European Community (EC) had objected in accordance with NAFO’s founding documents. The ensuing dispute was the climax of an ongoing dispute over the allocation of quotas in the NAFO region. Of more recent vintage is the seal hunt in Atlantic Canada, seen as an animal welfare issue in the European Union (EU), but considered by Canada as a sustainable use of a natural resource and trade issue. The EU is Canada’s second largest market for seal products and consequently Canada’s seeking relief against Belgium and the Netherlands through the World Trade Organization (WTO) is not surprising. More recently, clouds appear to be gathering on the horizon concerning the European Commission’s Arctic communication which addresses, among others, the enhanced future usage of Arctic navigation. Canada is of the view that the Northwest Passage constitutes internal waters subject to full Canadian sovereignty. Differences on some recent non-ocean issues have also received extensive publicity, such as Canada’s apparent retraction on its Kyoto commitments, measures of the EC concerning approval and marketing of Canadian products containing genetically-modified organisms, trade description of scallops, and restrictions on the import of Canadian beef raised with hormones.

Scholarly attention is merited to enable a dispassionate study of the broader scope of this important relationship outside the arena. Publicised differences frequently mask the reality that more often than not Canadian and EU international relations, including ocean relations, are generally marked more by convergence than divergence, and that differences are by and large

resolved in a non-confrontational manner. When there are disputes, consultation and diplomacy are normally employed. For example, Canada and the EC amicably resolved a dispute over taxes and exemptions for wine and beer that was initially a WTO complaint. There are numerous examples where the seemingly normal or unspectacular technical cooperation in ocean affairs with EU Member States occurs on a regular basis. Cooperation within the International Maritime Organization (IMO) is taken for granted and therefore not normally reported upon. The exchange of fishery science information is similarly “quiet.” At times the apparent differences in approach are purely linguistic, as for example Canada’s “ocean” policy as compared to the European Commission’s “maritime” policy, when in effect the general purpose and content are comparable. In other instances, the difference is more substantial. For instance, the development of Canada’s ocean policy (National Oceans Strategy) was mandated by legislation (*Oceans Act*) whereas the EU’s Integrated Maritime Policy was adopted as a political initiative. Whether there are similarities or differences, it is useful to seek to understand what is behind the convergence or divergence in the practices of two entities which between them account for a large measure of the world’s coastal and ocean areas, capabilities and actual activities.

There is also another motivation behind this book which serves as context for decision making on ocean and maritime affairs: comparative “federalism.” Canada has had experience as a federal state since confederation in 1867, and with full authority over external affairs since 1931. In comparison, the EU is a supranational organisation originating from the Coal and Steel Community (1951), the European Economic Community (1957), and European Atomic Energy Community (1957), which were integrated into the European Communities (1967), and further evolving into the EC and the EU (1993). The EU continues to internally integrate and evolve in the direction of a “federal” union. Repatriated in 1982, Canada’s constitution has a complex structure that allocates powers between federal and provincial levels and recognises aboriginal rights. Aboriginal rights have received further constitutional recognition in a series of Supreme Court of Canada decisions. Although oceans issues (fisheries, navigation and shipping, and including external affairs) are *prima facie* attributed to the federal level, the coastal provinces and territories have interests and claims over how Canada’s oceans are managed and how their benefits are distributed. In the case of offshore development in the Atlantic region, a special political arrangement was worked out between the federal government and the provinces of Newfoundland and Labrador and Nova Scotia which included an allocation of regulatory responsibilities and royalty management to a joint board. Unlike Canada,

the EU has sovereign states as members and they do not necessarily enjoy exclusive competence on some ocean issue areas such as fisheries conservation and management, whereas they retain broad competence on other ocean issues such as offshore development and military uses. Central to the comparison between Canadian and EU ocean policy making is the relationship between the central (federal or supra-national) and component units (provinces, territories and Member States). As the EU continues to evolve as a “federal” arrangement, it is not surprising that it will seek to learn lessons from an older (albeit smaller) sibling on key policy domains where the relations between the centre and the constituent membership is in play. Ocean issues are one such policy domain where the Commission has studied the Canadian experience in anticipation of the launching of maritime policy consultations and eventual adoption of the Blue Book. And equally, Canada has frequently looked at the EU to learn from ground-breaking initiatives, such as renewable energy policies and practices.

This book is the result of a cooperative project led by scholars from Canadian and European universities and with the participation of practitioners. Although in Canada the “EU” is common currency, there is sparse understanding of the nature and complexities of this supranational organisation among Canadian scholars. The challenge of integration for an organisation that currently has 27 diverse Member States with over 500 million inhabitants is probably not fully appreciated. At Canadian law schools the teaching of EU law is a relatively recent phenomenon and is far behind the comparative attention US law receives. In part this may be explained by the North American geographic and trade realities, but it is also true that the EU is a major trade partner for Canada. Similarly among EU scholars, there is insufficient understanding of Canada as a highly diverse federal state of 33 million inhabitants whose middle-of-the-road foreign policy has enabled it to play a role far beyond its size.

The issue areas of focus in this book are ocean-related. The aim is to increase academic and public understanding of Canadian and EU approaches and challenges in governing key human uses of the oceans. The general approach of the book is comparative, pitting colleagues on both sides of the Atlantic to identify and reflect upon areas of convergence and divergence in Canadian and EU interests and practices. A running theme throughout the book is ocean governance because across those sectors Canada and the EU are facing numerous common issues. Those issues include: comparing ocean policy development and implementation experiences; how to establish, strengthen and modernise regional fisheries management organisations; current directions for Arctic policy and whether existing regional governance arrangements for the North, such as the Arctic Council, are sufficient; the role of maritime spatial

planning in advancing maritime policy; how to effectively counter illegal, unreported and unregulated (IUU) fishing; how far coastal states and regional entities can go in unilaterally controlling and criminalising vessel-source pollution and increasing conditions for port entry on environmental grounds; how to respond to the problem of exotic species introduced by ballast waters from ships; how to address illegal immigration at sea; how to address high seas governance “gaps,” for example, management of discrete high seas fish stocks, establishment of high seas marine protected areas and protection of biodiversity; and how to address growing energy security concerns surrounding offshore oil and gas and the prospects of renewable ocean energy. Addressing potential terrorist threats in ports and at sea, and interdiction and enforcement at sea are further high priority issues. How Canada and the EU (including EU Member States) project their interests in international organisations with marine and environmental mandates is also addressed in the various issue areas above.

The project that produced this book had a three-part methodology. First, an initial workshop of leading scholars of Canada (Dalhousie University) and the EU (University of Lapland, *Vrije Universiteit Brussel*, Utrecht University) was convened in Halifax, Nova Scotia, Canada, to share perspectives on ocean governance approaches and challenges, to identify issues to be targeted and to plan for the engagement of policy makers. Second, teams of scholars undertook cooperative and comparative investigations of selected ocean governance topics. Third, a final workshop involving participating scholars and practitioners from the European Commission (in particular the Directorate-General for Maritime Affairs and Fisheries (DG MARE); Directorate-General for External Relations (DG RELEX); Directorate-General for Transport and Energy (DG TREN) and the European Maritime Safety Agency (EMSA)) was convened in Brussels in cooperation with the Institute for European Studies (IES). The purpose of the workshop, also involving representatives from the Canadian Department of Fisheries and Oceans (DFO) and the Department of Foreign Affairs and International Trade (Brussels embassy), was to share research findings, invite critical comments on research results, and distill comparative lessons.

This book consists of the proceedings of the final workshop (namely presented papers and summary of discussions). The project was able to achieve several stated objectives. It has engendered among project participants a clearer comparative understanding of evolving Canadian and EU ocean policy interests in key marine sectors and issues and their projection in the international arena. The project has explored approaches for how Canada and the EU might play leading roles in furthering the progress and development of the law of the sea, international environmental law, international maritime law, and international

ocean governance. The project enhanced appreciation of the increasingly important roles of various groups (policy makers, NGOs, industry, and academics) in Canadian and EU approaches and challenges in ocean policy and governance. The project has facilitated greater Canadian-EU cooperation in addressing ocean governance weaknesses and gaps in the issue areas addressed. Finally, the project has forged cooperative research linkages among participating institutions in Canada and the EU that have law of the sea, and ocean policy and governance interests and programmes.

Finally, the co-editors and contributors to this book acknowledge the generous grant from the Public Diplomacy and Outreach European Union and EU-Canada relations programme, funded by the European Commission (DG RELEX) that has enabled this project to occur and to be brought to fruition. The co-directors want to express their sincere thanks to Yasmina Sioud for the effective administration of the project at the Commission and the technical editors (Susan Rolston and Adam Stepien) for their diligent work in putting the book together.