CANADA

STATEMENT TO COMMITTEE III PLENARY

SEPTEMBER 14, 1976

My Delegation wishes to thank you for your comprehensive report on the work of our Committee as it relates to vessel source pollution and through you to express our appreciation for the able contribution of Mr. Vallarta in the small negotiating group. That we have achieved as much as we did is a reflection of his sedulous efforts.

At the outset of this session I think there was common ground in believing that many of the most difficult problems relating to marine pollution are resolved by the RSNT. The text which we inherited from the fourth session went some distance towards meeting the objective of a proper balance between the enforcement rights and duties which coastal States, maritime States and port States should be in a position to exercise in order to ensure a comprehensive, credible and effective regime for the prevention, reduction and control of marine pollution from vessels. A number of amendments on the more contentious issues relating to port State and coastal State enforcement powers remain outstanding and must be held over for resolution at our next session, particularly bearing on Articles 28, 30 and 38, but we are optimistic that an improved RSNT can be formulated.

However there is one other outstanding issue - coastal State rights and duties with respect to the territorial sea and Economic Zone - which in the view of this delegation remains of crucial importance in determining the successful outcome of negotiations of the Part III text and in the longer term the acceptability of the Convention for a number of states. You reflected this assessment when at the beginning of the current session you identified as one of

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the three key issues the power of the coastal State to establish laws and regulations within its territorial sea for the prevention, reduction and control of marine pollution from vessels. Our full concurrence with this assessment derived from a deep concern that powers acknowledged under existing international customary and treaty law to be a part of the sovereign prerogative of the coastal State risked being seriously undermined by the restrictive wording of operative provisions in Part II of the RSNT. More specifically and in the context of this Committee's mandate, it was our concern that powers ostensibly conferred on the coastal State pursuant to Article 21(3), Part III to set environmental standards in the territorial sea would be effectively denied when read in conjunction with the sweeping language of Article 20(2) Part II. It was evident therefore that the two articles were interelated and in conflict with one another.

It is not our purpose to reiterate in detail our concerns relating to Article 20(2) of Part II of the text. This has already been done by the Head of our Delegation in Committee II and in this forum earlier in the session. But since this is the last Plenary meeting of our Committee this session we think it would be useful to briefly summarize for the record the problems inherent in Article 20(2) and its bearing on Part III.

Our concerns are the following:

A - This article would have the effect of radically altering in favour of maritime States the long established balance between coastal State sovereignty and the right of innocent passage thus constituting a substantial restructuring of

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existing international law as codified in the 1958 Convention on the Territorial Sea;

B - The article imposes an absolute prohibition on the enactment by the coastal State of laws relating to design, construction, manning and equipment even if only to give effect to existing international rules and standards - something which is not even done in Article 21 (4) relating to the Economic Zone;

C - This prohibition extends to other "matters" regulated by generally accepted international rules unless specifically authorized by such rules, and "matters" is left undefined and hence may encompass a wide range of subjects including discharge standards, safety of navigation, minimum keel clearance, conservation of the living resources of the sea and liability;

D - Coastal States would be completely deprived of the ability to respond to perceived threats to the marine environment not covered by international rules even if only in anticipation of the entry into force of rules already adopted by competent international organizations;

E - The difficulty of agreeing on what is a "international standard" and when it is "generally accepted" compounds the problem of applying this article (as set out so well by the Malaysian delegate in Committee II).

It has been suggested that states which share the objectives and concerns of my own country are seeking absolute sovereignty

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for the coastal State within the territorial sea to set marine pollution standards. This is completely erroneous and false - it is not our wish or intention to achieve such a result nor do we believe that our proposals to delete or amend Article 20(2) would produce that result. We have always recognized the duty of a coastal State to respect the right of innocent passage for foreign vessels in the territorial sea. In listening to the debate on this issue it has been our impression that the objective of some states has been to create a new order of absolute sovereignty for flag states within the territorial sea. The 12 mile territorial sea has been with us for a long time and we are yet to witness the worst possible scenario - the development of a so-called patchwork quilt of regulations or inordinate restrictions on foreign shipping. In that some 25 states have enacted marine pollution legislation, legislation which in certain cases was in anticipation of the coming into force of an international convention or at variance with such convention, and yet maritime commerce continues to and from such nations is we think highly indicative of the false bogeyman that is being presented. It would simply not be in any coastal State's interests to adopt such a self defeating approach dependent as many of us are on the smooth flow of international shipping to ensure our economic well being. The existing regime of the territorial sea has worked effectively to preserve and promote the interests of both coastal and maritime States. Working together in international fora they have developed international rules governing vessel source pollution. We for our part have endeavoured wherever possible to incorporate international norms in our national laws. But we fear that by employing restrictive

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language in Article 20(2) a coastal State's ability to act in cases of need to protect the marine environment will be denied to it and an important part of the incentive for maritime and coastal States to collaborate in formulating effective international rules will be lost.

It has become evident that an increasing number of delegations are seriously concerned about the open-ended nature of the paragraph and the resulting constraints which might as a result be imposed on a coastal State's ability to enact legitimate measures both for the protection of its marine environment and in other areas. As delegates are aware Committee II discussed this issue last week and there was a wide expression of concern that Article 20(2) created serious problems. Given the close link between this Article and Article 21(3) of Part II the discussion in Committee II has obvious and direct implications for our work in Committee III. Clearly this is an issue which requires the closest collaboration between the two Committees to ensure harmonization of the relevant provisions of Part II and Part III texts. It is significant that as a result of the discussion in Committee II the Chairman has acknowledged a need for a small group of that Committee to examine the issue, perhaps inter-sessionally, but certainly at the next session.

Discussion in the two Committees has served to focus attention on the basic issues involved and hopefully set the stage for meaningful negotiations at the next session. Delegates now have an opportunity to reflect on the subject and come to the next round prepared to discuss in concrete terms possible ways of remedying the defects in the text. Perhaps the most important and revealing question to be addressed by all of us here is whether Article 20(2) Part II dealing with the

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territorial sea and Article 21(4) Part III dealing with the Economic Zone differ i substance, as they should in that the legal regime of the territorial sea is one of sovereignty and the legal regime of the Economic Zone is one of coastal State jurisdiction. It is our concern that the effect of Article 20(2) leaves the coastal State with equivalent or perhaps fewer powers with respect to marine pollution control than are conferred on it with respect to the Economic Zone.

It is our impression that while there is a range of views as to how Article 20(2) might be improved in order to ensure reasonable discretion for the coastal State to act in the protection of its marine environment there is common ground on the need for some amendment to curb the restrictive effect of the present text.

In the meantime we think it is imperative to avoid any amendments to Article 21(3) of Part III which could further prejudge the basis issue of coastal State standard setting powers in the territorial sea. More specifically, any broadening of the cross reference in that article to include all of Section iii of Part II of the RSNT could have such a prejudicial effect. Thus pending an overall solution of the problem, which by necessity must reflect the inter-relationship of the two articles, we believe that it is important to leave Article 21(3) unchanged.

We are confident that a solution to this problem can be found which maintains the balance between a coastal State's sovereign rights within the territorial sea and the right of innocent passage.