

TEXT OF STATEMENT BY MR. J. A. BEESLEY, REPRESENTATIVE OF
CANADA, TO THE UNITED NATIONS PREPARATORY COMMITTEE
TO THE THIRD LAW OF THE SEA CONFERENCE, SUB-COMMITTEE
III, PALAIS DES NATIONS, GENEVA, JULY 20, 1971. *

Thank you, Mr. Chairman.

May I begin by expressing the appreciation of the Canadian Delegation for the two statements we have just heard, the message from Mr. Strong and the report on the London Anti-Dumping Conference, which take us a considerable distance already in elucidating the nature of the problem before us explaining the complexity of it, and perhaps suggesting some guidelines for our future action. I would certainly like to endorse the suggestion just made by the distinguished representative of Austria, to ~~follow~~ the Chairman's opening remarks on our possible procedures. Mr. Chairman, I must also apologize to the Committee and the interpreters in that I will not be speaking from a prepared text or notes. Nonetheless, in the light of the excellent statements we have just heard, I cannot refrain from making known some of our thoughts on this particular problem of pollution which is one which we in Canada consider so important, as I think is reasonably well known in this committee. We have fairly strong views and I hope I will be forgiven if I repeat some ideas which we have made known before, and I hope I can have the indulgence of the committee if I also take a few moments to suggest how we at least see how we might approach this problem in this committee.

To begin with we have no doubt whatsoever that, as we have said before, the pollution problem raises the whole range of issues, jurisdictional, legal, political, military and economic facing the committee as a whole as well as the subcommittee ⁱⁿ which I am now speaking. We have pointed out before that if we are dealing with fishing and the problem of fisheries jurisdiction, what a coastal state does or may not do is bound to have serious implications for the fishing activities of other states, particularly of course distant water fishing states. We are all aware also

* (Transcribed from the recording of Mr. Beesley's intervention)

that such questions as the breadth of the territorial sea^{and} passage through straits in which the under-lying or over-riding problem of security is raised, will have implications for certain states more than others, particularly those major maritime powers which have a prime interest in maintaining freedom of passage for military vessels. Similarly, activities by coastal states affecting offshore drilling rigs will have important effects for those concerned with the exploitation of the seabed resources. If, however, we are to face up to the problem of marine pollution we must deal in this committee with every type of marine vessel. We have to worry about the problem of commercial passage, about the problem of security of coastal states, about the problem of fisheries, about the problem of drilling--in other words any type of activity conducted on the seas within or beyond the jurisdiction of coastal states, with the possible exception perhaps of cable laying and some other limited types of activities. For these reasons we have emphasized from the beginning that we consider that the mandate of this subcommittee is one of the most important that the committee of the whole has to discharge, and we say this not merely because we have a special interest in protecting any particular environment, such as the Arctic, but because we have necessarily had to give serious thought to this whole range of issues. For reasons which I will explain later in greater detail in plenary, we are convinced that we are here faced in this subcommittee with extremely serious problems which, if left unresolved, will create dangers not merely for the Third Law of the Sea Conference, not merely for the member states of the UN but for humanity as a whole.

Turning now to some of the specific problems before us, we all know that we are facing an extremely important conference in Stockholm in 1972. We know that the Secretariat and a large number of member states are very busily engaged in preparing for that conference, and we would like to express appreciation to the Secretariat of the conference for the magnificent

work they are doing. They have achieved so much more in so short a time than any of us would have thought possible that I can only say that I hope we in this committee are able to emulate their example. What, then, is precisely what we hope to see as the outcome of Stockholm? Well, there are many things which I think probably lie beyond our mandate which we hope to see come out of that particular conference, questions to do with monitoring, for example. To us that problem is scientific and technical in nature and perhaps even partaking of engineering concepts, but it is not essentially a law-making problem. We don't see that problem as falling within the mandate of this committee. It is not up to us to make laws about monitoring. If it turns out that we can do so as a follow-up to Stockholm, so much the better. What we think is, however, definitely required of Stockholm, is a Declaration of Legal Principles, and I refer here to legal principles, not pious platitudes, not hortatory calls upon the nations of the world or the peoples of the world, not something that will serve as an inspirational message to our children but something which will have some solid legal foundation. It won't be law in itself but it will have a very high legal content. I can liken it perhaps best to the Declaration of Principles on Outer Space which later led to the Convention on Outer Space. For this reason we attach great importance, perhaps some would say inordinate importance, to having a solid legal basis for international environmental protection come out of Stockholm in the form of a Declaration of Legal Principles. I don't think it is any secret that the Canadian Delegation have participated actively in New York at the recent meeting of the working group on the declaration of principles. I don't think it is any secret either, although perhaps I would wish it were, that we were not very successful in having our own declaration of principles accepted. Rather to our surprise, we found that certain principles which we consider almost self-evident to be rather controversial. I refer, for example, to the principle

effectively enforced and honestly obeyed. Having sounded that warning, or perhaps caveat is the better word, I should like to turn to the question of the forthcoming IMCO Conference, the kind of role IMCO can play vis-a-vis Stockholm and also vis-a-vis our own Third Law of the Sea Conference. In our view at least, and we put this view forward with great conviction, IMCO is the body with the technical expertise to develop specific rules concerning shipping safety and maritime traffic. I think probably it is fairly well known that Canada has not been all that enthusiastic about some of the decisions of IMCO, particularly the 1969 Brussels IMCO Convention, which we felt fell far short of what might have been achieved in attempting to protect the environment. Indeed we felt that it protected shipping states rather more than it did the environment. Nonetheless, we sense a tremendous evolution of thinking within IMCO, and we feel satisfied that we can trust IMCO to take the declaration of principles emanating from the Stockholm Conference and translate them into technical rules, perhaps in the forms of conventions, perhaps not, but in any event technical rules of application, in a forum in which the necessary expertise exists. We don't hope that from Stockholm itself we can expect a convention. A declaration of principles is quite adequate in our view.

Now, turning to what we might expect from the Law of the Sea Conference, and I would like to express the hope here on behalf of the Canadian Delegation that the IMCO Conference will follow the Law of the Sea Conference rather than vice versa, although we could live with either possibility, we think that the Law of the Sea Conference simply must produce a convention on control of pollution, a convention on the marine environment, leaving aside for the moment the problems of the other environments with which the international community must also deal and

with which Stockholm will, of course, be very directly concerned. The wave of the future as we see it, if you will pardon the pun, is an anti-pollution convention of universal application laying down certain minimal rules. We think also, however, that it is desirable that provision be made for the development of a system of special rules established on a regional basis, which might be not only special, but stricter, applicable to particular regions. If there is one truth which seems self evident in the whole field of pollution and the environment it is that no single strategy, no single panacea applies to every area of the world or to every type of problem. This is not, however, a reason for avoiding the problem of trying to draft a universal convention, so long as special regional problems are also taken care of on a regional basis. I would refer here for a moment to paragraph 24 of Document E/5003, which is of course an excellent analysis of the problem, which draws attention to the need for both universal and also regional approaches. We already see in our own mind's eye a kind of convention which we might produce in this sub committee and in due course will be making our proposals known and will hope to exchange views with other representative states who undoubtedly have their own ideas too. Now as to where we go from there, I think we can help perhaps a little bit by giving some attention to what is going on in various parts of the world already. To mention only a few examples, we know that there is already a rather well developed system of pollution prevention from offshore exploration in the North Sea area. Certain of the people involved in that development who should perhaps remain unnamed, are probably amongst the most dedicated environmentalists in the world. We know also that similar attempts have been made, for example, with respect to the Baltic and we hope that those efforts will prove fruitful. I can tell you also that we ourselves

are collaborating with other states in attempting to work out a regional approach for the Arctic. Perhaps a more specific regional example of more immediate application is the efforts we are engaged in with our neighbour to the south to attempt to clean up the problem of the Great Lakes pollution. We have already reached agreement in principle on measures required, and this agreement is going to have very far reaching significance for both our countries, when we have completed our work of drafting the necessary bilateral treaty, in which we are now engaged. Here, I suggest, is an example of how and why we must approach certain problems from a regional point of view. It is of interest that Canada already has a treaty with the United States, the Boundary Waters Treaty of 1909 which I think provides a good example of both the possibilities and difficulties inherent in this pollution problem. As far back as 1909 these two countries agreed that they would not pollute one another's boundary waters. Well, it has taken us 50 years to prove how thoroughly we can pollute these very boundary waters. Now, after 50 years we are beginning to try to tackle the problem of cleaning up the mess, but this makes quite clear, I think, that the law is only one strategy which we must use.

Turning now to the question of general multilateral law, I'm afraid that apart from a few IMCO Conventions there is relatively little environmental law on which we can base our future work. In brief, we have the decision of the Trail Smelter Case, we have the Test Ban Treaty, we have the IMCO Conventions mentioned, we have various multilateral and bilateral treaties. There are, however, certain developments since we last met which are rather encouraging concerning the future development of the law. One I mentioned which gives cause for both encouragement in some respects and discouragement in others is the meeting of the working group on the declaration in New York. Another, and to our minds a somewhat more encouraging development, is that just referred to by one of the previous speakers, namely the meeting on dumping in London held

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under the auspices of the Preparatory Conference for the Environment and with the assistance of INCO. We ourselves attach great importance to the fact that the USA tabled a draft proposal on anti-dumping. We went somewhat further on the Canadian side with ^{the} rather radical proposal that if a state insists on dumping noxious materials then it should do so in its own waters and no one else's. We are aware, of course, that pollution knows no boundaries, but we would rather have a state pollute itself before it begins polluting every one else. In this respect we would like to pay tribute to the recent decision of the Dutch Government to take a ship which was on its way to pollute everyone's environment and return it back to Holland where it would do its own polluting in its own territory.

In addition to the intergovernmental conferences mentioned, there have been a whole series of semi-official conferences in which we have participated, and it is rather encouraging to us that the Canadian approach to the dumping problem put forth in London attracted support in the Pacem in Maribus Conference in Malta just a few weeks ago.

There is a long way to go, however, in developing international environmental law. As to how we go about our task, our view is that what is required is a total or holistic approach, not a piecemeal and uncoordinated approach, and we see real dangers ahead if we don't attempt to adopt such a comprehensive well coordinated approach, bearing in mind always precisely what we can expect from each of the conferences facing us. Moreover, in addition to all this action on the multilateral plane we think it is absolutely essential that each one of us go back to our own countries and try to clean up our own backyards. Whether or not everyone agrees with the precise methods adopted by Canada at INCO, it should be recognized that we are engaged in just that very process. The Canadian Government has recently

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established a Department of the Environment and for some time now we have had in our foreign ministry a section of our Legal Operations Division devoted to environmental law. Canada has recently adopted a series of important statutes relating to the protection of the environment. There is, for instance, the Canada Water Act providing for strict water quality management; certain brand new anti-pollution provisions in the Canada Shipping Act, including the extension of pollution control to Canada's new fishing zones; new and more stringent provisions under the Fisheries Act; a new Oil and Gas Production and Conservation Act providing for the control of activities offshore, particularly as regards the prevention of pollution; and, of course, the Arctic Waters Pollution Prevention Act. Still other legislation could be cited, such as a Clean Air Bill now in the process of enactment, but my suggestion is that whether or not other states will follow our particular precedents, we must all recognize the need to attack the problem on the national level as well as on the multi-lateral level. We feel also it is necessary to attack the problem bilaterally, which as I mentioned, we are attempting to do with our neighbour to the south and our neighbour to the north on such questions as the Arctic, the Great Lakes, the possibility of heavy tanker traffic off the west coast of Canada. In all these fields we think it is imperative to move nationally and bilaterally. The mandate of this sub-committee, however, is to move on the multilateral plane. The complexities of the problem I think can best be illustrated by consulting the Document E-5009, where on page 5/ⁱⁿ language far better than I could ever devise, some of the intricacies of the problems are set out. I think also it is worth bearing in mind that we can't solve all the marine pollution problems in this sub-committee. Pollution of the marine environment can occur from the air. A recent IMO Conference chaired by a Canadian, Dr. Hoedler, who is a member of

this Delegation, it was concluded that much if not most of the pollution of the marine environment comes from the air, and I think there is no better way of bringing home to us that we cannot simply attack the problem in any one forum nor on the multilateral plane in isolation from national action. We must do something about it at home.

Mr. Chairman, against this background how do we Canadians see this great problem and how do we see things shaping up for the future? A year ago I don't know if we would have been very hopeful but we now believe that there is much more awareness of the problem and much more attention being devoted to the question of the progressive development of international law, the part of the problem of concern to this sub-committee. We cannot call our future work codification, because there is so little of the law to codify in this field but must engage in progressive development of the law. We think that we have good reasons to expect a well-coordinated approach to result from the Stockholm Conference. I would only add that unless this sub-committee takes this problem very seriously we lawyers will be left behind and will find that although cooperative action occurs we are not developing the law as we think it should be developed.

I would like to conclude by outlining very briefly our own view of the way to tackle this problem. Firstly, we do not want to attempt to create some kind of super agency which would have to have the combined powers of the Security Council, ICAO, ITU, WMO, WHO, and IMCO. We think that such an approach is simply not realistic. We see the solution as being an agreed multilateral regime laying down certain minimal standards wherein certain responsibilities and duties, and, if anyone wants to use the term, "powers", would be delegated to coastal states. It would be left to coastal states to do the policing, management and administration of the regime which would, however, be elaborated and agreed to multilaterally. I am not talking here

about unilateral action. I am talking about a multilateral approach which could delegate powers to the coastal state, and this is the direction in our view in which we should proceed in this committee.

Thank you very much, Mr. Chairman.